



## **COMMENTS AND RECOMMENDATION OF SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000**

Service Employees International Union, Local 1000 (SEIU) welcomes the opportunity to submit its comments regarding the implementation of the proposed Personal Trading Policy regulation. The California Public Employees' Retirement System (CalPERS) has proposed to add section 558.1 to Title 2 of the California Code of Regulations. SEIU has never questioned the reason for and the importance of the proposed regulation regarding security and asset trading by CalPERS Board members and employees and the attendant reporting requirements. SEIU has expressed concerns regarding specific impacts on covered employees. Most of those concerns have been resolved or minimized by the proposed regulation.

SEIU is the exclusive representation of the majority of rank and file employees at CalPERS whose investment activities may be subject to the proposed regulation. These employees perform job duties in a wide range of State of California civil service job classifications including, but not limited to, Office Technician; Investment Officer; Pension Actuary; Information Systems Analyst; and Retirement Program Specialist.

SEIU commends CalPERS for its collaborative process of working with SEIU and other stakeholders prior to the actual submission of the proposed regulation. SEIU met with CalPERS management during this informal process and was able to resolve a number of its concerns regarding the regulation's impact on employees and their families.

### "Covered Person"

SEIU is concerned that the definition of "Covered Employee" in section 558.1(a)(4)(H)—"All employees of the CalPERS Investment Office"—is overly broad.

The Initial Statement of Reasons explains the intent of the "Covered Person" definition is to cover Board members and employees who "as a result of their position, job duties or logical systems access [emphasis added] has (or could easily obtain) access to material, non-public information...." The term 'logical system access' appears to mean physical location. SEIU understands the importance of covering Portfolio Managers, Investment Officers and other professional staff because of their job duties and access to non-public information that they either receive and/or create. SEIU, however, is very concerned about the inclusion of clerical and other support staff only because of the physical configuration of the Investment Office.

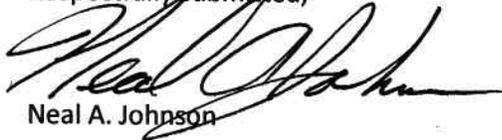
On March 30, 2012 (the first day of the 45-day public comment), SEIU receive a notice (see Attachment) pursuant to Article 24 (Entire Agreement Clause) of its Contract with the State of California that the CalPERS Investment Office had outgrown its existing space in Lincoln Plaza East and was relocating employees to other CalPERS office spaces. This relocation provides an excellent opportunity to create physical barriers that would minimize the 'logical system access' that causes some employees to be defined as a "Covered Person."

It is SEIU's recommendation and prayer that CalPERS amend the text of Section 558.1(a)(4)(H) to read as follows:

"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;"

The amended text would be very similar to (a)(4)(L) where CalPERS recognized that many of its Information Technology employees had extremely limited access to non-public information investment information and should not be subject to the Personal Trading Policy.

Respectfully submitted,



Neal A. Johnson  
SEIU Local 1000  
May 14, 2012

Attachment:

Additional Office Space and Relocation Notice CalPERS March 30, 2012



California Public Employees' Retirement System  
Human Resources Division  
P.O. Box 942718  
Sacramento, CA 94229-2718  
TTY: (877) 249-7442  
(916) 795-3065 phone • (916) 795-3345 fax  
[www.calpers.ca.gov](http://www.calpers.ca.gov)

March 30, 2012

RECEIVED APR 04 2012

Nolice Edwards, Chief of Staff  
Services Employees International Union, Local 1000  
1808 14th Street  
Sacramento, CA 95811

Dear Ms. Edwards:

SUBJECT: Additional Office Space and Relocation

The California Public Employees' Retirement System, Investment Office encompasses the northwest end of the second, third, and fourth floors of Lincoln Plaza East (LPE). The Investment Office has outgrown their current space in LPE and needs to look for additional space for staff. Working with the Operations & Support Services Division (OSSD) they are preparing a Master Space Plan with recommendations on how to best utilize the office space to align divisions under the new organization structure, and provide space for new positions. This plan includes building out the vacant space on the 1<sup>st</sup> floor of 400 R Street and the retail space on the 1<sup>st</sup> floor of LPE for office space.

The anticipated staff movement to 400 R Street will begin in June, 2012. Movement to the 1<sup>st</sup> floor of LPE by the end of July. Staff will be notified 30 days in advance prior to their movement date.

The office space at 400 R Street will have similar features as LP (coffee stations, break room with refrigerators and microwaves). They are also using the same furniture as LP. The building is managed by Colliers so the level of service that staff expects will remain the same. Parking will be available at the garage across the street for the same monthly rate or employees can remain in the LP garage.

