

Title 2. California Public Employees' Retirement System

NOTICE OF PROPOSED REGULATORY ACTION

PROPOSED ADDITION OF SECTION 558.1 TO TITLE 2 OF THE CALIFORNIA CODE OF REGULATIONS

REGULATIONS ENACTING PERSONAL TRADING GUIDELINES FOR CALPERS EMPLOYEES PERSONAL TRADING

(a) Definitions.

(1) Blackout Period. Blackout Period means the three-day period of time that commences one market day before and ends one market day after a transaction in Covered Securities by CalPERS.

(2) Board Member. CalPERS Board members and their appointed designee(s).

(3) Covered Account.

(A) Covered Account includes the following:

(i) An account, not identified as exempt in subdivision (B), with the capability of trading Covered Securities to which a Covered Person holds legal title or over which the Covered Person has the power to place or direct trades;

(ii) Self-directed brokerage accounts offered through 401(k) or 457 accounts or sub-accounts from a current or previous employer of the Covered Person. An employer sponsored retirement savings plan that offers a brokerage account as an investment option is not a Covered Account (e.g., a Savings Plus Program account that offers a self-directed Schwab 401(k) is exempt; however, the brokerage account itself (e.g., the Schwab brokerage account) is a Covered Account).

(B) Covered Account does not include the following:

(i) The accounts in which a spouse or registered domestic partner conducts trading activity by virtue of their employment (for example: a money manager, a financial advisor, etc.) are exempt from the regulation unless the

spouse or registered domestic partner is employed by CalPERS;

- (ii) Bank accounts;
 - (iii) Treasury direct accounts;
 - (iv) Mutual fund-only accounts;
 - (v) Employer sponsored 401(k) or 457 accounts limited to transactions in exempt securities, as identified in subdivision (6)(B) (e.g., Non self-directed accounts in the State of California's Savings Plus Program);
 - (vi) 403(b) accounts;
 - (vii) 529 accounts;
 - (viii) Managed Accounts; and
 - (ix) An account where CalPERS has investment discretion or the ability to effect transactions.
- (4) Covered Person. Covered Person means a person holding any of the positions listed below.
- (A) Board Members;
 - (B) The CalPERS Chief Executive Officer;
 - (C) The CalPERS Deputy Executive Officers;
 - (D) The CalPERS Assistant Executive Officers;
 - (E) The CalPERS Chief Financial Officer;
 - (F) The CalPERS Chief Actuary;
 - (G) All employees of the CalPERS Office of Enterprise Risk Management;
 - (H) All employees of the CalPERS Investment Office;
 - (I) The CalPERS Division Chief of Fiscal Services and all employees of the CalPERS Investment/Fund/Retirement Program Accounting

Section of the Fiscal Services Division, except the Retirement Program Accounting Units;

- (J) All employees of the CalPERS Office of Audit Services, except Senior Program Evaluators (Public Agency Team) and all employees directly reporting to the Senior Program Evaluator (Public Agency Team);
 - (K) All employees of the CalPERS Benefit Program Policy & Planning Branch whose positions are designated in the CalPERS Conflict of Interest Code at 2 Cal. Code Regs. Section 560;
 - (L) All employees (and their direct supervisor and/or manager) of the CalPERS Information Technology Services Branch who have access to CalPERS real-time trade information and/or non-public investment related information by virtue of their job duties;
 - (M) The CalPERS General Counsel and Deputy General Counsel. The Assistant Chief Counsel (Investments) and the Staff Counsel and Senior Staff Counsel reporting to the Assistant Chief Counsel (Investments). The Assistant Chief Counsel, Senior Staff Counsel and Staff Counsel who advise the CalPERS Health Plan Administration Division of the Benefit Programs Policy and Planning Branch. The Assistant Chief Counsel, Senior Staff Counsel and Staff Counsel who advise on CalPERS' procurement or services contracts;
 - (N) All management staff of the Contracts and Procurement unit of the Operations Support Services Division whose positions are designated in the CalPERS Conflict of Interest Code at 2 Cal. Code Regs. Section 560;
 - (O) The secretary and assistant of any person holding a position listed in (A) through (N), above;
 - (P) The spouse (by virtue of marriage under section 300 of the California Family Code) or registered domestic partner (by virtue of domestic partnership established under sections 297, et seq., of the California Family Code) of any person holding a position listed in (A) through (O), above.
- (5) Covered Person Employee. Covered Person Employee means a Covered Person who is employed by CalPERS.
- (6) Covered Security(ies). Covered Securities means all of the following except for the securities excluded in subsection (6)(B);

