



CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

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Ownership Interests

Charter Sections: 2601(5), 2601(6), 2601(8), 2601(12), 2601(16),
2603(c)(3), 2604(a)(1)(a), 2604(a)(3), 2604(a)(4),
2604(a)(5)(a), 2604(b)(2), 2604(b)(3), and 2604(b)(4).

Opinions Cited: 2002-1

Advisory Opinion No. 2007-4

Mayor Michael R. Bloomberg has requested an opinion from the Conflicts of Interest Board (the "Board") concerning the application of the conflicts of interest provisions of Chapter 68 of the City Charter to an impending change in his outside financial interests.¹

Background

i) The Board's Prior Opinion.

Mr. Bloomberg entered City service with three major holdings: 1) a majority interest in Bloomberg L.P., a privately-held financial information service firm that had virtually no business dealings with the City of New York; 2) a large portfolio of government bonds, mostly tax-exempt

¹ Charter Section 2603(c)(3) provides that the Board's advisory opinions will be made public "with such deletions as may be necessary to prevent disclosure of the identity of any public servant." Mayor Bloomberg has, however, agreed that the Board may forego such deletions, which would otherwise have been so substantial as to deprive this opinion of virtually all instructive value.

bonds of the City and State of New York; and 3) a large portfolio of publicly traded securities, held in a managed account, including stock of firms that had business dealings with the City.

Prior to his taking office in 2002, Mayor Bloomberg sought the Board's advice concerning these outside financial interests. In response, the Board issued its Advisory Opinion No. 2002-1, which described those interests and set forth the necessary steps, agreed upon between the Board and the Mayor, to conform those interests to the requirements of the City's Conflicts of Interest Law, set forth in Chapter 68 of the City Charter. In summary form, those 2002 restrictions were as follows:

- The Board determined that Mr. Bloomberg could retain his ownership interest in Bloomberg L.P., from which he had resigned all positions, provided that (a) he recused himself as Mayor from all matters involving Merrill Lynch & Co. (a 20% owner of Bloomberg L.P.) and from all matters involving cable television (because Bloomberg Television is carried on some of the City's cable systems); (b) he disclosed the one hundred largest customers of Bloomberg L.P.; and (c) he returned to the Board for advice if and when he proposed to participate in a major decision at Bloomberg L.P. involving a party that might be engaged in, or seeking, City business.
- The Board determined that Mr. Bloomberg could continue to hold City and State bonds, and could continue to purchase such bonds, but could not sell such bonds during his mayoralty, and could not participate in any decision to call or redeem any particular issue of bonds that were among his holdings.
- The Board determined, and Mr. Bloomberg agreed, that he would dispose of his portfolio of publicly traded securities and would, for the remainder of his service

as Mayor, invest only in large, professionally-managed mutual funds and exchange-traded funds, the specific investments of which he would have no ability to influence.

ii) *The Current Request.*

Mr. Bloomberg now advises the Board that this proposal results from his desire to significantly increase his personal philanthropy and to diversify his assets. As part of the process of increasing his personal philanthropy, Mr. Bloomberg recently formed the Bloomberg Family Foundation (the "Foundation"), a not-for-profit entity of which he is the sole director, which is currently seeking Section 501(c)(3) status from the Internal Revenue Service.

The Foundation will be embarking on a program of charitable giving, and Mr. Bloomberg will also continue his own personal philanthropy. In order to adequately diversify the assets of the Foundation and his personal assets, including distributions from Bloomberg L.P. financed by various financial institutions, Mr. Bloomberg proposes to invest in a greater variety of vehicles than the mutual funds and exchange-traded funds approved by the Board in Advisory Opinion No. 2002-1. These other investment vehicles could include commodities, currencies, real estate, hedge funds, private equity funds, and other alternative investments, as well as such traditional investments as fixed income and equity securities. Since these categories of investments go beyond those approved by the Board in its prior opinion, Mr. Bloomberg has again sought the Board's advice.