Additionally, in support of my|CalPERS, some program areas are physically reorganizing. This could result in additional moves similar to the one cited above. We will continue to update you as the moves progress.

Nolice Edwards  
March 30, 2012  
Page 2

Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Linda Cameron".

LINDA CAMERON  
Labor Relations Analyst  
California Public Employees' Retirement System  
(916) 795-3126

cc: Pam Manwiller, Labor Relations Officer, DPA



California Public Employees' Retirement System  
Office of Enterprise Risk Management  
P.O. Box 942701  
Sacramento, CA 94229-2701  
TTY: (877) 249-7442  
(916) 795-3577 phone • (916) 795-3517 fax  
[www.calpers.ca.gov](http://www.calpers.ca.gov)

May 30, 2012

Mr. Neal A. Johnson  
SEIU Local 1000  
1808 14<sup>th</sup> Street  
Sacramento, CA 95811

Dear Mr. Johnson,

Thank you for your interest in the regulations enacting personal trading guidelines for CalPERS Employees Personal Trading. The comments in your May 14, 2012 communication have been carefully considered by staff with the following outcome.

During the development of the Proposed Regulations, CalPERS carefully evaluated the definition of "Covered Employee" in order to protect staff and CalPERS as an organization from potential liability resulting from advertent or inadvertent misuse of material, non-public information.

In many cases, clerical and other support staff have access to email, voicemail and correspondence of Senior Investment Officers and Senior Portfolio Managers. It would be operationally challenging to set up information barriers for clerical and other support staff that support INVO's professional staff in order to exclude them from becoming a Covered Person. 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.

The concept of "logical systems access" was used in the Initial Statement of Reasons to denote access to systems and technology (including, but not limited to, trading systems, portfolio management systems and resource mailboxes). Clerical and other support staff may have logical system access and are physically located alongside investment professionals such as Investment Officers and Portfolio Managers. The clerical and other support staff, including those from other asset classes, should remain Covered Persons because of potential access to non-public information.

It should be noted that private financial services firms of CalPERS size and complexity routinely apply code of ethics requirements to all employees of their asset management

Neal A. Johnson  
May 30, 2012  
Page 2

subsidiaries without regard to job function. We will, however, 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.

Sincerely,

A handwritten signature in blue ink that reads "Larry Jensen". The signature is written in a cursive style with a large, looping initial "L".

Larry Jensen  
Risk Officer  
Enterprise Risk Management Division

J.J. Jelincic  
366 Jane Court  
Hayward, CA 94544

May 7, 2012

Re: Comments on Proposed Personal Trading Regulation

Christina Nutley, Regulations Coordinator  
California Public Employees' Retirement System  
P.O. Box 942702  
Sacramento, CA 94229-2702

Dear Ms. Nutley:

This regulation is a solution in search of a problem. While it is true "Industry standards are to have personal trading guidelines for investment and related staff. Currently CalPERS does not have personal trading guidelines. These regulations will align CalPERS with industry standards." CalPERS compensation levels, analytics and internal controls are not consistent with industry standards. Failure to meet industry standards is not grounds for a regulation. Insider trading remains illegal even if the regulations are not adopted.

Having said that I have no problem with adopting a well-crafted personal trading policy. Such a policy will protect the interests of CalPERS. However, it should be acknowledged that it is designed to protect CalPERS and senior management.

There are a number of flaws in the proposed regulation.

- (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.
- "Interests in private equity" is a covered security [(a) (6) (A) (iii)] but "private equity" is not defined.
- "Interests in real estate (limited to acquisition made through a private placement vehicle or an investment in a co-mingled entity)" [(a) (6) (A) (ix)] is covered but it is not clear why sales of real estate would be excluded. Also the regulation fails to define "a private placement vehicle" or "a co-mingled entity." Very few real estate transactions are not private.
- "Commodities (limited to exchange traded futures and option in futures)" are covered [((a) (6) (A)(x)]. 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.

Comments on Proposed Personal Trading Regulation  
Page 2

- “Open –ended mutual funds (registered or non-registered)” are excluded [((a) (6) (B)(iii))] 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.
- “Index-based securities (ETFs) and options on these securities)” are excluded [((a) (6) (B)(iv))] yet “Exchange-traded notes” are not. ((a) (6) (A) (vi)]. No explanation for this apparent inconsistency is offered. It should also 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.
- The definition of “Restricted List” (a) (13) 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.
- The “Blackout Period” (e) 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 also be amended to make clear that it relates only to internal CalPERS trades (assuming that is the intent).
- 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.

