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## **Banker's Roles with Issuer-Related Charitable Groups Raise Questions.**

LOS ANGELES – A Wells Fargo Securities banker may not violate municipal bond rules by serving on the boards of school district charitable foundations and then obtaining the schools' underwriting business, but some securities lawyers say there is a perceived conflict of interest that should be disclosed.

The banker, Craig Brast, serves on the boards of two Houston-area charities, the Spring Independent School District Education Foundation and the Aldine Education Foundation. Brast doesn't live within school district areas, although he is a resident of Houston and he went to Westfield High School in Spring ISD.

The foundations are nonprofits that raise money for the Spring ISD and Aldine ISD through events such as golf tournaments as well as direct donations. The foundations are distinct entities governed by volunteer boards of directors that are separate from the school district. The school districts, however, publicly encourage support of the foundations.

Brast was a founding member of the Aldine foundation when it was created in 2012 and has served as a volunteer member of the board on the Spring foundation for about five years. He continues to serve on both boards.

Brast has personally given money to the foundations. Neither Wells Fargo nor the foundations would disclose the amounts. A Wells Fargo spokesman said the bank gave about \$4,000 to the Spring Foundation and \$1,250 for the Aldine Foundation's golf tournament fundraiser last year.

Since 2012, when the Aldine foundation was created, the Aldine ISD has done two negotiated transactions and Wells Fargo was the lead underwriter on both, according to Thomson Reuters data.

The most recent was \$266.84 million of school building and refunding bonds that the Aldine ISD issued in January of this year. In the other deal the school district issued \$45.6 million of school building and refunding bonds in October of 2013.

Wells Fargo was involved in Spring ISD's most recent transactions as well. It was lead underwriter for \$80 unlimited tax refunding bonds issued in June 2016 and a member of the underwriting syndicate for \$136.9 million of unlimited tax refunding bonds issued in December 2015. The bank was not involved in five earlier negotiated transactions Spring ISD did dating back to July 2011.

Wells Fargo doesn't believe the contributions or Brast's involvement with the foundations and donations represent any conflicts of interest.

Municipal Securities Rulemaking Board rules do not bar bankers from giving to issuers' charitable groups.

Its Rule G-20 on gifts and gratuities prohibits dealers from giving, directly or indirectly, anything or

service of value in excess of \$100 per year to a person other than an employee or partner of the dealer, if such payments or services are in relation to the municipal securities activities of the recipient's employer.

The MSRB's Rule G-37 on political contributions bars dealers and their municipal finance professionals from underwriting transactions with issuers for two years if they contribute to issuer officials who can influence the award of negotiated muni business. The rule states that dealers cannot do indirectly what they are prohibited from doing directly. But it only covers contributions to issuer officials.

The board's Rule G-17 on fair dealing requires that underwriters disclose to issuers with whom they do business any "potential or actual material conflicts of interest" inherent in the relationship.

Underwriters send issuers disclosure letters when they are engaged to do business, commonly called "G-17 disclosure letters" because they are designed to satisfy that rule's requirement that conflicts of interest or potential conflicts be disclosed.

Neither of the G-17 letters that Brast sent to the two school districts, which were obtained by The Bond Buyer through Freedom of Information Act requests, mentioned his involvement or contributions to the charitable foundations. The letter sent to Aldine ISD was dated Jan. 6, 2016 and the letter sent to Spring ISD was dated Nov. 30, 2015.

Securities lawyers who declined to be named in order to offer analysis of the circumstances said that pay-to-play rules such as the MSRB rules do not cover contributions to charitable foundations, even in cases where the gifts were at the request of, or to curry favor, with public officials.

But one of them said that such a banker's relationship with both an issuer and the issuer's money-raising foundation could be a problem.

"Even if it's not explicitly against G-37 or G-20, you still have to consider whether it's a conflict of interest," that attorney said.

That attorney said the situation in Houston is not unlike others around the country where charitable organizations serve as middlemen between issuers and dealers who obtain their negotiated municipal underwriting or advisory business.

He said that it was quite possible the Securities and Exchange Commission might find such relationships to be something that should be disclosed, because it could at least raise a question for investors about whether a firm is getting business because it also has another relationship with that issuer that is financially beneficial to the issuer.

"People should be weighing it," the lawyer said. "If you're not even thinking about it, that's a problem."

Wells Fargo spokesman Gabriel Boehmer said that the bank gives generously to non-profit organizations in Texas and nationwide, and gave about \$9.4 million to Texas charities last year including the donations to the Spring and Aldine foundations.

Boehmer confirmed that Brast gives a small donation to both foundations annually, declining to specify the amounts. He added that Wells Fargo has business relationships with hundreds of Texas school districts and that Brast's work covers issuers throughout the Southwest.

Boehmer said that Wells Fargo employees serve on the boards of many charitable organizations, and

that Brast's work to raise money for Spring and Aldine ISDs does not create a conflict of interest requiring a disclosure.

"In our view the education foundations, which are nonprofits, and the school districts are totally separate entities," he said. "It might appear to the casual observer that the school district and the foundation have a relationship, but they do not have a business relationship at all."

## **The Bond Buyer**

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