- (A) Securities includes all of the following:
- (i) Publicly traded securities (including but not limited to derivatives, options, puts and calls, with the exception of publicly traded instruments identified in subsection (B)).
 - (ii) Unregistered debt and equity offerings;
 - (iii) Interests in Private Placement Vehicles;
 - (iv) Interests in hedge funds;
 - (v) Fixed income instruments;
 - (vi) Exchange-traded notes;
 - (vii) Private offerings;
 - (viii) Initial Public Offerings
 - (ix) Interests in real estate (limited to transactions made through a Private Placement Vehicle);
 - (x) Exchange traded futures and options on futures;
 - (xi) Non-Index-based exchange traded funds; and
 - (xii) Closed-end mutual funds.
- (B) Covered Securities does not include any of the following:
- (i) Money-market mutual funds and short-term investment funds;
 - (ii) Collective trust funds;
 - (iii) Open-end mutual funds (registered or non-registered);
 - (iv) Index-based securities (ETFs) and options on these securities;
 - (v) Commercial paper;

- (vi) Unit investment trusts;
 - (vii) Certificates of deposit;
 - (viii) U.S. Treasury obligations;
 - (ix) Debt securities issued by state and municipal governments and agencies of the United States government; and
 - (x) Variable and fixed rate annuity insurance products and life insurance.
- (7) Designated Brokerage. Designated Brokerage means a broker or broker-dealer approved by CalPERS in accordance with subdivision (b).
- (8) Holding Period. Holding Period means the 30 or more calendar day period between the acquisition and sale, and the 30 day or more calendar day period between sale and re-acquisition, of a Covered Security, on a last-in first-out basis.
- (9) Managed Account. Managed Account means an account with the capability of trading Covered Securities that meets all of the following criteria:
- (A) It is managed by a third party who is not a Covered Person,
 - (B) No Covered Person has the power to affect or ability to control or influence investment decisions in the account, and
 - (C) No Covered Person communicates (directly or indirectly) with the person(s) with investment discretion regarding the trading activity in the account.
- (10) Managed Account Certification Form. Managed Account Certification Form means a form provided by the Division of Enterprise Compliance, or a substantially similar form provided by a third party Managed Account provider, that certifies the arrangement whereby a third-party Managed Account provider has discretion to act as investment advisor or to manage any investment or trading account for another person.
- (11) On-Line Platform. On-Line Platform means a web-based, on-line trading platform provided by CalPERS to all Covered Persons.
- (12) Permission Request Form. Permission Request Form means a form provided by the Division of Enterprise Compliance to a Covered Person to request approval of a transaction in Covered Securities. The Division of

Enterprise Compliance may create and provide different Permission Request Forms for different types of Covered Investment Transactions.

- (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 or 1933 or as “qualified purchasers” under Section 25102 of the California Corporations Code.

- (14) Restricted List. Restricted List means the list of Covered Securities of companies about which any CalPERS employee or Board Member has information that may be material, non-public information. The Restricted List is maintained and updated by the CalPERS Division of Enterprise Compliance and distributed to Covered Person Employees and Board Members.

- (15) Transfer of a Security. Transfer means to move a Covered Security to a different account(s) whereby the Covered Person continues to hold legal title, or change ownership from the Covered Person to a different party.

- (16) Transfer of an Account. Transfer of an account means the transfer of one covered account to another account. An example of this would be the consolidation of Individual Retirement Accounts (IRAs). This activity is permissive; however, the accounts and their securities are still considered covered after the transfer.

- (b) Designated Brokerages.
 - (1) All Covered Accounts must be maintained at a Designated Brokerage.
 - (2) CalPERS will establish a list of approved Designated Brokerages. The addition of a broker or broker-dealer to this list of Designated Brokerages will be based on the broker or broker-dealer’s ability to provide direct feeds, CalPERS ability to meet any broker or broker-dealer account minimums, and cost. All upfront and ongoing expenses will be paid by CalPERS.
 - (3) A Covered Person Employee has 60 days from the later of (A) the commencement of his or her employment with CalPERS, or (B) the effective date of this section to move all his or her Covered Accounts and the Covered Accounts of his or her spouse or registered domestic partner to a Designated Brokerage. A Board Member has 60 days from the later

of (A) the date he or she assumes office, or (B) the effective date of this section, to move all his or her Covered Accounts and the Covered Accounts of his or her spouse or registered domestic partner to a Designated Brokerage.