In considering the Mayor's current request for advice, the Board's focus was, as it was in 2002, on the provisions of Chapter 68, discussed below, that prohibit public servants from holding ownership interests in firms that have "business dealings" with the City - particularly the public servant's own agency - and the Board's rules, in particular its "blind trust" rules, for

dealing with such interests. In an effort to comply with these restrictions, Mr. Bloomberg proposed that his own and the Foundation's investments be overseen by one, or perhaps a few, firms in the investment business (the "Investorcos"), which will in turn choose and contract with a number of third-party asset managers (the "Managers"), who will actually manage the investments. The Managers, it is proposed, will have unfettered authority to make purchases and sales of securities and other investments for the accounts of the Mayor and/or the Foundation, without consultation with the Investorco or with Mr. Bloomberg. Mr. Bloomberg would be involved with the Investorco(s) in making decisions about the general allocation of funds among different categories of investment and the hiring or discharge of the Managers. And he would receive information about the performance of each Manager. But he would receive no information about the specific holdings in his or the Foundation's accounts at any of the Managers, except by category of investment.

Discussion

Following this request for advice from the Board, the Board and its staff engaged in a series of consultations with Mr. Bloomberg's representatives, and the Chapter 68 issues raised thereby were analyzed and discussed at several Board meetings. In the course of these discussions, further representations and agreements were made on behalf of Mr. Bloomberg regarding his financial interests, as reflected in the determinations of the Board set forth below.

Relevant Charter Sections

Charter Section 2604(a)(1)(a) provides that no public servant shall have an interest in a firm which is engaged in "business dealings" with the agency served by that public servant. Charter Section 2604(a)(5)(a) provides that, for the purposes of Charter Section

2604(a), the "agency served" by an elected official, other than a member of the City Council, shall be the entire executive branch of City government. Charter Section 2601(8) defines "business dealings" to mean any transaction involving the "sale, purchase, rental, disposition or exchange of any goods, services, or property, any license, permit, grant or benefit."

As defined in Charter Section 2601(12), "interest" includes an ownership interest in a firm. Charter Section 2601(16), as periodically amended by Board Rules Section 1-11, currently defines an "ownership interest" as, inter alia, "an interest in a firm held by a public servant, or the public servant's spouse, domestic partner, or unemancipated child, which exceeds five percent of the firm or an investment of forty thousand dollars in cash or other form of commitment, whichever is less but shall not include interests held in any... mutual fund, the investments of which are not controlled by the public servant, the public servant's spouse, domestic partner, or unemancipated child, or in any blind trust which holds or acquires an ownership interest."

Charter Section 2601(6), in turn, defines "blind trust" to mean "a trust in which a public servant, or the public servant's spouse, domestic partner, or unemancipated child, has a beneficial interest, *the holdings and sources of income of which the public servant, the public servant's spouse, domestic partner, and unemancipated child have no knowledge, and which meets requirements established by rules of the board, which shall include provisions regarding the independent authority and discretion of the trustee, and the trustee's confidential treatment of information regarding the holdings and sources of income of the trust.*" (Emphasis added.)

Pursuant to that section, the Board has promulgated a Blind Trust Rule (Board Rules Section 1-05), which further defines "blind trust" to mean a trust the holdings and sources of income of which the public servant and the above-listed immediate family members have no

knowledge, and which has a professional, independent trustee and whose trust instrument provides that the trustee shall have the authority and discretion to manage the trust and shall not communicate with any interested party regarding the trust, except that there may be written communications from the trustee about the performance of the trust and from the beneficiary about his or her general financial interest and needs, including the need for distribution of cash.

Charter Section 2604(a)(3) provides that a public servant who holds an ownership interest prohibited by Charter Section 2604(a)(1)(a) must either divest that ownership interest or disclose it to the Board and comply with its order. Charter Section 2604(a)(4) provides that, after such disclosure, the Board may issue an order setting forth its determination as to whether the interest, if maintained, would conflict with the proper discharge of the public servant's official duties. In making such a determination, the Board takes into account the nature of the public servant's official duties, the manner in which the interest may be affected by any action of the City, the appearance of conflict to the public, and the financial burden of any decision on the public servant.

