UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

APR 16 1979

MEMORANDUM FOR: Irwin B. Rothschild, III
Office of the General Counsel

FROM: Robert B. Minogue, Director
Office of Standards Development

SUBJECT: PROPOSED MODIFICATION OF REGULATIONS REGARDING OWNERSHIP OF SECURITIES BY NRC EMPLOYEES

Announcement No. 35 dated April 2, 1979 outlined proposed modifications to NRC's regulations on ownership of securities. These regulations are likely to result in significant financial penalties for many NRC employees. The April 2 proposal is more restrictive in several ways than the generally well-thought-out amendments proposed on December 22, 1978, by the then Acting General Counsel in SECY-78-682. Specific areas where the new proposal is more restrictive include:

1. SECY-78-682 specifically excluded "other members of the employee's household" from coverage under the regulation. This would, for example, have allowed an aged parent to move into the employee's home without requiring divestiture of proscribed securities. The new proposal would include such persons within its scope.

2. SECY-78-682 provided a one-year time period for present employees to divest themselves of securities added to the proscribed list. By assuring two tax years for divestiture, this would have provided employees more latitude to reduce the tax burden of realizing possible large gains on stocks (for example, from sale of stock held for many years). The new proposal allows six months, which may or may not fall into two tax years.

3. SECY-78-682 specifically excluded firms serving as consultants on activities licensed or regulated by the NRC from coverage under the regulation. The consultant category is not only included in the scope of the new proposal, but comprises more than half the total list of companies whose securities may not be held.

The April 2, 1979 announcement offered no explanation or justification for the proposed modifications, in contrast to the proposals in SECY-78-682 which were supported by a consultant's report, citations of law and of precedents established at other Federal agencies, and comments by NRC offices and staff.

I would like to offer specific comments on the inclusion of "any company or firm which serves as a consultant on activities licensed or regulated by the NRC" as a category of securities whose ownership is prohibited. SECY-78-682 offered two arguments for not including such organizations within the scope of the regulations, "First, virtually all of these firms are partnerships or small corporations which do not issue public securities and therefore do not raise a need for the present sweeping security ownership prohibition. Second, after a concerted effort, the Office of the General Counsel, after discussions with representations of the principal staff offices, has been unable to define what constitutes 'substantially serving as consultant' for purposes of the regulation and, consequently, is unable to develop a list of firms in the category."

While I recognize that it may be appropriate to include some consulting firms in the proscribed list, those included should be identified in an organized way based on real interest and clear understanding of ownership. To do this, logical explicit criteria should be developed and applied in a thorough, systematic manner. Companies on the resulting list should have a significant interest in activities regulated by NRC. Where the consultant firm has a relationship to a large corporation by being wholly or partly owned or otherwise controlled by it, the criteria for determining "significant interest" should, in my view, consider the total activities of the parent organization (whose securities, as I understand it, would also be prohibited to employees), not only those of the subsidiary.

The list of consulting firms included in Attachment B to the April 2, 1979 announcement reflects the difficulty of compiling a satisfactory list of nuclear consultants. The criteria for inclusion in or exclusion from that list are not readily apparent. In fact the list gives the appearance of having been developed in a "brainstorming" session from a laundry list of consulting firms.

Further, the present regulation, the proposal in SECY-78-682, and the new proposal appear arbitrarily to exclude certain categories of organizations while including others in the ownership prohibition.

Why, for example, include nuclear power plant licensees but exclude those manufacturing smoke detectors or performing industrial radiography; why include consultants to the nuclear industry, but exclude those who supply major components to the same firms; why include a conglomerate with a small subsidiary representing a tiny fraction of its saleswhich consultswith the nuclear industry, while excluding a mutual fund that is heavily invested in nuclear utilities and suppliers? And, why are NRC's contractors not included?

I would like to make the following recommendations:

1. With respect to excluding "other members of the employee's household" from coverage and establishing a time period for divestiture of securities of companies in which holdings are not permitted, the positions of SECY-78-682 should be adopted in preference to those in Announcement No. 35 of April 2, 1979. That is, members of the employee's household other than his spouse and minor children should be excluded from the scope of the regulation and employees should be given a full year from the time a firm is added to the list to divest themselves of securities in that firm.

2. With regard to prohibiting ownership of securities in firms providing consulting services to the nuclear industry, I believe this should be done only if it is possible (a) to develop logical and explicit criteria related to a significant interest on which the prohibition is to be based and (b) to thoroughly and systematically review all consulting firms and clearly identify those meeting the criteria for prohibition of ownership. Further, when the consulting firm is a division of, or otherwise involves an interest of a large corporation, any criteria developed should take into account the total scope of activities of the parent corporation.

3. Finally, I would like to propose an open meeting with the Commission of those responsible for developing the proposed regulation and the staff or their representatives. At such a meeting individuals on the staff could make their concerns known directly to the Commission and could obtain explanations and interpretations that they might need. The Commission, for its part, might determine the need for changes in addition to those suggested in this memorandum that might ease the burden that this regulation places on the staff while still avoiding real or apparent conflicts of interest.

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In conclusion, I believe that the staff recognizes the need for and is willing to accept strict rules on investments in organizations involved in the nuclear industry. They will do so more readily if the bases for prohibition of ownership of the securities involved are clear and are logically explained to them.

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cc: Lee V. Gossick