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The Filing and Review of the Attorney General's Financial Disclosure Report

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Before the
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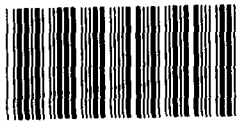
Committee on Post Office and Civil Service
House of Representatives



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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our analysis of Attorney General Edwin Meese III's 1985 financial disclosure report and the Department of Justice and the Office of Government Ethics' (OGE) reviews of that report. Our analysis was conducted pursuant to your April 30, 1987, request and culminated in our report entitled Ethics Enforcement: Filing and Review of the Attorney General's Financial Disclosure Report (GAO/GGD-87-108). First, I will describe the legal requirements for financial disclosure and review. Second, I will relate the sequence of events in the filing and review of the Attorney General's disclosure report. Finally, I will note our conclusions regarding Mr. Meese's disclosure report and the Justice and OGE reviews of that report.

Generally, we found that the Attorney General did not disclose the assets and transactions in his partnership with Financial Management International, Inc., as required by the Ethics in Government Act (Public Law 95-521, as amended). We also concluded that, while certain aspects of the disclosure report were questioned and corrected, neither the Department of Justice nor OGE obtained the required information about the partnership during their reviews of Mr. Meese's disclosure form.

LEGAL REQUIREMENTS FOR FILING AND REVIEW OF FINANCIAL DISCLOSURE REPORTS

Reporting requirements

Section 201(d) of the Ethics in Government Act requires an incumbent of a high-level executive branch position to file a public financial disclosure report on or before May 15 of each year unless an extension is granted by the reviewing official. In such an annual report, the filing official must disclose a number of details about his or her financial affairs during the previous calendar year, including his or her income, interests in property, liabilities, and gifts and reimbursements.

Section 202(f) of the Ethics Act specifies that an individual receiving income from or holding an equity interest in a "financial arrangement" must disclose the assets and associated income unless the arrangement is an exempt trust. Three types of such exempt trusts are permitted under the act: (1) a qualified blind trust, (2) a qualified diversified trust, and (3) an excepted trust. The act contains very specific standards for the creation of each type of trust. For example, one of the statutory requirements for the creation of a qualified blind trust is that the proposed trustee and the proposed trust

instrument be approved in advance by the official's supervising ethics office, which, in the case of a presidential appointee, is the Office of Government Ethics. Although the third type of trust, an excepted trust, does not require OGE approval, it must be created without action or involvement by the employee.

An individual who holds an interest in any private investment vehicle other than one of these three types of trusts is legally obligated to disclose the underlying assets and the income from specific assets in the same detail as if the assets were held outright. In the event that any asset was purchased, sold, or exchanged for an amount over $1,000 during the preceding calendar year, the individual would also be required to describe the transaction and state its date and category of value.

Review requirements

The Ethics Act and its implementing regulations provide that an incumbent of a position requiring Senate confirmation must file his or her financial disclosure report with the reviewing official in the employing agency. That official must review the financial disclosure report within 60 days after the date of filing and transmit the report to OGE. OGE must review the report within 60 days after the date of its transmittal.

The reviewing responsibilities of the employing agency and OGE with respect to a presidential appointee's annual report are the same. Briefly, if the reviewing official believes that additional information is required, the reviewer must request that information from the filing official. If the reviewer concludes that the report discloses a conflict of interest or otherwise is not in compliance with ethics rules, the reviewer must notify the individual and afford him or her a reasonable opportunity for response. If, after consideration of the response and opportunity for consultation, the reviewer believes the report is still not in compliance, the reviewer must notify the filer of appropriate remedial steps to be taken. Such steps might include divestiture, recusal, or establishment of a qualified trust. If such steps are not taken, the matter must be referred to the President for appropriate action.

