



Agenda Item 5

June 11, 2012

ITEM NAME: Board Fiduciary and Staff Undue Influence Certifications

PROGRAM: Board Governance

ITEM TYPE: Information

EXECUTIVE SUMMARY

This agenda item provides an overview of processes that will be followed to implement the certification requirements identified in the attached Governance Policy (Policy) (Attachment 1). These processes include the Fiduciary Certification process for Board members and the Undue Influence Certification process for identified CalPERS staff. This overview is presented to inform the Board of the implementing processes and to seek any additional input from the Board members.

BACKGROUND

In September 2011, the Board adopted six governance principles and approved recommendations focused on improving the effectiveness, oversight, accountability, and decision-making of the Board and its Committees.

In February 2012, the Board approved and implemented the Policy which provides an overall framework for governance. The Policy specifies that "Board members shall attend fiduciary training, which includes on-line training (if available), as approved by the Board President, annually." (Policy section X.O., pg. 20 of 27.) The Policy further states "Each Board member will sign a statement acknowledging fiduciary responsibilities in conjunction with self-assessment processes." (Policy section XI.C., pg. 21 of 27.)

For Executive Staff, the Policy specifies that "the Board will require all executives, to the level of senior portfolio managers, to certify in writing, at least annually, that they have been free from undue influence by any individual Board member, executive or third party." (Policy section IX.E., pg. 16 of 27.)

ANALYSIS

Under the Policy, Board members and staff will be required to make certain certifications. The Chief of Risk, Compliance, and Ethics (CRCE) will be responsible for administering and overseeing the process of obtaining and monitoring these certifications.

Fiduciary Certification

To ensure compliance with the Policy and that all Board members, including their Designees, fulfill the governing principle to be "effective and capable fiduciaries," the

following are highlights of the process we are going to follow to implement the fiduciary certification requirement:

- Board members must attend a fiduciary training and sign the Fiduciary Certification form each calendar year. Board members have the option to attend the CalPERS fiduciary training or a fiduciary training identified on a list provided by the CRCE.
- After Board members complete the fiduciary training, they will sign and submit the Fiduciary Certification form to the Board Services Unit (BSU). The BSU will then send the forms to the Enterprise Compliance Division (ECOM).
- The CRCE will provide quarterly reminder notices to those Board members who have not submitted their signed Fiduciary Certification form and include a list of remaining fiduciary training opportunities for the year.
- The CRCE will also provide quarterly status reports to the Board President, Board Vice President, Chief Executive Officer, General Counsel, and Chief Financial Officer.
- The CRCE will present the Fiduciary Certification Completion Report for the previous calendar year to the Board Governance Committee in February of each year.

In February 2012, many Board members and their Designees participated in the CalPERS Fiduciary training. For the 2012 calendar year, Board members who have completed their fiduciary training will receive the Fiduciary Certification form to sign and submit. Board members who have not completed their fiduciary training will receive a list of fiduciary training opportunities.

Freedom From Undue Influence Certification

To ensure compliance with the Policy, all Executive Staff, Investment Office Senior Management (Senior Investment Officers, Senior Portfolio Managers, and Portfolio Managers), Chief Risk Officer, Chief Compliance Officer, and Chief Auditor (collectively referred to as "Certifiers") will be asked to certify annually that they have been free from undue influence. The purpose of this certification is to determine if there have been any incidents of undue influence. In the event a Certifier believes he or she has witnessed or been subject to undue influence, a review of the allegation will be conducted. The timing of this certification process will be in alignment with the California Fair Political Practices Commission Form 700 process. The following are highlights of the process we are going to follow to implement the certification requirement:

- ECOM will send a notification to all Certifiers requesting them to sign and submit the CalPERS Employee Statement Regarding Undue Influence form if they have been free from undue influence.
- All Certifiers who have been free from undue influence will sign and submit the CalPERS Employee Statement Regarding Undue Influence form to ECOM.

- If necessary, ECOM will send a reminder email to any Certifiers who have not signed and submitted their form.
- The CRCE will present the Undue Influence Certification Completion Report to the Board Governance Committee once all certifications have been received.

For calendar year 2012, the Certifiers will be provided the CalPERS Employee Statement Regarding Undue Influence form to complete and submit to the CRCE. In addition, the CRCE will be responsible for implementing and administering a new process to review and report on allegations of undue influence, if any.

ATTACHMENT

Attachment 1 – Governance Policy

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