

# Future, Funds in the Fire, But Liu Plays It Cool

By **RICHARD STEIER** | Posted: Monday, January 23, 2012 5:00 pm

When John Liu is asked whether his plan to transfer control of pension-investment decisions from the boards of the five municipal retirement funds to an independent board headed by a Chief Investment Officer has hit a snag, the City Comptroller responds, “We have not skipped a beat.”

Told of that reply, a spokesman for one top union official remarked, “There hasn’t been a beat, actually.” Referring to several union leaders having said at the time the plan was unveiled nearly three months ago that they supported it in principle but that “the devil is in the details,” he asserted, “There haven’t been any details.”

In October, United Federation of Teachers President Mike Mulgrew said he expected a bill authorizing the change would be introduced in the Legislature by the end of this month; a few weeks later a Liu aide amended the timetable to “the first quarter” of the year.

And so if Mr. Liu, during a Jan. 17 interview in his office, seemed more optimistic than the facts would justify about the major overhaul of a 70-year-old investment system, it was consistent with the public face he is putting on regarding the Federal investigation into his campaign fund-raising.

## Arrest for Phantom Donors

In mid-November, U.S. Attorney Preet Bharara announced that one fund-raiser for Mr. Liu, Xing Wu Pan, was arrested for allegedly scheming with a businessman who was actually an undercover FBI agent to make large donations to Mr. Liu but create straw donors and list the contributions in \$800 chunks that would allow the campaign to receive matching funds from the Campaign Finance Board. Mr. Pan, according to the complaint, indicated that the Comptroller was aware of the machinations.

It was also revealed around that time by the New York Times that there was an ongoing probe into whether during his 2009 campaign for Comptroller Mr. Liu had received large donations from foreign sources.

Mr. Liu has denied acting improperly, and said last week, “I’ve done nothing wrong. My folks are hard-working people who do the right thing, and we’ll cooperate to the utmost.”

But given his role as the overseer of municipal spending and the guardian of the city’s pension funds, he is in a difficult spot politically even if the probes clear him of any role in the suspicious fund-raising.

Santos Crespo, head of Education Employees Local 372 of District Council 37, said of the impact the probe has had on Mr. Liu’s mayoral chances, “Right now he’s as viable as any of the other candidates...until you know what else they may have dug up.”

As the head of the largest local in DC 37, which has continued contributing money to Mr. Liu's campaign fund despite the Federal inquiry, it was not surprising that Mr. Crespo couched his response that way.

One political consultant, who spoke conditioned on anonymity, did not use a conditional when asked about his viability for higher office in 2013, offering a flat "no. And it's questionable whether he could win re-election as Comptroller. You can't stop all malfeasance, but the job of a Comptroller is to make sure controls are in place to prevent it. He's supposed to be the watchdog of a \$62-billion budget and he couldn't keep an eye on his campaign fund of a million or so? It's not enough to say 'I wasn't indicted' or 'I didn't know about it.' I would say he's badly damaged."

Mr. Liu insisted he couldn't be concerned about political perceptions, saying, "My main responsibility is to uphold the duties of this office."

### **'I Don't Conjecture About Future'**

Asked about how hurtful the short-term damage will be to his aspirations even if he is ultimately held blameless by prosecutors, he said, "I don't think about that all too much. I don't conjecture about what might come down the road in the next year to two years."

Later that day, he would release the list of his campaign bundlers after drawing media criticism for previous delays in releasing that information. Mr. Liu said earlier plans to provide the list had been put on hold because the Federal inquiry "superseded anything else." His campaign also contended the focus on the probe accounted for the funds he raised in the second half of 2011 being just over half the roughly \$1 million it collected in the preceding six months.

The criminal complaint against Mr. Pan alleged that he told the undercover agent who said he wanted to contribute \$16,000 to Mr. Liu's campaign that he would divide it into 20 donations of \$800 apiece that purportedly came from other individuals. What made this particularly problematic for Mr. Liu from a perception standpoint was that the Times had detailed other instances in which companies had listed as individual donors of \$800—8 is a lucky number in Chinese culture—employees whose incomes were too modest to reasonably believe they would have given that much. Some of those contacted by the Times said they did not work for the companies that listed them as donors; one official at a Brooklyn seafood company said that while 11 employees were listed as donors, that was eight more than actually worked for the business.

Asked last week about those findings, Mr. Liu said, "My campaign has acted properly at all times. I don't doubt the Times when they report that some people told them they don't work there, that they didn't give. Does that mean it's true? I don't know."

He continued, "No campaign goes out and investigates exactly who lives where. We rely on the information that the donors give us."