- (4) If it is not possible to move a particular account to a Designated Brokerage, the Covered Person Employee or Board Member is responsible for obtaining an exception to maintain the Covered Account from the Division of Enterprise Compliance. These Covered Accounts will require pre-clearance as outlined under subdivision (c).
- (c) *Pre-Clearance Approval.* Covered Persons are required to obtain pre-clearance approval before the purchase, sale or transfer of Covered Securities of any size is executed in a Covered Account, unless the transaction is exempt from the requirement of pre-clearance approval under subdivision (g).
- (1) *Pre-Clearance Approval of Publicly Traded Covered Securities.*
- (A) To obtain pre-clearance approval of a publicly traded Covered Security, a Covered Person must input the details of the proposed trade into the On-Line Platform and follow the instructions. A Covered Person must also attest through the On-Line Platform the transaction is not prohibited under subdivision (h) of this section.
- (B) The Covered Person will normally receive immediate notification as to whether the proposed trade is approved or denied. Requests for pre-clearance approval shall only be denied if the transaction would violate any of the trading restrictions set forth in subdivisions (d), (e), (f) or (h) of this section. The notice of denial shall indicate the reason for denial. If the proposed trade is approved, the approval is valid only during the current market session, or the next open market session if the approval is received by the Covered Person after the market closes. The same standard applies for pre-clearance requests placed for extended hours trading (5am – 5pm, Monday through Friday, PST) Separate pre-clearance approval is required for extended hours trading and is only valid for that extended market trading session. Limit and stop order approvals will remain valid for all pre-clearance requests for the term of the order.
- (C) If the information in a pre-clearance request is a modification to a previously approved order, the pre-clearance process must be completed again prior to undertaking the transaction.
- (D) If the transaction is not executed within the approved market session, the pre-clearance process must be repeated prior to

undertaking a new transaction (excluding limit and stop orders). Limit and stop order approvals will remain valid for the term of the order.

- (2) *Pre-Clearance Approval of Covered Securities Not Publicly Traded.* To pre-clear Covered Securities that are not publicly traded, a request must be submitted to the Division of Enterprise Compliance through a Permission Request Form accessible through the On-Line Platform. A Covered Person must input the details of the proposed transaction on the form and attest the transaction is not prohibited under subdivision (h) of this section. The On-Line Platform will forward the completed document to the Division of Enterprise Compliance for review. The Covered Person will receive notification within one market business day (or the next business day on which the markets are open) as to whether the proposed trade is approved or denied. Requests for pre-clearance approval will only be denied if the transaction would violate any of the trading restrictions set forth in subdivisions (d), (e), (f) or (h) of this section. Some requests may require additional supporting documentation and research that could prolong the due diligence process.
 - (3) *Pre-Clearance Request by a Disabled Covered Person.* In the event a Covered Person is unable to pre-clear trades as the result of a disability, he or she will be provided a reasonable accommodation and offered an alternative method to obtain preclearance with the Division of Enterprise Compliance. This alternative method will also exist for reconsideration and reporting requirements as described in subdivision (i), (j) and (k).
 - (4) *Pre-Clearance of a Transfer of an Account.* The pre-clearance of the transfer of an account from one account to another account, from one institution to another institution or a consolidation of two accounts (for example, the consolidation of two IRA accounts) is not required. For the transfer of covered securities between any accounts, refer to (1)(A) of this section.
 - (5) Within 45 days of the effective date of this section, the Division of Enterprise Compliance shall develop and implement policies and procedures to address the ongoing administration of the Regulations, including, but not limited to, processes to review and determine whether a unique and/or novel financial instrument presented by a Covered Person for Pre-Clearance Approval meets the definition of Covered Security and processes to effect Pre-Clearance Approval for such instruments.
- (d) *Holding Period.* Unless the transaction is a limit or stop order, or is exempted by subdivision (g), Covered Persons are prohibited from selling or transferring

Covered Securities within 30 calendar days of their acquisition, and from re-acquiring shares of such Covered Securities after their sale within 30 calendar days of the last sales date, on a last-in, first-out basis. Trading activity to circumvent the Holding Period requirement is not permitted and will be considered a violation of this section.

