



Agenda Item 8

June 13, 2012

ITEM NAME: Public Hearing and Board of Administration Recommendation:
Proposed Personal Trading Regulations

PROGRAM: Office of Enterprise Risk Management

ITEM TYPE: Action

RECOMMENDATION

Approve recommendation, subject to the results of the public hearing, to adopt Title 2, Section 558.1 of the California Code of Regulations, Personal Trading Regulations.

EXECUTIVE SUMMARY

The proposed text to Section 558.1, Personal Trading Regulations will place CalPERS within industry standards to protect CalPERS and its employees from engaging in insider trading and front-running. Federal securities laws prohibit these activities and the penalties include fines and possible imprisonment. Enacting personal trading regulations or guidelines is considered an industry best practice and will help to ensure that employees are meeting their fiduciary duty to CalPERS and its members.

BACKGROUND

At the March 14, 2012 CalPERS Board of Administration meeting, the Board approved the proposed Personal Trading Regulations text, with the inclusion of Board members, and initiation of the regulatory process. Subsequently, a Notice of Proposed Regulatory Action was filed with the Office of Administrative Law (OAL) to enact personal trading guidelines. As part of the regulatory process, a 45- day written comment period is required where interested parties may submit public comment relevant to the proposed regulatory action. The written public comment period ended May 14, 2012.

A public hearing was also scheduled to allow interested parties to present testimony regarding the proposed regulatory action. The Board is not required to respond to public comments during the hearing; rather, all comments must receive a response from CalPERS as part of the final rulemaking file.

ANALYSIS

Federal securities laws prohibit the engagement of insider trading, front running and other illegal trading practices. The proposed Personal Trading Regulations will put CalPERS in accordance with industry best practices and industry standards.

The Notice of Proposed Regulatory Action (Attachment A) was published in the California Regulatory Notice Register (CRNR) 2012, No. Z2012-0319-01, March 30,

2012 (Attachment B). The public hearing was noticed for June 13, 2012. The written comment period for the proposed regulatory action closed on May 14, 2012. At the time this agenda item was prepared, public comments have been received and CalPERS staff has responded to the comments. A summary of all public comments and staff's response to each comment is provided as Attachment C of this agenda item. The original public comment received from interested parties and CalPERS responses are included as Attachment D of this agenda item. As a result of these public comments, the proposed Personal Trading Regulations (Attachment E) were amended to provide clarity and to define certain terms. Any recommended additional language is double underlined and deletions are shown with a strike through the text. The proposed Personal Trading Regulations, as amended, are included as Attachment F for Board consideration.

At the conclusion of this hearing, a summary of any additional public comments which have been received will be sent to the Board for consideration. If the Board decides to adopt the proposed amendment(s), the rulemaking file will be forwarded to the Office of Administrative Law (OAL) for review and approval. Once OAL has approved the proposed amendment, it will be forwarded to the Secretary of State for filing and publication in the California Code of Regulations. The regulation will become effective within 30 days of the Secretary of State filing, or at a specified time to be aligned with implementation of the automated solution to support compliance monitoring of the proposed regulation.

BENEFITS/RISKS

Implementing the proposed Personal Trading Regulations will protect CalPERS and staff from potentially entering into trades that could be perceived as front running or trading on insider information. Implementing the proposed regulations will also serve to protect the CalPERS reputation and align insider trading and front running practice with industry standards. Prolonging the regulatory process may delay the effective date of the regulation.

ATTACHMENTS

Attachment A- Notice of Proposed Regulatory Action
Attachment B- Published CA Regulatory Notice Register
Attachment C- Summary of Public Comments
Attachment D- Actual Public Comments and Response
Attachment E- Personal Trading Regulations (including edits)
Attachment F – Personal Trading Regulations (edited version)

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