Office of Government Ethics
93 x 28 -- 10/14/93

Letter to the President of an Investment Management Firm dated October 14, 1993

This is in response to your letter (with its enclosures), dated October 4, 1993. Your letter raises issues under the Federal ethics program concerning who is eligible to serve as a fiduciary of a blind trust arrangement which is certified by this Office as a qualified trust.

In order for an Executive branch official to have a blind trust which may be recognized under Federal law, the trust arrangement must have been certified by this Office as a qualified trust under the mandatory scheme of section 102(f) of the Ethics in Government Act of 1978 and the implementing regulations at 5 C.F.R. § 2634.401 et seq. An integral component of this mandatory system is the certification of all fiduciaries under the rules of paragraph (a) of 5 C.F.R § 2634.406. The legislative history of section 102(f) manifests a Congressional intent to provide for a unitary system of blind trust rules to which all blind trust arrangements must adhere. This intention is explicitly stated to be a reaction against Federal blind trust practices prior to the adoption of the Ethics Act, which allowed individualized decisions as to what was practical and efficacious for the parties to each blind arrangement.

The legislative objectives of the statutory blind trust scheme are being met through this Office's management of a qualified trust program which has achieved general public acceptance, a notable lack of controversy, and satisfactory results for those who have voluntarily subjected themselves to the rigors of the program to avoid collateral concerns relating to their private-sector investment interests. Notwithstanding the concerns expressed in your letter, issues involving the formulation of blind trust arrangements which are to be certified by this Office must be resolved in accordance with applicable law.

Under the rule of paragraph (a)(2) of section 2634.406, eligibility to serve as a fiduciary of a qualified trust is limited to financial institutions, not more than 10 percent of which are owned or controlled by a single individual. This rule is premised on our opinion based on OGE's experience that such a fiduciary is

necessary to maintain effective administration of trust arrangements and preserve confidence in the Federal qualified trust program.

We have examined the materials you have submitted. It appears that your firm's ownership and control are concentrated in a single individual. Since there does not appear to be a regulatory basis for departing from the rules imposed by paragraph (a)(2) in the situation you present, the Office of Government Ethics is without authority to deviate from the rules prescribed by that paragraph.

Sincerely,

[an OGE Associate General Counsel]