- (e) *Blackout Period.* Unless the transaction is 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.
- (f) *Restricted List.* Unless the transaction is exempted by subdivision (g), Covered Persons are prohibited from buying, selling or transferring a Covered Security while it is on the Restricted List. The purchase or sale of a Covered Security on the Restricted List that is the result of the execution of a previously pre-cleared limit or stop order is not a violation of this prohibition provided the Covered Security was not on the Restricted List at the time the limit or stop order was placed.
- (g) *Transactions Exempt from Pre-Clearance, Holding Period, Blackout Period, and Reporting Provisions.* Transactions in the following types of Covered Securities, instruments or accounts are exempt from the pre-clearance requirements of subdivision (c), the Holding Period requirements of subdivision (d), the Blackout Period prohibition of subdivision (e), and the reporting requirements of subdivision (j):
 - (1) Direct Investment Plans (i.e., DRIPs);
 - (2) Scheduled transactions made through the use of an automatic investment plan (pre-clearance is required when a Covered Security is added or modified);
 - (3) Enrollment and scheduled transactions made through an Employer Stock Purchase Plan or Employee Stock Ownership Program;
 - (4) Non-volitional actions that occurred without the input of the Covered Person (e.g., option expiration, called bond, converted Covered Security, etc.).

(h) Prohibited Transactions. Covered Persons are prohibited from executing the following transactions:

- (1) A transaction that would constitute insider trading under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder or that would violate any other state or federal law.
- (2) A transaction based on confidential information that a Covered Person Employee learns by virtue of his or her employment with CalPERS, position on the Board, or relationship with a Covered Person Employee.
- (3) A transaction that is executed on a Covered Security while taking advantage of knowledge of a pending CalPERS order in the same Covered Security, thereby trading “in front of” CalPERS (front-running).
- (4) A transaction that is effected through an account other than a Covered Account in order to circumvent the requirements of or prohibitions contained in this section.
- (5) Derivatives of any kind (and any other instrument or device) used to avoid the requirements or prohibitions contained in this section.

(i) Reconsideration of Pre-Clearance Denials.

- (1) If a request for a pre-clearance approval under subdivision (c)(1) is denied, a Covered Person may submit a request for reconsideration through the On-Line Platform. Pre-clearance approval may only be denied for violating one or more trading restrictions set forth in subdivisions (d), (e), (f), or (h) of this section. A reconsideration request must be submitted for each violation and all reconsiderations must be approved prior to placing the trade. A Covered Person will receive notification within one market business day as to whether the proposed trade is approved or denied. Denials shall indicate the reason(s) for the denial. In addition, the Covered Person must provide the following information:
 - (A) For denials based on a violation of the Blackout Period, the Covered Person must provide a certification that the Covered Person had no knowledge at the time the Covered Person requested pre-clearance approval that CalPERS had traded or would trade the same or equivalent Covered Securities during the Blackout Period. All such requests will require review from the Division of Enterprise Compliance. The Division of Enterprise Compliance will respond to the request within one market business day.

