

Advisory Opinion No. 92-6

The Conflicts of Interest Board has been asked for an opinion by the Office of the Comptroller as to whether, consistent with Chapter 68 of the City Charter, John D. Gilliam, a retired partner of Goldman Sachs and Co. ("Goldman") may be appointed as Deputy Comptroller for Asset Management and retain his financial interest in the firm.¹ The Board has also been asked whether Mr. Gilliam may retain the use of his office, part-time secretary and computer at the firm's headquarters, which he has had since his retirement; he would use these resources for the sole purpose of handling his personal investments at times when he is not required to perform services for the City.

Mr. Gilliam has had a long and distinguished

¹ The facts stated in this opinion are based on representations to the Board by the Office of the Comptroller, which has authorized the use of Mr. Gilliam's name and the name of his firm in this opinion. See Charter Section 2603(c)(3), which requires the Board to make public its advisory opinions with such deletions as may be necessary to prevent disclosure of the identity of any public servant or other involved party.

career in investment banking and the Comptroller has advised the Board that his unique talents would greatly benefit the City, particularly during these difficult fiscal times.

Mr. Gilliam retired as a general partner of Goldman in 1986, becoming a limited partner without any operational duties or responsibilities. As a limited partner, Mr. Gilliam has an investment in the firm which is in excess of \$25,000. According to the partnership agreement, over which he has no control, as long as Mr. Gilliam leaves this money invested in the firm, he is guaranteed the same rate of return as the other limited partners.

Goldman has substantial business dealings with the City. It is one of five rotating co-senior managers for the issuance and trading of City securities and is also a broker for the City's pension funds, acting at the discretion of the funds' independent money managers who may use Goldman to execute some of their trades. In addition, the firm participates in the Comptroller's cash management program, which is handled by the Bureau of Asset Management.

Further, Goldman Sachs Asset Management ("GSAM"), a Goldman subsidiary (which hereinafter is included in the definition of "Goldman") is an independent money

manager for the New York City Teachers Variable Supplement Fund A, of which the Comptroller is a Director. This subsidiary's offices are separate from the firm's headquarters where Mr. Gilliam's office is located. While GSAM is not currently an independent money manager for any of the pension funds administered by the Deputy Comptroller for Asset Management, GSAM may submit proposals to obtain such engagements in the future.

Mr. Gilliam has served without compensation as an expert advisor to the Bureau of Asset Management since February 1991, advising the Comptroller's investment staff and meeting with the boards of trustees of the City's pension systems, but not making any decisions about investments. As Deputy Comptroller for Asset Management, he will oversee the investment of the City's pension fund assets and investment of City's cash accounts.

As Deputy Comptroller for Asset Management, Mr. Gilliam will not be involved in any of the areas in which Goldman does business with the City. First, in working on City securities offerings, the firm interacts solely with the Office of the Deputy Comptroller for Finance and not with the Deputy Comptroller for Asset Management. Second, Mr. Gilliam

will not be involved in Goldman's brokerage business with the City because the Comptroller's Office does not place orders for the purchase or sale of securities.

Third, although the employees of the Comptroller who handle cash management are in the Bureau of Asset Management, these employees will report to the Chief of the Bureau, not to Mr. Gilliam, in order to avoid any appearance of impropriety.

Finally, if GSAM does submit proposals to the City pension funds to obtain a position as an investment manager, the Comptroller's Office has advised the Board that Mr. Gilliam would recuse himself from the consideration of any GSAM proposal and, if GSAM is selected, it would negotiate with other members of the Office of the Deputy Comptroller for Asset Management.

In the event that GSAM becomes a money manager for any of the pension funds, Mr. Gilliam would have no dealings with GSAM concerning its City business and would not oversee or monitor its performance. This responsibility would be delegated to the Chief of Bureau of Asset Management under the supervision of the First Deputy Comptroller.