Among those identified in his filing as bundlers was Hugh H. Mo, a former Deputy Police Commissioner for Trials who was among a group of Chinese-American officials that last month likened the inquiry into Mr. Liu's fund-raising to the hazing experienced by Army Private Danny Chen before he killed himself in Afghanistan. At that time, Mr. Mo told the Times, "I believe it is an effort to destroy John, who really represents the hopes and aspirations of Asian-Americans, and particularly Chinese-American immigrants."

### **'A Character Assassination'**

Virginia Kee, a founding member of the Chinese-American Planning Council, explicitly compared Mr. Liu's treatment to that of Mr. Chen, adding, "This is a character assassination. Worse than death, you lose your good name."

The analogy seemed a bit extreme given that the physical and mental torture endured by Private Chen had been serious enough to lead eight members of his battalion to be charged with offenses including involuntary manslaughter and negligent homicide even though he apparently killed himself. Mr. Liu said Ms. Kee was referring to "the atmosphere" created by what amounted to ganging up on someone rather than the severity of the suffering. While what happened to Private Chen was "tragic and atrocious," he said, "I would use neither adjective to describe my situation."

He projects a certain jauntiness even in the midst of a period in which at the very least his political future has been knocked off stride. Mr. Liu over eight years as a City Councilman didn't shy from taking on Bloomberg administration officials while siding with municipal unions on key issues, both raising his profile and cultivating labor support that helped him emerge from a crowded pack to win the Comptroller's race in 2009 when incumbent Bill Thompson unsuccessfully tried to deny Mr. Bloomberg a third term.

### **Spotlighted CityTime Overruns**

The CityTime scandal fermented for years under Mr. Thompson's watch as the Mayor and some of his top aides allowed spending to mushroom from an original estimate of less than \$70 million to more than \$700 million. It would have been a potent campaign issue for Mr. Thompson, except he never sought an audit of the galloping cost overruns. Mr. Liu, who had criticized the electronic-timekeeping system before becoming Comptroller, intensified his attacks on it once installed in the job, and that particularly raised his profile after Mr. Bharara indicted a group of officials connected to the project while alleging that virtually all of the overspending was the result of a massive scam.

While earning the Mayor's enmity, Mr. Liu became perceived in some quarters as too friendly with and too solicitous of the unions, with the New York Post editorial page never missing an opportunity to flog him as a labor puppet.

He doesn't argue very strenuously against the notion that he and Mr. Bloomberg don't care for each other, saying only, "I have regular interactions with the Mayor, and our top staff are in constant

communication with each other.”

Nor does he do much to dispel the perception of his labor sympathies, saying, “From my days as a member of the City Council and chairing innumerable hearings, I have found that you get the truth when the union representatives testify. I do my job independently, as the voters elected me to do, regardless of what the Mayor and the unions want.”

If he seems pro-union, he continued, it is only in comparison with Mr. Bloomberg. “I meet, see and hear people in our communities on a daily basis, and I believe I know very much what the people want,” Mr. Liu said.

### **Together on Pension Shift**

One of the rare instances in which he, Mr. Bloomberg and the unions were in sync occurred late last October, when they announced the tentative deal on the independent pension board. The Mayor, the Comptroller and several union leaders touted the plan as offering the pension funds the opportunity to streamline operations, conduct transactions more swiftly, and realize greater returns, pointing to university endowments that were doing far better with their investments by using independent boards and a well-compensated chief investment officer.

Even as they announced the agreement in principle, however, opposition was beginning to percolate on the union side. Teamsters Local 237 President Greg Floyd attended the press conference, held in the seldom-used Governor’s Room on the second floor of City Hall, but said afterwards that he hadn’t been involved in the discussions and had learned of the deal only that morning. Some of his concerns were shared by Transport Workers Union Local 100 President John Samuelsen, who along with Mr. Floyd comprises two of the three union trustees on the board of the largest municipal fund, the New York City Employees Retirement System.

There seemed at least the possibility that they had been kept out of the loop because a key element of the plan would trim the number of pension trustees from the 58 on the boards of the five funds (there is some duplication because the Comptroller and Mayor are represented on all of them) to 12, with speculation being that the one union trustee on the NYCERS board likely to retain a spot was Lillian Roberts of District Council 37. But Mr. Floyd, along with Mr. Samuelsen’s alternate representative on the board, attorney Larry Cary, raised some substantive questions at a subsequent Nov. 15 NYCERS hearing on the plan, leading First Deputy Comptroller Eric Eve to concede that the \$1 billion or more in investment gains Mr. Liu and Mr. Bloomberg had predicted might be reaped annually from the proposed system was a hypothetical projection based on good results elsewhere.