- (B) For denials based on a violation of the Holding Period, the Covered Person must provide the reason(s) why the Covered Person believes an exception to the Holding Period requirement should be approved. The On-Line Platform will allow a Covered Person to request reconsideration of his/her transaction for any of the following reasons: (1) strong price movement in a Covered Security, (2) public announcements relating to the Covered Security, and (3) a Covered Person's unexpected personal financial hardship. Requests for reconsideration based on any other reason will require review from the Division of Enterprise Compliance. The Division of Enterprise Compliance will provide final approval or denial of reconsideration requests by within one market business day after receipt of the request.
- (C) For denials based on Covered Securities being included on the Restricted List, the Covered Person must provide the reason(s) why the Covered Person believes an exception should be approved. All such requests will require review from the Division of Enterprise Compliance. The Division of Enterprise Compliance will respond to the request within one market business day.
- (2) If a request for a pre-clearance approval under subdivision (c)(2) is denied, the Covered Person may submit a request for reconsideration by using a Permission Request Form for reconsiderations accessible through the On-Line Platform. The Covered Person must provide the reason(s) why the Covered Person believes an exception should be approved. The On-Line Platform will forward the document to the Division of Enterprise Compliance for review. The Covered Person will receive notification within one market business day as to whether the proposed trade is approved or denied.
- (3) If the request for reconsideration is denied under this subdivision (i), the Covered Person may request further reconsideration of the decision by the General Counsel. Requests for reconsideration of denials based on the Restricted List require joint approval of the General Counsel and the Chief Operating Investment Officer. The General Counsel and Chief Operating Investment Officer may delegate the authority to make these decisions to their subordinates.
- (4) All requests for reconsideration will be examined on a case by case basis after evaluation of all surrounding facts and circumstances, including without limitation, a Covered Person's unexpected financial hardships and market conditions (e.g., a declining market, public announcements about a Covered Security).
- (j) Reporting.

- (1) Covered Persons must disclose all Covered Accounts and Managed Accounts to the Division of Enterprise Compliance through the On-Line Platform. If a Covered Person is not certain as to whether an account is a Covered Account or Managed Account, it is his or her responsibility to seek, and comply with, guidance from the Division of Enterprise Compliance.
- (2) For Managed Accounts, the Covered Person is required to provide a copy of a Managed Account Certification Form, signed by the investment advisor who manages the account, to the Division of Enterprise Compliance within 30 calendar days of disclosing the account. This document, available on the On-Line Platform, or a substantially similar form provided by the third party Managed Account provider, will capture the arrangement whereby a third-party managed account provider has discretion to act as investment advisor or to manage any investment or trading account for another person.
- (3) A Covered Person Employee must disclose his or her Covered Accounts and Managed Accounts and the Covered Accounts and Managed Accounts of his or her spouse or registered domestic partner on or before the later of 30 calendar days from (i) the commencement of a Covered Person Employee's employment as a Covered Person, or (ii) the effective date of this section. A Board Member must disclose his or her Covered Accounts and Managed Accounts and the Covered Accounts and Managed Accounts of his or her spouse or registered domestic partner on or before the later of 30 calendar days from (i) the date the Board Member assumes office, or (ii) the effective date of this section. In addition, a Covered Person is required to update the On-Line Platform within 30 calendar days when new accounts are opened or if existing accounts are closed or transferred.
- (4) Covered Person Employees and Board Members are required to attest annually through the On-Line Platform, and within 30 calendar days of the first new calendar quarter, that all of their Covered Accounts and Managed Accounts and the Covered Accounts and Managed Accounts of their respective spouses or registered domestic partners have been disclosed as required by this section. Designated Brokerages will supply a direct feed of all transactions on Covered Accounts. For Covered Accounts without an automated feed, Covered Persons must report all purchases, sales and transfers of Covered Securities on a quarterly basis, within 30 calendar days of each new calendar quarter. This report will also include Covered Securities donated or transferred to, or received from, another party.

- (5) CalPERS will treat information reported under this section as confidential personnel information, exempt from disclosure under subdivision (c) of Section 6254 of the California Government Code, and will not disclose the information until after the Covered Person is notified and not unless ordered to do so by a court of competent jurisdiction.
- (k) Acknowledgment of Section. Within 30 calendar days of the later of (1) commencement of employment as a Covered Person (in the case of a Covered Person Employee) or the date of assuming office (in the case of a Board Member) or (2) the effective date of this section, and on April 1 of every subsequent calendar year, Covered Person Employees and Board Members must review, acknowledge and affirm through the On-Line Platform they have read and understand this section.
- (l) Violations. In the event of any alleged violation of this section 558.1, the Division of Enterprise Compliance will conduct an investigation, which will include notification of the Covered Person Employee's direct supervisor. Violations will be referred to the Human Resources Office, the Legal Office, and relevant management personnel, and will be treated in accordance with CalPERS policies and procedures regarding violations of law, and in accordance with California law, including but not limited to Government Code section 19572. Violations of this section 558.1 may result in disciplinary action, up to and including termination of employment.

NOTE: Authority cited: Sections 20120, 20121, Government Code. Reference: Sections 19990, 87200 et seq. and 87300 et seq., Government Code.