Relevant Charter Sections

Pursuant to Charter Section 2604(a)(1)(b), a public servant whose primary employment is with the

City may not have an "ownership interest" in or a "position" with a firm which the public servant knows is engaged in business dealings with the City. Mr. Gilliam has both an ownership interest in and a position with Goldman.²

This prohibition is limited, however, by Charter Section 2604(a)(3), which provides that, if prior to becoming a public servant, a person has an ownership interest which Chapter 68 prohibits for public servants, he or she must either divest the interest or disclose it to the Board for a determination as to whether the interest will in fact conflict with his or her official duties as a public servant.

In making this determination, Charter Section 2604(a)(4) requires the Board to take 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; and the appearance of conflict to the public. If the Board determines that it would not

²For the purposes of Chapter 68, an ownership interest in a firm includes any interest held by a public servant, his or her spouse or unemancipated child, which exceeds five percent of the firm or an investment of \$25,000. See Charter Section 2601(16).

A position with a firm means a position such as an officer, director, trustee, employee or any management position, or an attorney, agent, broker or consultant to the firm. See Charter Section 2601(18).

create a conflict for the public servant to hold the interest, the Board may issue an order to that effect and the public servant may retain the interest when he accepts the City position.

Similarly, Charter Section 2604(e) permits a public servant to hold an otherwise prohibited position when the Board determines that the position involves no conflict with the purposes and interests of the City, after receiving the written approval of the public servant's agency head.

Board Determinations

The Board has determined, based on the representations of the Comptroller's Office, that it would not be a violation of Chapter 68 if Mr. Gilliam retains his interest in Goldman after he is appointed Deputy Comptroller for Asset Management. The Board has also determined that Mr. Gilliam may retain his office, at the firm's headquarters and part-time secretary and computer for the sole purpose of handling his personal investments at times when he is not required to perform services for the City. The Board has further concluded that Mr. Gilliam's position as a limited partner of Goldman does not conflict with the purposes and interests of the City, having received Comptroller Holtzman's written approval.

We have reached these conclusions based on the representations of the Office of the Comptroller concerning the importance of Mr. Gilliam's services to the agency, the limited nature of his relationship to Goldman, the limited use of his firm office and its location apart from GSAM and, in particular, the precautions he has taken and will take to recuse himself from Goldman's business dealings with the City.

We understand this recusal to require that Mr. Gilliam will not be involved, directly or indirectly, in any matters which involve Goldman's current or future business dealings with the City. This includes, but is not limited to, his participation in discussions or meetings with City officials and others and receiving copies of relevant documents.

Further, the Comptroller's Office has represented that Mr. Gilliam and Goldman will enter into a written understanding pursuant to which it is agreed that as long as Mr. Gilliam is serving as Deputy Comptroller for Asset Management, there will be no communications between him and anyone at Goldman regarding any business dealings which Goldman has with the City or any matter relating to the City. See also Charter Section 2604(b)(3), which provides that no public servant shall use or attempt to use his or her official

position to obtain any financial gain or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.

Our decision is consistent with the conclusions of our predecessor, the Board of Ethics, in several of its opinions interpreting former Chapter 68, which we approve as conforming to revised Chapter 68. For example, in Board of Ethics Opinion No. 388 (1976) an employee of a bank which had business dealings with the City wanted to take a leave of absence to donate his services to the City to work on the design and implementation of a budgetary system for the City. The Board of Ethics held that a conflict of interest between the employee's loyalty to the bank and his official duties for the City would be avoided if he was insulated from any contacts with the bank relating to the City matters, subject to a letter agreement between the employee and the bank.

See also Board of Ethics Opinion Nos. 400 (1976) and 400A (1977), pursuant to which several executives with private firms which had business dealings with the City were required to sign comparable agreements with their firms before they were permitted to advise the Mayor's Office on a pro bono basis during the fiscal

crisis.

We recognize that there has been a tradition of distinguished executives in the private sector who have devoted their time and talent to public service. This tradition has been of great value to the City, particularly in difficult fiscal times. We believe that the public is well served by encouraging this tradition, where, as here, significant safeguards have been created to insure that both the fact and the appearance of impropriety have been avoided.

Beryl R. Jones
Acting Chair

Benjamin Gim

Shirley Adelson Siegel

Dated: March 4, 1992

Mr. Oliensis and Mr. McGuire did not vote on this matter.