CHRONOLOGY OF EVENTS IN THE FILING AND REVIEW OF THE ATTORNEY GENERAL'S REPORT

On May 9, 1986, Attorney General Meese requested and was granted a 20-day extension for filing his report by his reviewing official, the Associate Attorney General, thereby making the document due on June 4, 1986. A second extension of 15 days was asked for and was granted by the Associate Attorney General on June 3, 1986, thereby making the disclosure report due on

June 19, 1986. Mr. Meese filed the report with the Associate Attorney General on that day.

In the report, Mr. Meese listed 38 assets or sources of income, most of which were valued at or below $5,000. The largest of his assets was identified as "Financial Management International, Inc. (limited blind partnership)" (FMII), valued at between $50,001 and $100,000. The report listed dividend income from the partnership of between $5,001 and $15,000 for the reporting period. FMII was the only asset listed on Schedule B of the report as purchased during the 1985 reporting period; 28 of the 37 remaining assets and income sources were listed as having been sold during 1985. According to Mr. Meese's attorneys, the sales of certain of the Attorney General's assets financed the purchase of the partnership with FMII and precluded the Attorney General from "controlling or knowing what was done with his money."

Justice review of the disclosure report

On June 20, 1986, the Deputy Associate Attorney General, acting on behalf of the Associate Attorney General, forwarded the report to the Designated Agency Ethics Official (DAEO) for the Department, who was the Assistant Attorney General for Administration within the Justice Management Division. The Associate Attorney General said he sent the form to the Assistant

Attorney General because the General Counsel within the Assistant Attorney General's office was more knowledgeable about conflict-of-interest law than he was, and this was the procedure he had established for conducting such reviews. The Assistant Attorney General, in turn, had the report reviewed by the General Counsel for the Justice Management Division (who also served as the Alternate Agency Ethics Official) and a staff attorney within that Division.

After completing their initial review of the form, the General Counsel and the staff attorney had several questions regarding items in the disclosure statement, most of which were resolved through further analysis. Several questions were not resolved, however, so the Assistant Attorney General and the General Counsel met with Mr. Meese to discuss these issues.

One of the issues raised with Mr. Meese by the General Counsel and the Assistant Attorney General was his listing of the FMII limited blind partnership. The General Counsel said she asked Mr. Meese to describe the partnership more fully, and he told her that it was a California partnership with a general partner and limited partners. He said he did not know how the money in the partnership had been invested because it was a blind partnership and he received only quarterly reports on the value of the asset. On July 1, 1986, the General Counsel used the computers in the Department's Antitrust Division to determine

what information was available concerning FMII in their computerized Dun and Bradstreet listing of businesses. She found, among other things, that FMII was listed as an investment counselor that sold its services to the general public; that W. Franklyn Chinn was described as president, sole owner, and sole employee of FMII; and that the company operated from the residence of Mr. Chinn.

On July 1, 1986, the Assistant Attorney General signed the form, and on July 3, 1986, the Associate Attorney General also signed the form, certifying that they believed there were no conflicts of interest. The Associate Attorney General said he simply made sure that the form was complete and had been reviewed by someone knowledgeable about conflict-of-interest law. He said he believes the burden is on the filer to be accurate and said he has no opinion as to whether the citation of a "limited blind partnership" was sufficient disclosure under the Ethics Act.

After being signed by the reviewing officials, the form was sent to the Department's Personnel Office for transmittal to the Office of Government Ethics. According to Justice officials, the Personnel Office collects disclosure statements from all officials in the agency and sends them to OGE as a group before the September 30 deadline for submission of such forms.

OGE review of the disclosure report

Mr. Meese's financial disclosure report was received by OGE on September 29, 1986. According to OGE officials, the disclosure report was initially reviewed by an analyst in OGE's Monitoring and Compliance Division, who raised certain questions regarding the gifts and reimbursements reported on the form. According to the OGE Director, this initial first-level review was completed on November 17, 1986. The report was then forwarded for review to the OGE Chief Counsel, who also raised certain questions concerning reported gifts. The Chief Counsel said that after a lengthy process involving numerous telephone calls and other research, he resolved the questions that had been raised sometime between January and March 1987.

