

California Public Employees Retirement System Board of Administration
c/o Ryan Digman, Regulation Coordinator
P.O. Box 942702
Sacramento, CA 94229-2702

Dear Member:

I have the following comments with respect to the proposed modified text of proposed Rule 558.1.

Proposed Modification to Rule 558.1(a)(6)(A)(iii). Although I agree that the former description ("private equity") did not meet the clarity standard set forth in Government Code Section 11349(c), the proposed change also fails to meet the clarity requirement. The definition of "Private Placement Vehicles" in proposed Rule 558.1(a)(13) would limit securities to those offered in an issuer transaction (*i.e.*, a purchase from the issuer). Moreover, it is unclear that there is even a need for the subsection as proposed in light of subsection (6)(A)(ii) which refers to unregistered debt and equity offerings and subsection (6)(A)(vii) which refers to "private offerings".

More importantly, it is very unlikely that insider trading would be a concern in such a situation (*i.e.*, that the covered person knows material non-public information about the issuer that the issuer does not know). It is far more likely that insider trading would occur in a non-issuer transaction (*i.e.*, a purchase and sale from an existing security holder). Therefore, I believe that it is confusing, inappropriate and illogical to include in Rule 558.1(a)(6)(A)(iii) securities in a "private placement vehicle".

Proposed Rule 558.1(a)(13). As discussed above, the proposed definition of "Private Placement Vehicles" is unnecessary because securities covered by this definition would be subsumed by the broader categories of unregistered debt and equity offerings (subsection 6(A)(ii)) and private offerings (subsection 6(A)(vii)). Moreover, the proposed definition does not meet either the clarity or consistency standards mandated by Government Code Section 11349. In particular the statement that "such offerings are made only to certain high-net worth individuals" is inaccurate. Section 3(a)(11) of the Securities Act of 1933, for example, exempts securities (not transactions) offered in intrastate transactions. The exemption is not conditioned upon investors meeting a net-worth standard nor is it limited to offerings to individuals. Further, the exemptions under Regulation D are not limited to individuals or to persons meeting a specified net worth. Corporations Code Section 25102 of the California Corporations Code is an exemption from the *qualification* (not registration) requirements of Section 25110. Section 25102 provides 17 separate exemptions and only two of those exemptions refer to "qualified purchasers". A proposed regulation cannot satisfy the consistency requirement of Government Code Section 11349(d) if it is not in harmony with, contradictory to, or in conflict with other provisions of law.

Very Truly Yours,
Keith Paul Bishop

Dear Mr. Bishop,

Thank you for your continued interest in the rulemaking regarding the proposed CalPERS regulations for personal trading (Rule 558.1). We have reviewed your comments and at this time will not be making any proposed changes to the rulemaking. We agree that there may be some overlap between some of the sub-categories of Covered Securities. We believe that is acceptable and doesn't make the rulemaking unclear or inconsistent. Our target audience for the rulemaking is CalPERS employees, so we believe that utilizing a number of terms and types of securities to make it clearer what is covered is not only acceptable but appropriate.

We agree that the risk of insider trading or other inappropriate conduct is certainly higher with some types of Covered Securities than others. However, given the breadth of CalPERS investment activities, we believe there is a risk for all the Covered Securities, including Private Placement Vehicles.

Finally, we differ with your conclusion that the definition of Private Placement Vehicles does not meet the clarity and consistency standards of Government Code Section 11349. The rulemaking specifies that "Generally speaking, such offerings of securities are made only to certain high-net worth individuals." [Emphasis added.] Therefore, Section (a)(13) was not designed to indicate that all such offerings were available only to high-net worth individuals.

The proposed Rule 558.1 will be presented to the CalPERS Board of Administration at the August 15, 2012 meeting for approval of the proposed text and authorization to submit the final rulemaking. We appreciate your comments and mutual interest in protecting CalPERS Board Members and staff by reducing the risk of insider trading, front-running, and conflicts of interest.

Sincerely,

Larry Jensen, Risk Officer
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