### **The MF Global Elephant**

A day later, Mr. Pan was arrested, and doubts about a radical change being pushed by Mr. Liu seemed to intensify. A couple of weeks after that, Mr. Floyd questioned the Comptroller’s having hired two former top officials at the scandal-scarred MF Global, Larry Schloss as his Chief

Investment Officer and Kevin Davis, who presided over the firm until 2008, then stepped down after it lost 90 percent of its market value as part of the Wall Street meltdown. Mr. Davis resigned a week later, but Mr. Schloss—who has been talked about as a possibility for the Chief Investment Officer job if the independent pension board is created—remains a lightning rod.

“That’s more of an issue than whether Liu’s involved,” Mr. Crespo said in a Jan. 19 phone interview. “It definitely doesn’t help that there are issues about other people’s credibility who were involved in questionable dealings.”

Mr. Crespo, whose members are covered by the one of the smaller city funds, the Board of Education Retirement System, said conversations he had with representatives on other pension boards suggested that Mr. Eve had offered responses to them on some key issues that have “not been consistent” with what he told BERS trustees. “Some of it is just not fitting right,” he said.

Mr. Liu acknowledged during the interview that some of the questions raised were “fair,” but maintained, “It’s a solid proposal. The way we make pension investments has not changed in 70 years. Over the last 20, 30 years the markets have become more complex.”

### **‘Some Funds Consistently Better’**

And he noticed shortly after taking office in 2010 that some public pension funds “seemed to do consistently better than the New York City funds. We looked into why that was the case. We found that their system of decision-making had been updated, in Ontario’s case 20 years ago, [and] allowed them to make more-rational decisions...we’re simply trying to mimic what they do.”

Mr. Eve had conceded that it was politically unfeasible to pay a Chief Investment Officer a salary of several million dollars that a good one could get working on Wall Street or for an Ivy League university endowment. This meant that making compensation competitive would most likely involve incentive bonuses tied to good results that could far exceed base salary.

Mr. Floyd and Mr. Cary, noting the problems encountered by the California Public Employees Retirement System as well as some Wall Street firms, warned that going to the independent board and the Chief Investment Officer would weaken accountability and tempt the CIO to make investments that could provide fat short-term returns that would drive up his or her bonus but might ultimately blow up and leave the pension funds under water.

### **“Wall Street’s Already Involved”**

Mr. Liu countered that having a Comptroller who serves a four-year term act as the CIO (the man who actually wields that power for him is Mr. Schloss, who at \$224,000 is the highest-paid staffer in the office but makes a fraction of what he did while at MF Global) can lead to “an unnecessary short-term focus” on returns as well as “the potential for pay to play” that was at the heart of the scandal that sent ex-State Comptroller Alan Hevesi to prison last year.

Referring to Mr. Cary's remark that the revamped system would shift investment decisions from city and union officials to "Wall Street types," Mr. Liu contended, "They're already in the hands of Wall Street managers. We don't pick which stocks to buy, which bonds... We hire investment consultants, Wall Street investment firms" and pay \$400 million in fees annually for their advice.

He continued, "I've been leading the call for in-sourcing, use city employees, stop with this unnecessary outside contracting. Right now, I don't handle the money, the [fund] trustees don't handle the money, the [Comptroller's] Bureau of Asset Management doesn't handle the money. I'm saying, bring the money in-house." Even if the city was paying \$50 million to the Chief Investment Officer and the staff members who would advise that person, Mr. Liu said, "it would still be one-eighth of what we're spending now."

He said compensation formulas can be structured to ensure that a Chief Investment Officer is rewarded for long-term earnings rather than a single outstanding year, contending that the Ontario system is sometimes offering the biggest bonuses based on seven years of strong performance.

### **Incentive for Career Service**

"We're simply copying best practices that we've seen in other places," Mr. Liu said. And being able to significantly raise the compensation of those staffers who help produce stronger returns would encourage some of the more-astute investors "to have a long-term career in-house in city government, not simply pad their resumes" with a couple of years of government service.

He said academics have predicted an improved return on investments of as much as 3 percent annually if the city goes to an independent board with a CIO, adding, "Even if it's a 1-percent increase, that's a \$1-billion-per-year increase in our investments."

At a time when Mr. Bloomberg and Governor Cuomo are sounding the alarm about rising pension costs, the potential to offset the demand to cut benefits for future workers by producing better earnings is a powerful impetus, Mr. Liu said. "I get questions constantly about what I think about a Tier 6," he noted. "I am concerned about rising pension costs as well."

Asked about the wisdom, then, of having failed to include two key union representatives in the discussions from the outset on a proposal with such potential impact, the Comptroller replied, "If that was the case, then I wish I could turn back time."

That's probably not the only issue he feels that way about.