Charter Section 2604(b)(2) prohibits a public servant from engaging in any private transaction, or having any private interest, which conflicts with the proper discharge of his or her official duties.

Charter Section 2604(b)(3) prohibits a public servant from using or attempting to use his or her City position for the private advantage of the public servant or of anyone associated with the public servant. The Charter defines those "associated" with a public servant to include a "spouse, domestic partner, child, parent or sibling; a person with whom the public servant has a business or other financial relationship; and each firm in which the public servant has a present or potential interest." See Charter Section 2601(5).

Charter Section 2604(b)(4) forbids a public servant from disclosing confidential City information or using such information for his or her private interest.

The Board's Determinations

1) The Assets of the Foundation:

As noted above, Charter Section 2601(16) defines a public servant's ownership interests to include those interests held by the public servant, or the public servant's spouse, domestic partner, or unemancipated child. The Charter thus does not directly deal with interests held by a foundation established by a public servant, or of which the public servant is a director - not to mention the sole director. Nor has the Board previously considered these questions. Here, where Mr. Bloomberg established the Foundation, is the sole contributor of its considerable holdings, and will be its sole director, the Board might well have determined that the assets of the Foundation are Mr. Bloomberg's for the purposes of Section 2604(a). However, the Board need not decide this question, because Mr. Bloomberg has agreed that, for the purposes of the instant request for advice, the assets of the Foundation will be considered his own interests.

2) Investment in Other than Operating Businesses:

As noted above, Mr. Bloomberg proposes that some portion both of his personal assets and the Foundation's assets may be invested in such vehicles as commodities, currencies, and currency and interest rate derivatives. Since such assets do not represent interests in firms which might be engaged in business dealings with the City, and since the duties of the Mayor of the City of New York do not involve the markets for such investments, these investments in themselves do not implicate Chapter 68 and are therefore permissible. However, as will be further discussed below, since the Managers selected to manage the assets and make such

investments may be firms which do have business dealings with the City, the Board determines that Mr. Bloomberg and each Investorco must structure their agreement so that Mr. Bloomberg does not know the identity of any of the Managers, even with respect to these investments in "other than operating businesses." Furthermore, while investments in real estate are permissible for the same reason as those in currencies and commodities, Mr. Bloomberg may not invest in real estate in New York City without first consulting further with the Board, since the powers of the mayoralty do include the ability to affect, generally and specifically, real estate values in the City.

3) Investments in Operating Entities:

The proposed investments in securities issued by operating entities may be held in the managed accounts, which may include corporate bonds and stocks, hedge funds, private equity funds, and other alternative investments that could or would involve, or be based on, securities issued by operating entities.

With respect to certain of these investments, hedge funds in particular, the holdings of a fund may be as diversified as those of a mutual fund, and the investor in a hedge fund may have less access to information about the fund's holdings than the mutual fund investor would have. While certain hedge funds might therefore, like mutual funds, be excluded from the Charter's definition of "ownership interest" (see Charter Section 2601(16)), most of the proposed investments would not be so excluded. Mr. Bloomberg therefore proposes the above-described arrangement, involving the Investorco[s] and the Managers, which would shield him not only from participation in specific investment decisions, but also from knowledge of the individual securities and funds which he and the Foundation will own in the accounts controlled by the Managers.

