



Agenda Item 8

November 15, 2012

ITEM NAME: Approval of Personal Trading Regulation for Submission to Office of Administrative Law

PROGRAM: Office of Enterprise Risk Management

ITEM TYPE: Action

RECOMMENDATION

Approve recommendation to adopt Title 2, Section 558.1 of the California Code of Regulations, Personal Trading Regulation and to authorize submission of the Notice of Regulatory Action to the Office of Administrative Law.

EXECUTIVE SUMMARY

The CalPERS Board of Administration approved the proposed Personal Trading Regulation at the August 15, 2012 meeting. The Office of Enterprise Risk Management (OERM) submitted the proposed Personal Trading Regulation to the Office of Administrative Law (OAL) for review and approval on August 28, 2012. The OAL contacted the CalPERS Regulations Coordinator with numerous clarifying questions. As a result, the proposed Personal Trading Regulation was updated and resubmitted for an additional 15-day public comment period. The public comment period was from October 16, 2012 to October 30, 2012. During this period, no public comments were received on the proposed Personal Trading Regulation.

Staff is now seeking final Board approval of the proposed regulation on Personal Trading and to submit the Final Rulemaking documents to the Office of Administrative Law.

STRATEGIC PLAN

Enacting the Personal Trading Regulation will support CalPERS' Strategic Plan goal of "cultivating a high-performing, risk-intelligent and innovative organization." Specifically, having Regulation and an automated personal trading platform in place will assist CalPERS' objective of "actively managing business risks with an enterprise-wide view." The Personal Trading Regulation and automated personal trading platform will help CalPERS to identify potential business risks of front running, insider trading and other illegal trading practices. By identifying risks, CalPERS is protecting itself and its members from potential violation of federal securities laws. Violation of federal securities laws may result in penalties, fines and reputation risk.

BACKGROUND

During the August 15, 2012 Board of Administration Meeting, the Board of Administration approved the final text of the Personal Trading Regulation. After the approval, CalPERS submitted the final text to OAL on August 28, 2012. The OAL reviewed the Regulation and set up a meet and discuss meeting with CalPERS staff regarding its review. CalPERS staff made all changes as suggested by the OAL. Due to the modifications of the Regulation text, OAL instructed CalPERS to provide another 15-day comment period. This comment period was from October 16 to October 30, 2012. No comments were received during the comment period. CalPERS staff is now bringing the final text of the Regulation with OAL changes to the Board of Administration for approval.

ANALYSIS

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

On August 15, 2012, the Board of Administration approved the final text of the proposed Personal Trading Regulation. There have been only non-substantive changes made to the proposed Regulation since reviewed and approved by the Board of Administration at the August 15, 2012 meeting. The non-substantive clarifications to the Regulation suggested by OAL include:

- Clarifications of terminology in the Regulation so that the lay person would better understand the Regulation. For example, the term "Market Day" was defined;
- Clarification on who would have access to the Personal Trading OnLine Platform (Covered Person Employees and Board Members will access the OnLine Platform as opposed to the spouse or registered domestic partner);
- Addition of the OnLine Platform technical terms and system requirements. Because CalPERS now has the OnLine Platform in place, CalPERS can provide additional system specific information in the Regulation; and
- Non-substantive grammatical and semantic type changes.

The Notice of Proposed Regulations, Title 2, Section 558.1 of the California Code of Regulations, Personal Trading Regulation is included as Attachment 1 of this agenda item. Modifications to the text are annotated with double underlines and double strikeouts for the 15 day additions and deletions (respectively) to text noticed during the period June 21, 2012-July 5, 2012. Italics indicate newly added text and single strikeouts indicate newly deleted text of the currently proposed regulation.

Attachment 2 of this agenda item is the final proposed text of the Notice of Proposed Regulations, Title 2, Section 558.1 of the California Code of Regulations, Personal Trading Regulation.

Upon Board approval of the proposed Personal Trading Regulation, staff will submit the final Rulemaking documents to Office of Administrative Law for approval. The Regulation is then filed with the Secretary of State for publishing.

BENEFITS/RISKS

Implementing the proposed Personal Trading Regulation 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 regulation 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 1 – Annotated Notice of Proposed Regulations, Title 2, Section 558.1 of the California Code of Regulations, Personal Trading Regulation

Attachment 2 –The Modified Text of the Proposed Regulations, Title 2, Section 558.1 of the California Code of Regulations, Personal Trading Regulation

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