



Agenda Item 8a

May 19, 2014

ITEM NAME: Proposed Revision of the Statement of Investment Policy for Insider Trading – Initial Review

PROGRAM: Total Fund

ITEM TYPE: Policy & Delegation – Information

EXECUTIVE SUMMARY

Staff seeks Investment Committee feedback and guidance on proposed revisions to the Statement of Investment Policy for Insider Trading (Policy). Staff's proposed changes:

1. Amend the definition of Restricted Person in the Policy to conform with the definition of Covered Person used in the Personal Trading Regulation (Regulation; Title 2, California Code of Regulations, section 558.1); and
2. Amend the Policy to reflect CalPERS current practices with regard to dissemination of the Restricted Company List.

Attachment 1 sets forth the proposed revisions to the Policy. It is anticipated that an action item seeking Committee adoption of the modified Policy will be presented at the Committee's June 2014 meeting.

STRATEGIC PLAN

This agenda item supports the CalPERS Strategic Plan goal to cultivate a high-performing, risk-intelligent and innovative organization.

BACKGROUND

The current version of the Policy was adopted by CalPERS in February, 2009. The Policy is intended to ensure that CalPERS, its Board members and employees are aware of and comply with the anti-fraud provisions of the federal securities laws. The Policy is reflective of the requirements and prohibitions of Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5, which prohibit the purchase or sale of securities on the basis of material, non-public information in breach of a duty of trust or confidence.

The Policy applies to all CalPERS personnel, and imposes additional requirements on Restricted Persons, a term defined in the Policy. The current definition of Restricted Person does not, however, include Board members and is not otherwise fully consistent with the definition of a Covered Person as set forth in the Regulation.

The Regulation was previously approved by the Board in June 2012 and became operative December 2012. (A copy of the Regulation is attached as Attachment 2.) Concurrent with the adoption of the Regulation, CalPERS procured Compliance11 to administer the obligations of Covered Persons to, among other things, seek pre-clearance for trades of Covered Securities. The adoption and implementation of the Regulation have created a need to update the Policy in order to align it with the Regulation and reflect current practices and procedures. In addition, staff is in the process of engaging a consultant to, among other things, review, assess and make recommendations to improve CalPERS policies, procedures and practices that are designed to protect against the misuse of material non-public information, including the Policy and the Regulation. It is anticipated that additional changes to the Policy will be presented to the Committee after the conclusion of this engagement; however, staff nonetheless believes it is advisable to make the currently proposed changes to the Policy now, and follow up with additional changes in the future as necessary.

ANALYSIS

Definition of Restricted Person

The Policy definition of Restricted Person should be updated to create consistency with the Regulation. For example, the Policy currently does not include as a Restricted Person the Chief Financial Officer, since that position was added after the adoption of the Policy. In addition, the Policy definition of Restricted Person does not include Board members.

Since the definition of Covered Person in the Regulation includes current CalPERS personnel subject to trading restrictions and who should otherwise be considered Restricted Persons for purposes of the Policy, staff recommends the Policy definition of Restricted Persons reference the positions designated as Covered Persons in the Regulation. This change would update the list of Restricted Persons to whom the Policy applies, would eliminate current inconsistencies between the Regulation and the Policy, and would include Board members within the Policy definition of Restricted Person.

Distribution of the Restricted Company List

Prior to implementation of Compliance11, the Restricted Company List was disseminated by electronic mail to all Restricted Persons. At that time, this was the only means by which Restricted Persons were informed of the securities that they were prohibited from trading. Upon implementation of Compliance11, staff concluded it was no longer necessary to provide the list to the Restricted Persons since Covered Persons are required by the Regulation to seek preclearance of trades in any Covered Security. As part of the preclearance process, Compliance 11 automatically denies preclearance authorization requests if the Covered Security is on the Restricted Company List. Moreover, staff concluded that broad dissemination of the Restricted Company List to all Restricted Persons could potentially increase the risk

of communicating CalPERS confidential information. Accordingly, staff discontinued the practice of disseminating the Restricted Company List to all Restricted Persons in February, 2013. However, the list continues to be distributed to select individuals, including INVO employees who are engaged in trading securities on CalPERS behalf.

Staff is now recommending a revision to the Policy so that the Policy conforms to current practices and procedures and does not require dissemination of the Restricted Company List to all Restricted Persons. Staff will nevertheless continue to provide a copy of the Restricted Company List to select INVO staff and will also provide it to Covered Persons upon request.

BUDGET AND FISCAL IMPACTS

Not Applicable

BENEFITS/RISKS

The benefits of revising the Policy include conforming the language and coverage of the Policy with the Regulation, adding Board members and others to the list of Restricted Persons, and conforming the Policy to existing practices. There are no risks associated with this Policy change. The risks of not adopting changes to the Policy are continued inconsistencies between staff practices and Policy language regarding the dissemination of the Restricted Company List as well as inconsistencies regarding the application of the Policy to persons regarded as a Covered Person under the Regulation.

ATTACHMENTS

Attachment 1 – Proposed Revised Insider Trading Policy

Attachment 2 – Regulations Enacting Personal Trading Guidelines for CalPERS
Employees Personal Trading

Attachment 3 – Consultant Opinion Letter

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