I believe all these flaws can be fixed but would encourage that the regulation not be adopted until they have been.

Sincerely,

J.J. Jelincic



California Public Employees' Retirement System  
Office of Enterprise Risk Management  
P.O. Box 942701  
Sacramento, CA 94229-2701  
TTY: (877) 249-7442  
(916) 795-3577 phone • (916) 795-3517 fax  
[www.calpers.ca.gov](http://www.calpers.ca.gov)

May 30, 2012

Mr. J.J. Jelincic  
366 Jane Court  
Hayward, CA 94544

Mr. Jelincic,

Thank you for your interest in the regulations enacting personal trading guidelines for CalPERS Employees Personal Trading. The comments in your May 7, 2012 communication have been carefully considered by staff with the following outcome.

Comment 1 (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.

Response to Comment 1 To clarify the intent, the following language will be recommended as section [(a)(3)(B)(viii)] & [(a)(3)(B)(viii) (ix)]:

"(viii) Managed Accounts; and"

"(ix) An account where CalPERS has investment discretion or the ability to effect transactions."

Comment 2 "Interests in private equity" is a covered security [(a) (6) (A) (iii)] but "private equity" is not defined.

Response to To clarify the intent, the following language will be recommended as section [(a)(6)(A)(iii)]:

Comment 2

“(iii) Interests in Private Placement Vehicles;”

And the following language will be recommended definition as section [(a)(13)]:

“(13) Private Placement Vehicle means an offering of securities which are exempt from registration under Section 3(a)(11), Section 4(2), Regulation A or Rules 504, 505 or 506 of Regulation D of the Securities Act of 1933 and Section 25102 of the California Corporations Code. Generally speaking, such offerings of securities are made only to certain high-net worth individuals who qualify as “accredited investors” under Regulation D of the Securities Act of 1933 or as “qualified purchasers” under Section 25102 of the California Corporations Code.”

Comment 3

“Interests in real estate (limited to acquisition made through a private placement vehicle or an investment in a co-mingled entity)” [(a) (6) (A) (ix)] is covered but it is not clear why sales of real estate would be excluded.

Also the regulation fails to define “a private placement vehicle” or “a co-mingled entity.” Very few real estate transactions are not private.

Response to  
Comment 3

To clarify the intent, the following change to Section [(a)(6)(A)(ix)] will be recommended:

“Interests in real estate (limited to *transactions* made through a Private Placement Vehicle or an investment in a co-mingled entity).”

And the following language will be recommended definition as section [(a)(13)]:

“(13) Private Placement Vehicle means an offering of securities which are exempt from registration under Section 3(a)(11), Section 4(2), Regulation A or Rules 504, 505 or 506 of Regulation D of the Securities Act of 1933 and Section 25102 of the

California Corporations Code. Generally speaking, such offerings of securities are made only to certain high-net worth individuals who qualify as “accredited investors” under Regulation D of the Securities Act of 1933 or as “qualified purchasers” under Section 25102 of the California Corporations Code.”

Comment 4 “Commodities (limited to exchange traded futures and option in futures)” are covered [(a) (6) (A)(x)]. 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.

Response to Comment 4 To clarify the intent the following change to Section [(a)(6)(A)(x)] will be recommended:

“(x) Exchange traded futures and options on futures.”

Comment 5 “Open-ended mutual funds (registered or non-registered)” are excluded [(a) (6) (B)(iii)] 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.

Response to Comment 5 To clarify the intent, the following language will be recommended as [(a)(6)(A) (xi) and (xii)]:

“xi Non-Index-based exchange traded funds; and”

“xii Closed-end mutual funds.”

In general, index-based ETFs and options thereon

are excluded because they are not actively traded.

Closed-end funds are included because of they are generally actively traded and because of the relative frequency that a closed-end fund's net asset value discount or premium may be significant (30% to 50%) relative to its quoted market place. To the extent these discounts or premia exist, the potential for a Covered Person to engage in manipulative trading practices exists which would be inconsistent with the intention of the Proposed Regulations.

Comment 6

"Index-based securities (ETFs) and options on these securities" are excluded [(a) (6) (B)(iv)] yet "Exchange-traded notes" are not. ((a) (6) (A) (vi)). No explanation for this apparent inconsistency is offered. It should also 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.

Response to  
Comment 6

In general, index-based ETFs and options are excluded because they are not actively traded.

Exchange-traded notes are not excluded from the Proposed Regulations because of the SEC's recent heightened scrutiny of these vehicles. Like with closed-end funds, many exchange-traded notes have recently been susceptible to disruptions in supply and demand for the notes. Unlike with an exchange-traded fund which can create or redeem existing 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.