Of course, the proposed arrangement is not, in form, a blind trust as defined by Charter Section 2601(6) and therefore does not, on its face, fall within the "safe harbor" exclusion for blind trusts provided for in Section 2601(16). Mr. Bloomberg's representatives have suggested that a formal blind trust would be impracticable given the substantial sums involved and would also be inconsistent with the Mayor's fiduciary duties as the sole director of the Foundation. Without ruling on those arguments, the Board is satisfied that the substance of the proposed arrangement conforms in all material respects to the Chapter 68 purposes served by a blind trust: inability of the Mayor to select or influence investments in firms that do business with the City, and lack of knowledge of the particular investments made on his and the Foundation's behalf. Accordingly, the Board determines, pursuant to Charter Section 2604(a)(4), that the proposed arrangement will not conflict with the proper discharge of his official duties, and that it avoids the appearance of conflict to the public, *provided that the following conditions are observed:*

- a) Mr. Bloomberg may select the Investorco[s] and may direct such Investorco[s] as to the allocation of his and the Foundation's funds among different categories of investments. The Investorco[s] may provide Mr. Bloomberg with periodic reports about the performance of the different categories of investments and about the performance of the individual Managers whom the Investorco has selected - although, as noted below, in a format that does not identify the Managers. The Investorco[s] may not, however, provide Mr. Bloomberg with any information which would identify the individual securities or funds in which the Managers have invested. Moreover, should he select any Investorco that does have,

directly or through an affiliated entity, business dealings with the City, Mr. Bloomberg must recuse himself in his official position from all matters involving that Investorco, and its affiliates. See Charter Section 2604(b)(3).

- b) The Investorco[s] will select the Managers, and Mr. Bloomberg, as noted above, may not be informed of the Managers' identities. Being shielded from the identities of the Managers will insure against his communications with the Managers, and thus prevent even the inadvertent communication of the identity of the securities in which they have invested.² Being blind to the Managers' identities will also remove any need for Mr. Bloomberg to recuse himself from City matters involving the Managers. Mr. Bloomberg may, however, as noted above, be informed by the Investorco[s] about the performance of the individual, but unnamed, Managers, and may participate with the Investorco[s] in decisions to replace Managers based on their performance.
- c) When Mr. Bloomberg selects an Investorco, he must memorialize the above conditions in his agreement with the Investorco and must provide

² The Board considered the possibility, however small, that merely due to Mr. Bloomberg's celebrity, one or more of those specific investments might become public and therefore known to him. To guard against such disclosure, Mr. Bloomberg's agreements with the Investorcos will require that the Investorcos and the Managers take diligent steps to keep confidential, to the extent permitted by law, the fact that a given investment is being made for Mr. Bloomberg or the Foundation. Should public disclosure occur despite these precautions, Mr. Bloomberg must return to the Board for its advice as to what further action, if any, he must take with regard to the disclosed holding.

the Board with a copy of each such agreement. At that time, the Board will disclose the identity of each Investorco.

Summary

To summarize the Board's conclusions, so long as Michael R. Bloomberg is Mayor:

- 1) The proposed investments by Mr. Bloomberg and by the Foundation in a wide variety of financial instruments will not violate Chapter 68, so long as it is the investment firm or firms ("Investorco[s]") assisting him with these investments that choose and retain the Managers who will make the specific investments, so long as Mr. Bloomberg's communications with the Investorco[s] are limited to decisions about the allocation of investments among broad classes or sectors, the performance of the categories of investments, and the performance of the Managers, and so long as Mr. Bloomberg does not know either the identities of the Managers or the specific investments they make on his behalf and on behalf of the Foundation. Mr. Bloomberg may make decisions on whether to retain particular Managers - again, so long as he does so based on their performance, without knowing their identities.
- 2) In response to the Board's concern that Mr. Bloomberg may be considered to have a "financial relationship" with, and therefore may be "associated," within the meaning of Charter Section 2601(5), with the financial institutions that are involved in financing the distributions to Mr. Bloomberg from Bloomberg L.P. or its affiliates, Mr. Bloomberg has agreed to recuse himself in his official capacity from all matters involving those financial institutions.

3) Mr. Bloomberg must recuse himself in his official capacity from all matters involving each Investorco, whose identity[ies] he will report to the Board upon their selection, and which shall be made a matter of public record.

4) Mr. Bloomberg must provide the Board with copies of his written agreement with each Investorco, which will set forth, *inter alia*, the above provisions.



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