

**SUMMARY OF PUBLIC COMMENTS AND RESPONSES TO THOSE
COMMENTS FOR THE PUBLIC COMMENT PERIOD
MARCH 30, 2012 TO MAY 14, 2012**

CalPERS received public comment communications from three persons / entities. One communication is from the Service Employees' International Union, Local 1000. One communication is in letter format from Mr. J.J. Jelincic. One communication was an electronic-mail from Ms. Joyce Dillard. The communication from Mr. Jelincic resulted in changes to the proposed Regulations.

1. SEIU, Local 1000 suggested the definition of "Covered Person", including "All employees of the CalPERS Investment Office" is "overly broad." SEIU requested the definition of Covered Person be change to "All employees of the CalPERS Investment Office who have access to CalPERS real-time trade information and / or non-public Investment related information by virtue of their job duties."

CalPERS responded that despite their physical proximity, clerical and other staff who support the Investment Office have access to material, non-public information by virtue of their job responsibilities. Moving the Private Equity Unit to another location within Lincoln Plaza East does not reduce the potential for access to non-public information by the clerical and other support staff within that unit. Clerical and other staff have logical access and are often physically located alongside investment professionals. For this reason, the clerical and other staff, should remain Covered Persons because of potential access to non-public information.

CalPERS noted that private financial services firms the size and complexity of CalPERS routinely apply code of ethic requirements to all employees without regard to job function.

As committed to SEUI, Local 1000, CalPERS will continue to review the definition of Covered Person and will propose amendments should feasible alternatives become available without diluting the intention of protecting staff and CalPERS from potential regulatory or legal risks surrounding the receipt of material, non-public information.

2. Mr. Jelincic submitted nine (9) observations in his communication. They include:

- a. Section (a)(3)(A) defines a Covered Account in such a way that the Public Employees' Retirement Fund (PERF) is a Covered Account since it is an account "over which the Covered Person has the power to place or direct trades. While the intent is cover personal trading (a)(3)(B)(i) makes it clear that a mere lack of ownership is not sufficient to remove an accounts covered status."

CalPERS responded and clarified the proposed regulation. An account where CalPERS has investment discretion or the ability to effect transactions is not a Covered Account.

- b. "Interests in private equity" is a covered security ... but "private equity" is not defined.

CalPERS responded and clarified the proposed regulation by replacing the reference to "private equity" with and defining the terms Private Placement Vehicle.

- c. "Interests in real estate (limited to acquisition made through a private placement vehicle or an investment in a co-mingled entity)" is covered but it is not clear why sales of real estate would be excluded.

CalPERS responded and clarified the proposed regulation by changing the word "acquisition" to "*transactions*" to accommodate real estate buys and sells.

- d. "Commodities (limited to exchange traded futures and options in futures)" are covered. If the purpose is to minimize the likelihood of front running (a practice permitted by commodity regulations) or insider trading it is not clear why exchange traded futures and options are covered while over-the-counter trades and physicals are excluded."

CalPERS responded and clarified the proposed regulation by changing the Covered Security terminology from: "Commodities (limited to Exchange traded futures and

options in futures)” to “Exchange traded futures and options on futures”.

- e. “Open-ended mutual funds (registered or non-registered)” are excluded ... which is proper since the Covered Person does not control the selection of securities in the fund. However, the Covered Person does not control the selection of securities in a closed-end fund either. The basis for the difference provided by staff is that a closed-end mutual fund may trade at variance from its net asset value. While this is true it is also true for Exchange Traded Funds which are not excluded.

CalPERS responded and clarified the proposed regulation by adding Non-index-based exchange traded funds and Closed-end mutual funds to the list of Covered Securities.

The response explains that, in general, index-based ETFs and options thereon are excluded because they are not actively traded.

Further, Closed-end funds are included because they are generally actively traded and because the relative frequency that a closed-end fund’s net asset value discount or premium could be significant.

- f. “Index-based securities ETFs and options on these securities” are excluded yet “Exchange-traded notes” are not. No explanation for this apparent inconsistency is offered. It should be noted that as the System moves more into portfolio construction based on “factors” ETFs offer a more effective way to take advantage of CalPERS trading than individual securities.

CalPERS responded that index-based ETFs and options are excluded because they are not actively traded.

Exchange-traded notes are included because of the SEC’s recent heightened scrutiny of these vehicles. Like with closed-end funds, many exchange-trade notes have recently been susceptible to disruptions in supply and demand for the notes. Unlike with exchange-traded funds which can create or redeem shares from authorized participants, issuers of exchange-traded notes may decide to stop creating or

redeeming units, which could potentially create opportunities for a Covered Person to engage in manipulative trading practices, which would be inconsistent with the intention of the Proposed Regulations.

- g. “The definition of ‘Restricted List’ includes any ‘Covered Security’ the CalPERS Legal Office chooses to include. At a minimum, the Regulation should define the criteria to be used in placing a ‘Covered Security’ on the list.”

CalPERS responded that the Legal Office has established a process consistent with SEC Rules for insider trading.

- h. “The ‘Blackout Period’ includes a definition of ‘a passively managed portfolio’ as ‘one that is not actively traded or traded against a strategy.’ This definition ignores that tracking and/or replicating an index is a strategy. It is unclear what ‘not actively traded’ means. It is unclear how the PERF can trade outside the ‘Blackout Period’ which is defined by its trading. The section should be amended to make clear that it relates only to internal CalPERS trades (assuming that is the intent).”

CalPERS responded and clarified the proposed regulation by revising the parenthetical example used to clarify what is meant by a “passively managed portfolio”. The parenthetical example now states: “... in a passively managed portfolio (i.e., a portfolio that is designed to track the performance of a broad-based securities index)”.

- i. “This use of the ‘Restricted List’ in (f) is reasonable but goes well beyond the limits CalPERS had negotiated with the exclusive representative at the time the ‘Restricted List’ was established.”

CalPERS responded that the intent of the Restricted List is to track companies where CalPERS has received non-public material information and concurred with the reasonableness of using the Restricted List in the proposed regulations

3. Ms. Dillard submitted two (2) observations in her communication. They include:
- a. “Black Out Period – why the short period of time of 3 days commencing one day before transaction and one market day after transaction. That does not seem to avoid conflicts of interest of self profit.”

CalPERS responded that many factors were considered in selecting the three-day Blackout Period, including, but not limited to:

- Current industry practice
- Balancing the ability of a Covered Person to receive approval to transact in a Covered Security and the actual or perceived risk of a Covered Person engaging in manipulative trading practices such as front running.

- b. “Why aren’t Collateralized Debt Obligations (CDOs) and derivatives on CDOs listed in the Regulation?”

CalPERS responded that Collateralized Debt Obligations, fixed income securities and derivatives are included in the proposed regulation.