OGE officials said they did not raise any questions regarding the limited blind partnership during the course of their review. The OGE Director testified in hearings before the Subcommittee on Oversight of Government Management of the Senate Governmental Affairs Committee on July 9, 1987, that the analyst noted the limited blind partnership during his review but incorrectly assumed that it was a pooled arrangement or similar to an excepted trust and did not raise it with an OGE attorney. The OGE Director said he first learned of questions regarding the partnership when reporters called him in mid-April 1987, shortly before publication of news accounts about the partnership. At

that time, the OGE Chief Counsel called the Justice Department's General Counsel and requested a copy of the partnership agreement, which she said she did not have.

On April 28, 1987, the OGE Director wrote to the General Counsel and formally requested a copy of the limited partnership agreement and any underlying documentation that established the character and nature of Mr. Meese's interests in the FMII limited partnership. In that letter, the OGE Director noted that the basic instructions to the financial disclosure form require that "in the case of holdings that are nonpublic such as privately held limited partnership interests, sufficient disclosure must be made to give reviewers an adequate basis for the conflicts analysis required by the Ethics in Government Act." The Director also stated that OGE does not recognize "blind" arrangements created by a filer's own action.

Shortly after sending this letter, the OGE Director said he called the Deputy Attorney General to determine the status of the Justice Department's investigation of individuals involved in the Wedtech Corporation and to determine whether Mr. Meese might become a subject of that criminal investigation. The OGE Director said that the Deputy Attorney General told him that Mr. Meese had requested the appointment of an independent counsel to investigate any wrongdoing on his part in relation to the Wedtech Corporation. The OGE Director said his Office then stopped its

investigation and processing of Mr. Meese's disclosure statement because of OGE's policy of deferring any action on its part pending completion of a criminal investigation. The OGE Director also called the Justice Department's General Counsel from whom he had requested the partnership agreement in early May 1986, and agreed with her that she should postpone any further review or inquiries concerning the Attorney General's financial disclosure form. On May 13, 1987, the General Counsel confirmed that agreement through a letter sent to the OGE Director and, in light of the subsequent announcement by the Deputy Attorney General that the Independent Counsel would be investigating Mr. Meese, she presumed that OGE's request for further information was withdrawn until she heard from him again.

On July 1, 1987, the Associate Attorney General called the OGE Director seeking advice regarding the limited blind partnership described on Mr. Meese's financial disclosure report for 1986, which was filed on June 15, 1987. After determining that the Independent Counsel had no objection to OGE's proceeding with the disclosure review, the OGE Director advised the Assistant Attorney General for Administration that he should proceed with his analysis and forward to OGE the underlying documents to determine if a conflicts analysis could be made on the basis of those documents. The OGE Director said that the Associate Attorney General told him that those documents were insufficient for a conflicts analysis, at which time the OGE

Director told the Associate Attorney General that disclosure of the assets would probably be required. In testimony before the Senate Subcommittee on Oversight of Government Management on July 9, 1987, the OGE Director said he had reviewed the documents and concluded that the holdings had to be disclosed. He also noted that his Office intended to send a letter to the Justice DAEO indicating what questions needed to be addressed by Justice before they could certify the disclosure report for 1986. At the conclusion of our review, OGE still had not certified Mr. Meese's 1985 disclosure report. Obviously, its certification rests on resolution of some of the same questions affecting the 1986 report.

CONCLUSIONS REGARDING THE FILING AND REVIEW OF THE ATTORNEY GENERAL'S REPORT

We have concluded that Attorney General Meese, in his 1985 financial disclosure report, did not disclose the assets held, purchased, or sold by his partnership with FMII, or the income attributable to specific assets of the partnership, as required by the Ethics in Government Act. Also, although certain questions were raised and corrections were made with regard to other aspects of the report, the Department of Justice and OGE did not obtain the information necessary to identify the partnership investments during their reviews.

