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## **New York City Municipal Bonds Ownership Interests Use of Position**

Charter Sections: 8(c), 2601(5), 2601(11), 2601(12), 2601(16),  
2603(a), 2604(a)(1)(b), 2604(b)(2), 2604(b)(3)

Opinions Cited: 94-10, 94-13, 2002-1

### **Advisory Opinion No. 2009-7**

The Conflicts of Interest Board (the "Board") has received an inquiry from a high-level public servant, whose work involves overseeing the issuance and redemption of City debt, asking whether she is permitted to trade in City debt securities for her own account without violating the conflicts of interest provisions of Chapter 68 of the New York City Charter ("Chapter 68"). For the reasons stated below, the Board concluded that it would violate Chapter 68 for her, and a small number of other similarly situated public servants, to buy, sell, or otherwise trade in City debt securities for their own accounts.

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Because this question may arise for other public servants, the Board issues this public opinion to set forth its determination in this matter.

**I. Background**

A high-level official (the “Official”) has asked the Board whether she is permitted to purchase, sell, or otherwise trade New York City bonds for her own account, in either the primary or secondary bond markets, in light of her City position. The Official has a leadership position at one of the three City agencies that are substantially involved in the issuance of City debt, and she personally participates in and leads that work for her City agency. These three agencies are the Office of the Comptroller, in particular its Public Finance Bureau, the Office of Management and Budget (“OMB”) and its corresponding public finance bureau, and the Law Department, in particular its Municipal Finance Division. The Comptroller’s Public Finance Bureau and OMB are responsible for issuing the City’s general obligation debt (its “GO Bonds”) and are also involved in the borrowing by the New York City Transitional Finance Authority (“TFA Bonds”) and the New York City Municipal Water Finance Authority (“NYW Bonds”). The Comptroller’s Office and OMB are jointly responsible for determining new debt issuance parameters, including price, structure, and timing, and also choose the members of the financing team associated with each issuance. These offices are also responsible for the management of City debt after its issuance.

When the City issues bonds, they are initially offered through the primary bond market during a prescribed bond offering period. Thereafter, such bonds are also available

in the secondary bond market. Once issued, City bonds are subject to a number of contingencies that can affect both the purchaser and the City. For example, most City bonds are “callable,” that is, the City may redeem these bonds prior to their stated maturity. The decision to call a bond before its maturity is made by the same group of City and non-City employees that sets the initial bond price at issuance, a group that includes the Official.

These same City officials, again including the Official, are involved in determining whether to defease City bonds, that is, to purchase United States Treasury securities in an amount sufficient to cover future interest and principal payments required by the City bond being defeased. Defeased bonds typically receive better credit ratings because of the security for future payments provided by the escrowed Treasury securities.

City bonds are also subject to ongoing disclosure requirements that extend beyond the initial issuance, including the requirement to provide public updates upon the occurrence of any significant or material event affecting that bond issue, such as a change in City bond ratings. The Official is among those City employees privy to information relevant to these public disclosures prior to that information being made available to the public, including knowledge of contemplated ratings changes, which typically impact the price of City bonds in the secondary market once released.

## **II. Relevant Law**

Charter Section 2604(a)(1)(b) states: “no regular employee shall have an interest in a firm which such regular employee knows is engaged in business dealings with the city,

except if such interest is in a firm whose shares are publicly traded, as defined by rule of the board.”

“Interest” is defined in Charter Section 2601(12) to include a position with a firm or an ownership interest in a firm. “Ownership interest,” in turn, is defined in Charter Section 2601(16) as:

[A]n 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 twenty-five thousand dollars in cash or other form of commitment, whichever is less, or five percent or twenty-five thousand dollars of the firm’s indebtedness, whichever is less, and any lesser interest in a firm when the public servant . . . exercises managerial control or responsibility regarding any such firm, but shall not include interests held in any pension plan, deferred compensation plan or mutual fund, the investments of which are not controlled by the public servant.

Pursuant to Charter Section 2603(a) and Board Rules Section 1-11, the dollar amount set forth in Charter Section 2601(16) is updated every four years to account for inflation and, since January 1, 2006, has been set at forty thousand dollars (\$40,000.00).

Charter Section 2601(11) defines “firm” as any “sole proprietorship, joint venture, partnership, corporation and any other form of enterprise, but shall not include a public benefit corporation, local development corporation or other similar entity as defined by rule of the board.”

Charter Section 2604(b)(2) states: “No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.”