Comment 7

The definition of "Restricted List" (a) (13) includes any "Covered Security" the CalPERS Legal Office choses to include. At a minimum, the regulation should define the criteria to be used in placing a "Covered

Security” on the list.

Response to  
Comment 7

The CalPERS Legal Office has established a process consistent with SEC rules for insider trading, by which a security may be added or removed from the CalPERS Restricted List.

CalPERS Board members and employees who come into possession of material nonpublic information concerning a publically traded company must contact the Legal Office. The Legal Office will add the company to which the information relates to the Restricted Company List based on the materiality.

Generally speaking, information is material where there is a substantial likelihood that a reasonable investor would consider the information important in deciding whether to buy or sell the securities in question, or where the information, if disclosed, could be viewed by a reasonable investor as having significantly altered the total mix of information available. Where the nonpublic information relates to a possible or contingent event, materiality depends upon a balancing of both the probability that the event will occur and the anticipated magnitude of the event in light of the totality of the activities of the issuer involved.

Comment 8

The “Blackout Period” (e) 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 also be amended to make clear that it relates only to internal CalPERS trades (assuming that is the intent).

Response to  
Comment 8

To clarify the intent, the following change to Section [(e)] will be recommended:

(e) “*Blackout Period*. Unless the transaction is

J.J. Jelincic  
May 30, 2012  
Page 6

exempted by subdivision (g), Covered Persons are prohibited from buying, selling or transferring Covered Securities during the Blackout Period. The Blackout Period prohibition does not apply to a Covered Person's transactions in the Covered Securities that CalPERS has traded (during the Blackout Period) in a passively managed portfolio (*i.e., a portfolio that is designed to track the performance of a broad-based securities index*). In addition, an exception to the Blackout Period prohibition has been granted by CalPERS if pre-clearance approval of the transaction was obtained in accordance with the pre-clearance process outlined in subdivision (c) prior to CalPERS inputting a transaction in the same or equivalent Covered Security."

Comment 9

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.

Response to  
Comment 9

The intent of the Restricted List is to track companies where CalPERS has received non-public material information. We concur with the reasonableness of using the Restricted List in the proposed regulations. In the context of the proposed regulation, personal trading activity is prohibited in those companies on the Restricted Trading List to protect staff from even the appearance of insider trading.

Sincerely,



Larry Jensen  
Risk Officer  
Enterprise Risk Management Division

**From:** Joyce Dillard [<mailto:dillardjoyce@yahoo.com>]  
**Sent:** Monday, May 14, 2012 4:45 PM  
**To:** Nutley, Christina  
**Subject:** Comments to CALPERS Trading Account due 5.14.2012

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 or self profit.

Derivatives or CDOs Collateralized Debt Obligations are not listed.

Joyce Dillard  
P.O. Box 31377  
Los Angeles, CA 90031



California Public Employees' Retirement System  
Office of Enterprise Risk Management  
P.O. Box 942701  
Sacramento, CA 94229-2701  
TTY: (877) 249-7442  
(916) 795-3577 phone • (916) 795-3517 fax  
[www.calpers.ca.gov](http://www.calpers.ca.gov)

May 30, 2012

Ms. Joyce Dillard  
P.O. Box 31377  
Los Angeles, CA 90031

Ms. Dillard,

Thank you for your interest in the regulations enacting personal trading guidelines for CalPERS Employees Personal Trading. The comments in your May 14, 2012 communication have been carefully considered by staff with the following outcome.

- |                       |  |
|-----------------------|--|
| Comment 1             | 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 or self profit.  |
| Response to Comment 1 | CalPERS staff considered many factors in determining that a three-day Blackout Period was appropriate in developing the Proposed Regulations. The factors considered included, but were not limited to, current industry practice (both of other pension funds and private asset management firms of similar size to CalPERS) and 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. |
| Comment 2             | Derivatives or CDOs Collateralized Debt Obligations are not listed.  |

Joyce Dillard  
May 30, 2012  
Page 2

Response to  
Comment 2

Collateralized Debt Obligations (CDO) would be considered a "Covered Security" and is addressed in the Proposed Regulations at Section (a)(6)(A)(v) (Fixed income instruments). Derivatives are similarly addressed in the Proposed Regulations at Sections (a)(6)(A)(i) and (x).

Sincerely,

A handwritten signature in blue ink, appearing to read "Larry Jensen".

Larry Jensen  
Risk Officer  
Enterprise Risk Management Division