Disclosure of FMII
partnership was insufficient

As discussed previously, the Ethics in Government Act requires an official to disclose the underlying assets of a private investment arrangement unless the arrangement qualifies as one of three types of trusts meeting specific statutory standards. Mr. Meese's partnership with FMII did not constitute one of those three types of trusts for a number of reasons. For example, it could not be considered a "qualified blind trust" or a "qualified diversified trust" because the arrangement was not pre-approved by OGE. The partnership could not be considered an "excepted trust" because Mr. Meese and his wife participated in its formation. Accordingly, the "blind" label affixed to the partnership did not insulate its underlying assets from disclosure under the Ethics Act. Consequently, the act required Mr. Meese to fully disclose the assets of the partnership, just as if he had held the assets directly. That is, he was required to list on Schedule A of the disclosure report the category of value of the money market funds held by the partnership's brokers at the end of 1985 and the source, type, and amount of income exceeding $100 that was generated by any asset held by the partnership during 1985. Mr. Meese incorrectly reported the partnership itself as a single asset.

Mr. Meese was also required by the Ethics Act to report on Schedule B of the disclosure report any partnership purchase, sale, or exchange of any stock, bond, or other form of security or of any real property interest if the amount of the transaction exceeded $1,000. According to a statement made public by Mr. Meese's attorneys on July 6, 1987, FMII invested partnership funds in 11 "same-day trades" of securities during 1985. The statement lists only the gross income or loss from each trade and does not indicate whether the individual purchases and sales exceeded the $1,000 disclosure threshold. However, monthly account statements of the trading account for the partnership indicate that each of the individual purchases and sales exceeded $1,000. Mr. Meese did not report any of these transactions on his disclosure form, indicating only that he purchased FMII during 1985. Since all of the FMII transactions exceeded $1,000, Mr. Meese should have detailed those transactions on his disclosure report.

Furthermore, Mr. Meese inaccurately identified the partnership as "Financial Management International, Inc." FMII was actually the general partner that managed the investments of the two limited partners, Mr. and Mrs. Meese. Neither Mr. nor Mrs. Meese owned any part of FMII. The legal name of the partnership was, according to the partnership agreement, "Meese Partners."

Justice and OGE reviews did not obtain the required information

Both the Department of Justice and OGE were required by the Ethics in Government Act to review Mr. Meese's disclosure report for completeness and compliance with the ethics laws and regulations and to apprise Mr. Meese if additional information was required. However, neither Justice nor OGE obtained information from Mr. Meese concerning the holdings of his partnership and the transactions involving those holdings, as required by the disclosure provisions of the Ethics Act.

When Department of Justice officials met with Mr. Meese to elicit further information concerning the partnership, he advised them that the partnership was established in California, that there was a general partner and limited partners, and that he was not aware of the assets of the partnership. Department of Justice officials accepted the nondisclosure of those assets on the disclosure report because of Mr. Meese's statement that the partnership was blind. However, the asserted "blind" nature of an investment arrangement does not excuse a reviewing official from requiring that the underlying assets be disclosed unless the arrangement constitutes a statutorily exempt trust.

The only other information obtained by Justice Department officials was a Dun and Bradstreet computerized listing that

identified FMII as an investment counselor and generally described the firm's structure and operations. Since the listing did not provide any information concerning the assets in which FMII had invested on behalf of Mr. and Mrs. Meese, it failed to satisfy the Ethics Act's disclosure requirements. Only a public listing of an investment vehicle's portfolio, such as the type provided by Moody's Bank and Finance Manual, will excuse a filing official from detailing the underlying assets on his financial disclosure report.

As noted in the review chronology, OGE officials did not question the partnership or request additional information until April 1987. In testimony before the Senate Subcommittee on Oversight of Government Management in July 1987, the OGE Director said that had the asset been described correctly as "Meese Partners" instead of FMII, the private character of the investment arrangement would have been more apparent and OGE analysts would have been more likely to question the arrangement.

That concludes my prepared statement, Mr. Chairman. I would be glad to answer any questions you might have.