

Federal Investment Policy Report for the CalPERS Board October 2015

I. Derivatives

1. **Brief Summary of Issue.** Implementation of Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) reforms relating to the regulation of derivatives, and possible consideration of CFTC reauthorization legislation.
2. **Developments Since Last Report.**
 - **Ownership and Control Rule.** The Commodity Futures Trading Commission (CFTC) issued a no-action letter that will provide additional time for compliance with certain reporting requirements of the ownership and control final rule. The letter gives futures commission merchants until April 27, 2016 to comply with the requirements. In addition, the new reporting requirements for customers and account controllers (on Form 40 and the new Form 71) have been pushed back from February 11, 2016 to September 28, 2016.
 - **Swaps Execution Facilities.** The CFTC again announced an extension until November 2016 of time-limited no-action relief for swaps executed as part of certain types of package transactions. The CFTC indicated that the extension will enable the Division to continue to further assess the appropriate response for applying the trade execution requirement to such transactions.
 - **CFTC Reauthorization.** Senate Agriculture Committee Republican staff expects the Committee to convene a markup of a CFTC reauthorization legislation before November 26, 2015. The Committee's Democratic staff anticipates that the most significant outstanding issue is the funding level for the CFTC.
3. **Implications for CalPERS.** CFTC rulemaking will impact the ability of CalPERS to trade derivatives for the purpose of enhancing returns for shareowners and hedging portfolio risk. A CFTC reauthorization would help remove uncertainty and allow the CFTC to focus on carrying out its mission of protecting market participants from abuses while fostering financially sound and stable markets.
4. **CalPERS/Federal Representative Actions.** Ongoing monitoring of relevant developments with respect to CFTC rulemaking and Congressional consideration of CFTC reauthorization in the coming weeks.
5. **Recommendations for Next Steps.** We will continue to provide updates and recommend action by CalPERS as warranted, including comment on relevant rulemakings.

II. Housing Finance

1. **Brief Summary of Issue.** Policy developments relating to housing finance including the market for asset-backed securities.

2. Developments Since Last Report.

- **Common Securitization Platform.** Federal Housing Finance Agency Director Melvin Watt signaled that the issuance of Freddie Mac securities from the newly developed Common Securitization Platform could possibly be expected as soon as late 2016. The release of a common security to replace separate issuances by Fannie Mae and Freddie Mac (the Government-sponsored Enterprises, or GSEs) is still believed to be a multi-year project.
- **Revised “Put-back” Policies.** The GSEs announced revised policies governing “put-backs” to lenders for underwriting defects. The changes make clear that lenders will not be required to repurchase loans for minor errors that were unrelated to the loan default. The announcement comes on the heels of similar policies at the Federal Housing Administration (FHA) that have the opposite impact on lenders and result in an environment for which lenders may prefer GSE guaranteed mortgages to those insured by the FHA.
- **Mortgage Disclosure Rules.** The Consumer Financial Protection Bureau’s Truth In Lending Act-Real Estate Settlement Procedures Act integrated disclosure rules went into effect on October 3. The rules replace overlapping mortgage disclosure forms with two streamlined forms that are designed to be easier to understand.

3. Implications for CalPERS.

Changes to housing finance policy could impact market liquidity, mortgage interest rates and CalPERS investment returns.

4. CalPERS/Federal Representative Actions.

Ongoing monitoring of relevant developments, including expected proposals relating to the Common Securitization Platform and credit risk transfer proposals.

5. Recommendations for Next Steps.

We will provide updates and recommend action by CalPERS as warranted, including comment on relevant rulemaking and legislative proposals.

III. Securities

1. Brief Summary of Issue.

Policy developments relating to capital formation, investor protection and securities market structure.

2. Developments Since Last Report.

- **Nominations.** The White House announced the nominations of George Washington University Law Professor Lisa Fairfax (a Democrat) and George Mason University Researcher Hester Peirce (a Republican) to replace Securities and Exchange Commission (SEC) Commissioner Luis Aguilar and former Commissioner Daniel Gallagher. Fairfax currently serves on the SEC’s Investor Advisory Committee, and has focused her academic work on boardroom diversity, shareholder activism and the selection of corporate directors by investors. Peirce is a former Senate Staff member and SEC lawyer who has been critical of Dodd-Frank. It is unclear when the Senate Banking Committee will take up the nominations.
- **Appointments.** A coalition of progressive advocacy organizations wrote a letter to SEC Chair Mary Jo White urging her to recuse herself from selecting the head of the Public Company Accounting Oversight Board (PCAOB) because of her husband’s legal work and

his role as a member of the PCAOB's Standing Advisory Group. The SEC has not yet made a final decision on whether to reappoint current Chairman James Doty or appoint a new chairman.

- **Pay-Ratio Legislation.** The House Financial Services Committee marked up and reported favorably to the full House H.R. 414, the "Burdensome Data Collection Relief Act" to repeal the requirement under Dodd-Frank that the SEC require public companies to disclose the ratio of their CEO's compensation to the median compensation of all their employees. The bill passed the Committee by a vote of 32-25 and now awaits action by the full House.
 - **Fiduciary Rule Legislation.** The House Financial Services Committee marked up and reported favorably to the House H.R. 1090 to prohibit the Department of Labor from prescribing rules defining the circumstances under which an individual is considered a fiduciary until 60 days after the SEC issues a final fiduciary rule governing standards of conduct for brokers and dealers. The bill passed the Committee by a vote of 34-25 and now awaits action by the full House.
 - **Corporate Governance.** The SEC issued a staff legal bulletin (SLB) for companies and shareholders to clarify the scope and application of Rule 14a-8(i)(9), which permits a company to exclude a proposal that directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting. The SLB indicates that the focus of future no-action requests will be on whether a reasonable shareholder could logically vote for both proposals.
 - **Political Activity Disclosure.** Reps. Patrick Murphy (D-FL) and Mike Capuano (D-MA), both members of the House Financial Services Committee, wrote a letter urging Chair White to reconsider her decision to remove from the SEC's agenda a possible SEC rulemaking that would require public companies to disclose the use of corporate resources for political activities. The letter was signed by 58 Members of Congress, including House Financial Services Committee Ranking Member Maxine Waters (D-CA).
3. **Implications for CalPERS.** Ongoing SEC rulemaking and Congressional efforts to repeal such rules could impact transparency necessary for informed allocation of capital by institutional investors, as well as corporate governance matters relevant to long term investment returns. Nominations of the new SEC Commissioners and the appointment of a PCAOB Chairman will continue to be of interest because of the implications with respect to such matters.
4. **CalPERS/Federal Representative Actions.** Ongoing monitoring of relevant developments including legislative proposals, and discussions with policymakers relating to the confirmation of the SEC nominees.
5. **Recommendations for Next Steps.** We will provide updates and recommend action by CalPERS as warranted, including writing letters for CalPERS to Lisa Fairfax and Hester Peirce congratulating them on their nominations and preparing questions for their anticipated confirmation hearings.