

## Federal Investments Report for CalPERS Board January 2017

### *I. Securities and Capital Markets*

1. **Brief summary of issue.** Policy developments related to the Securities and Exchange Commission (“SEC”) and legislation concerning the capital markets.
2. **Specific changes/developments since last report.**
  - **Nominations.** President Donald J. Trump announced that he intends to nominate Jay Clayton to be the Chairman of the SEC. Mr. Clayton is a corporate lawyer who has focused his practice on public and private mergers and acquisitions transactions, capital markets offerings, regulatory and enforcement proceedings, and other matters. The Senate Banking Committee is expected to consider the nomination early next month.
  - **Acting SEC Chairman.** SEC Commissioner Michael Piowar was designated as Acting Chairman of the SEC, following the departure of former Chair Mary Jo White. Acting Chairman Piowar is expected to head the SEC until the Senate confirms a new Chairman.
  - **Acting Chairman Piowar Remarks.** Acting Chairman Piowar indicated that he would not prioritize any rules required under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), including a proposed rule related to incentive-based compensation arrangements at financial institutions. However, Acting Chairman Piowar said that he could work with Commissioner Kara Stein to consider such issues as disclosure modernization.
  - **Rulemakings.** Reince Priebus, Assistant to the President and Chief of Staff, sent a memorandum to the heads of Executive Branch departments and agencies that states the following: “With respect to regulations that have been published in the [Federal Register] but have not taken effect, as permitted by applicable law, temporarily postpone their effective date for 60 days from the date of this memorandum... Where appropriate and as permitted by applicable law, you should consider proposing for notice and comment a rule to delay the effective date for regulations beyond that 60-day period.” Among the proposed rules that will likely be impacted are SEC rulemakings related to universal proxies, disclosure update and simplification, disclosure of order handling information, incentive-based compensation arrangements, investment company use of derivatives, pay versus performance, and clawbacks. The SEC’s recently finalized rule related to liquidity risk management for open-end funds will also likely be impacted.
  - **Legislation.**
    - The House passed H.R. 78, the “SEC Regulatory Accountability Act” by a vote of 243-184. Introduced by Rep. Ann Wagner (R-MO), the bill would require the SEC to consider the costs and benefits of its regulations and to conduct a review to determine whether existing regulations are “outmoded, ineffective, insufficient or excessively burdensome.” The

Senate has not acted on the bill. At this juncture, it appears unlikely that H.R. 78 will garner sufficient Democratic support for passage by the Senate.

- The House passed H.R. 79, the “Helping Angels Lead Our Startups Act” by a vote of 344-73. Introduced by Rep. Steve Chabot (R-OH), the bill would direct the SEC to revise certain regulations to facilitate the ability of small business startups to gain access to capital from angel investors. The Senate has not acted on the bill; prospects for advancement are not yet clear.
- House Financial Services Committee (“HFSC”) Chairman Jeb Hensarling (R-TX) signaled that the “basic structure” of the Financial CHOICE Act (“FCA”), a bill that he introduced in the 114th Congress to comprehensively reform the Dodd-Frank, will “remain the same” when the legislation is reintroduced in the coming weeks. Notably, the HFSC is expected to markup the reintroduced version in mid-February.

**3. Implications for CalPERS.**

- The rulemaking freeze could impact the SEC’s ability to effectively regulate the securities markets, which could impact CalPERS and other market participants that utilize such markets;
- The reintroduction and subsequent markup of the FCA will provide CalPERS an opportunity to provide input on particular aspects of the legislation for the benefit of shareowners and the broader securities markets;
- Senate consideration of the SEC Regulatory Accountability Act will afford CalPERS an opportunity to provide input on the potential implications of requiring the SEC to perform increased cost-benefit analysis for rulemakings; and
- Senate advancement of the nomination of Mr. Clayton to be SEC Chairman could provide CalPERS and other market participants greater certainty as to the SEC’s upcoming regulatory agenda.

**4. CalPERS/Federal Representative Actions.**

- Sent comment letter to the SEC about the proposed rule on Universal Proxy January 9, 2017;
- Provided updates to CalPERS on the anticipated reintroduction of the FCA; and
- Conducted ongoing monitoring of regulatory and legislative developments related to the securities markets.

**5. Recommendations for Next Steps.** We will continue to monitor and keep CalPERS apprised of developments concerning the FCA and to provide updates on other legislative and regulatory issues and recommend action by CalPERS, as warranted.

**II. Derivatives Reform**

1. **Brief summary of issue.** Policy developments related to the Commodity Futures Trading Commission (“CFTC”) and the derivatives markets.
2. **Specific changes/developments since last report.**
  - **Acting CFTC Chairman.** The CFTC voted to extend the public comment period for the CFTC’s proposed rule on Regulation Automated Trading (“Reg AT”) to

May 1, 2017. The proposed rule on Reg AT would improve risk controls, transparency, and the safety and soundness of automated trading on all designated contract markets. House Agriculture Committee Chairman K. Michael Conaway (R-TX) had previously requested the CFTC to extend the comment period, which would have ended on January 24, 2017.