Charter Section 2604(b)(3) states: “No public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.”

Charter Section 2601(5) defines persons “associated” with a public servant as including “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.” Moreover, pursuant to Charter Section 2601(12), an “interest” in a firm includes both an “ownership interest in a firm” and “a position with a firm.”

### **III. Discussion**

The Board was presented with the question of whether certain high-ranking appointed officials who have decision-making authority over the City’s municipal bonds can trade in those bonds for their own accounts without violating the conflicts of interest provisions of Chapter 68. As the Board determined in Advisory Opinion 94-10, simple ownership of New York City municipal bonds by City public servants generally does not constitute an interest in a firm as prohibited by Charter Section 2604(a)(1)(b). That determination turned on the Board’s conclusion that ownership of City bonds was not ownership in a “firm” as that term is defined in Charter Section 2601(11). *See also* Advisory Opinion 94-13 at 5 (“As to the municipal bond investments, it is the opinion of the Board that this kind of investment does not constitute a prohibited ownership interest in a firm.”).

On the other hand, the Board recognized in Advisory Opinion 2002-1 that, while there is no friction between the ownership of City bonds by City employees and Charter Section 2604(a)(1)(b), such ownership “does raise questions under Charter Section 2604(b)(2), the prohibition against conduct or interests which conflict with the proper discharge of official duties, and Section 2604(b)(3), which prohibits use or attempted use of a City position ‘to obtain financial gain . . . direct or indirect, for the public servant.’” Advisory Opinion 2002-1 at 13-14. In that opinion, which concerned Mayor Bloomberg’s personal financial holdings, the Board recognized that because the City Charter assigned the Mayor ultimate responsibility for the amount of City borrowing, and because he therefore was required to have some involvement in and knowledge of such transactions, it could appear that the Mayor might trade municipal securities on non-public information or might make important decisions regarding City debt that could affect the value of his extensive personal holdings. For these reasons, the Board determined that the Mayor’s mere *ownership of* City debt would not violate Chapter 68, provided that, for the duration of his mayoralty, the Mayor did not sell any of the City debt obligations he held, and further provided that he did not participate in any decisions about whether to call any particular issue of City bonds.

In contrast with even the Mayor, however, the small group of public servants, including the Official, whose duties make them directly responsible for material decisions affecting the value of City debt obligations cannot practicably be recused from such determinations as pricing of bonds and whether to call or defease a particular issue of City debt. For these public servants, recusal would require avoidance of significant aspects of

their responsibilities to the City, thus eliminating their ability to effectively serve. In addition, again unlike the Mayor, and indeed unlike all other public servants, the Official and her counterparts have intimate knowledge of and day-to-day responsibility for the confidential details of the pricing and management of the City's debt. If these City officials were permitted to trade in City securities for their own accounts, it could appear that such trading was based on non-public information to which they were privy in their City positions. Similarly, if such officials were permitted to hold City debt obligations, it could appear that their personal holdings influenced such City decisions as whether and when to call or defease a particular debt issue.

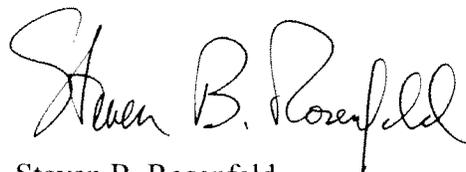
For these reasons, the Board determined that the buying, selling, or holding of City debt obligations for their own accounts by the Official and by similarly situated public servants from such City agencies as the Office of the Comptroller, OMB, and the Law Department who, in their City positions, are personally and substantially involved in the issuance and management of such debt, would violate Chapter 68. From that conclusion, it also follows that such public servants also may not trade, or participate in trading, City debt obligations on behalf of, or for the account of, any person or firm "associated" with them, such as a spouse, domestic partner, child, parent, sibling, persons with whom they have financial relationships, or firms in which they hold positions or ownership interests. *See* Charter Sections 2601(5) and 2604(b)(3).

Any public servant who is unsure whether he or she is subject to this prohibition, or who has questions about the class of securities to which, in his or her case, this prohibition applies, should seek the Board's advice before trading in or continuing to hold City debt

obligations for his or her own account or on behalf of, or for the account of, any associated person or firm.

**IV. Conclusion**

For the reasons set forth in this Opinion, it would violate Chapter 68 for those public servants personally and substantially involved in the issuance and management of City debt securities to buy, sell, or hold such securities for their own accounts, or on behalf of or for the accounts of any “associated” persons or firms.



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