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Dealer Donations to Mayor's Fund in LA Legal, But Raise Eyebrows.

WASHINGTON - Three dealer firms have donated more than \$1 million to a Los Angeles nonprofit closely associated with the city's mayor, gifts some market participants say create an appearance of impropriety even though the donations didn't violate any rules.

Goldman Sachs Gives, JP Morgan Chase & Co., and Citi Community Development made the donations last year to The Mayor's Fund, which has collected more than \$5 million since its creation last June. A registered 501(c)(3) organization with no formal tie to Los Angeles Mayor Eric Garcetti, the fund is similar to other programs in New York and elsewhere. But the fund is nonetheless headquartered at city hall and Garcetti speaks to the fund about his goals for the city and helps facilitate its fundraising efforts.

Lawyers, issuer officials, and others consulted about it agreed that the three firms did not violate the rules when they gave the money to the fund, which is governed by a board independent of the city leadership and which does nothing to politically support Garcetti or any other political interest.

The Municipal Securities Rulemaking board's Rule G-37 on political contributions prohibits dealers from engaging in negotiated muni business with state or local governments for two years after making political contributions to issuer officials who can influence the award of bond business. The MSRB has published guidance that explicitly allows gifts to charitable organizations.

Also, there is no indication that the dealers have received any benefit as a result of their donations to the fund.

Los Angeles has historically done the majority of its deals competitively, but has turned to more negotiated deals in recent years. The city's chief administrative officer recommends potential debt issuances to both Garcetti and the city council and both must approve all financings. All three dealers are current members of Los Angeles' underwriter pool for both long and short-term debt.

A Goldman spokesman said the firm's \$250,000 donation was targeted to a fund-backed program dedicated to providing summer jobs to at-risk Los Angeles youth, while a JP Morgan spokesman said the same of that company's \$500,000 gift. Citi officials did provide any comments. All three dealer firms who gave to the fund have, in fact, gone on record as supporting strengthening pay-to-play protections by including bond ballot campaign donations as gifts that would trigger the two-year business ban.

Ernie Lanza, a partner at Greenberg Traurig in Washington and former MSRB deputy executive director said that the question of whether firms should be able to give money to charities associated with political figures is well-established, and was part of the debate during G-37's development in the early to mid-1990s. A 1997 letter written to then-Securities and Exchange Commission chairman Arthur Levitt by then-Goldman Sachs partner David Clapp and preserved by the SEC Historical Society reflected that debate. Clapp, who chaired the MSRB during G-37's development in 1993 and 1994 wrote that the MSRB's attorneys told the board that writing the rule broadly to include

contributions to bond ballot campaigns and charities with close ties to politicians could be too restrictive of First Amendment rights and might be overturned by federal courts.

“From the very start of G-37 the question was there,” Lanza said. “From time to time it does pop up, and people raise questions about it.”

Some bond lawyers have said the rule, which withstood a First Amendment challenge some 20 years ago, could face yet another in the near future. A very similar rule for investment advisers is under attack in a lawsuit brought in the U.S. Court of Appeals for the District of Columbia Circuit by two state Republican parties and its outcome could have implications for another challenge of G-37.

Glenn Byers, assistant treasurer and tax collector for Los Angeles County, acknowledged that the fund might look questionable to some people but said that it doesn't bother him.

“On the surface, this may not sound the best,” Byers said. “But because this is a 501(c)(3) non-profit that is directed by a board independent, in theory at least, from the mayor and spending money on public projects, I'm OK with it.”

Craig Holman, government affairs lobbyist for the advocacy group Public Citizen in Washington, said that as long as the board governing the fund is independent of the mayor and the fund takes no part in supporting the mayor, it is within the boundaries of the rules. But Holman said the fund's name alone could cause some to be concerned.

“It does raise red flags,” he said. “I would automatically assume that it was associated with the mayor.”

But some industry sources said the appearance of potential impropriety created by these kinds of donations should be captured by G-37.

“This is what the pay-to-play rules need to catch,” said one executive of a dealer who did not want to be named. “The appearance just casts a negative light on the industry. The optics don't look good.”

The MSRB did not respond to a request to comment.

THE BOND BUYER

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MAR 12, 2015 1:26pm ET

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