- **Nominations.** Former President Barack Obama re-nominated in the final days of his Administration Democrat Chris Brummer and Republican Brian Quintenz to be CFTC Commissioners. The Senate Agriculture Committee approved the nominations in the last term of Congress, but the full Senate did not act on the nominations. At this juncture, it is not yet clear when the Senate Agriculture Committee will re-consider the nominations, though the nominees have garnered bipartisan support.
- **Rulemakings.**
  - *Rulemaking Freeze.* A number of CFTC rulemakings will likely be impacted by Mr. Priebus' memorandum of January 20 (discussed above), including proposed rules related to automated trading and position limits and a recently finalized rule concerning the aggregation of position limits.
  - *Swaps.* The CFTC approved a proposed rule to make it easier for U.S. and foreign regulators to gain access to data related to swap data repositories. In expressing support for the proposed rule, Chairman Massad said that "increased reporting of data on swaps transactions" enables international regulators assess "exposures and risks related to this market." A CFTC fact sheet about the proposed rule is available here. Public comments must be received by March 27, 2017.
  - *Recordkeeping and Storage.* The CFTC approved a proposed rule to modernize and make technologically-neutral the recordkeeping and storage obligations provisioned in CFTC rules. In a statement, Chairman Massad stated that the proposed rule is consistent with the CFTC's objective of assuring that the agency's rules are "up-to-date in light of technological changes." Public comments must be received by March 20, 2017.
- **CFTC Reauthorization.** The House passed H.R. 238, the "Commodity End-User Relief Act" by a vote of 239-182. Introduced by House Agriculture Committee Chairman K. Michael Conaway (R-TX), the bill would reauthorize the CFTC. In his remarks on the House Floor, Chairman Conaway said that H.R. 238 would also require the CFTC to "conduct more thorough and robust cost-benefit analyses to help get future rulemakings right the first time." He stated that the bill would "make important statutory changes to protect end-users and give them access to the tools they need to manage their risks." The Senate has not to date acted on the bill. However, Senate Agriculture Committee staff has indicated that, if the provisions related to cost-benefit analysis are retained in H.R. 238, the bill would likely not garner sufficient Democratic support for passage by the Senate.

### 3. **Implications for CalPERS.**

- The rulemaking freeze could impact the CFTC's ability to effectively regulate the derivatives markets, which could impact CalPERS and other market participants that utilize such markets to hedge investment risk; and
- Senate consideration of the Commodity End-User Relief Act will allow CalPERS the opportunity to provide input on the implications of requiring additional cost-benefit analysis for CFTC rulemakings.

### 4. **CalPERS/Federal Representative Actions.**

- Conducted ongoing monitoring of the pending nominations of Mr. Brummer and Mr. Quintenz to be CFTC Commissioners as well as regulatory and legislative developments related to the derivatives markets.

### 5. **Recommendations for Next Steps.** We will continue to provide updates on the pending nominations of Mr. Brummer and Mr. Quintenz as well as on relevant rulemakings and legislative proposals, and recommend action by CalPERS, as warranted. Given the current rulemaking freeze, comment on pending and proposed rules is not recommended.

## **III. GSE Reform**

### 1. **Brief summary of issue.** Policy developments related to reform of Fannie Mae and Freddie Mac (the "GSEs").

### 2. **Specific changes/developments since last report.**

- **Housing Finance Reform.**

- *Mr. Mnuchin Remarks.* Steve Mnuchin, President Trump's nominee to be the Secretary of the Department of the Treasury, testified at his confirmation hearing before the Senate Finance Committee. In response to a line of questioning from Sen. Mark Warner (D-VA), Mr. Mnuchin said that "[f]or very long periods of time I think Fannie Mae and Freddie Mac have been well run without creating risk to the government," though he also said that "[w]e need housing reform." Although Mr. Mnuchin said that he had "no interest" in reestablishing Fannie Mae and Freddie Mac in their original form, he signaled that he would be interested in finding a "bipartisan solution" to reform.

- *Dr. Carson Remarks.* Dr. Ben Carson, President Trump's nominee to be the Secretary of the Department of Housing and Urban Development, testified at his confirmation hearing before the Senate Banking Committee. In response to a question from Sen. Dean Heller (R-NV) about whether Dr. Carson supports a government backstop for Fannie Mae and Freddie Mac, Dr. Carson said that he supports "some type of backstop" but that he was "very much in favor of introducing more private entities into the market."

- *Former Secretary Lew Memo.* Former Secretary of the Treasury Jacob J. Lew issued a Department of the Treasury Exit Memorandum, which includes a recommendation that housing finance reform be addressed legislatively in the coming years. Former Secretary Lew indicated that

“fixing our housing finance system remains the major unfinished work of post-financial crisis reform” and that “only legislation can comprehensively address the ongoing shortcomings of the housing finance system.” He also stated that a “clearly-defined role for government to promote broad access to consumer-friendly mortgages in good times and bad” should be a starting point for such legislative efforts. Former Secretary Lew said that, although “private capital should bear the majority of the risks in mortgage lending, reform also must provide more American households with greater and more sustainable access to affordable homes to rent or own.”

3. **Implications for CalPERS.**

- Comments from Mr. Mnuchin and Mr. Carson regarding the GSEs could provide investors in mortgage-backed securities greater certainty as to the future of the GSEs and the broader housing finance system during the Trump Administration.

4. **CalPERS/Federal Representative Actions.** Conducted ongoing monitoring of relevant regulatory and legislative developments related to the secondary mortgage market.

5. **Recommendations for Next Steps.** We will provide updates and recommend action by CalPERS, as warranted, including commenting on relevant rulemakings and legislative proposals.