August 14, 2017

Item Name: Report to the Legislature – Senate Bill 185 (de León)

Program: Total Fund

Item Type: Information Consent

Executive Summary

Pursuant to the requirements of Government Code § 7513.75, also known as the Public Divestiture of Thermal Coal Companies Act (the Act), CalPERS is submitting the attached report to the California Legislature and Governor. The Act became law effective October 8, 2015. The Act requires the CalPERS Board of Administration (Board), consistent with its fiduciary responsibilities, to identify, engage, and potentially divest from companies meeting the definition of “thermal coal companies” as identified by the Act.

The 2017 CalPERS Public Divestiture of Thermal Coal Companies Act Report is provided as Attachment 1.

Strategic Plan

This item is required by statute and does not support the CalPERS Strategic Plan.

Background

The Act requires CalPERS and CalSTRS to constructively engage publicly traded thermal coal companies generating 50% or more of their revenue from mining thermal coal and to divest from such companies if, following engagement, a company is not “…transitioning its business model to adapt to clean energy generation.” The Act directs CalPERS to undertake several actions within set timelines, specifically:

1. Complete divestment of any investments in applicable companies by July 1, 2017;
2. Restrict future investments in applicable companies; and
3. Report to the Legislature and the Governor by January 1, 2018 with:
    a. A list of divestments undertaken per the requirements of the Act;
    b. Supporting documentation for any determinations by the Board that a company is exempt from divestment because of a planned business model adaptations considering clean energy generation; and
    c. A list of companies that would have been subject to divestment under the Act but for the Board’s determination that such action would conflict with the Board’s fiduciary obligations as outlined in the CA Const. Section 17, Article XVI, together with the Board’s findings in support of this conclusion.

In May 2017, the Committee evaluated the outcome of engagement activities undertaken per the requirements of the Act, as well as the investment performance and risk considerations of the identified companies, and implications for the portfolio. The Committee considered the following:

- Three companies had indicated plans to adapt their business models in consideration of clean energy generation (such as through a reduction of thermal coal mining revenues), and were exempt from the divestment requirement of the Act

- Fourteen companies failed to indicate applicable business plan adaptations, or failed to respond to CalPERS engagement efforts and were subject to divestment per the requirements of the Act

- Although CalPERS had no holdings to divest, an additional eight companies were identified as subject to the Act

- Whether its fiduciary duties precluded it from divesting from the fourteen companies subject to divestment per the requirements of the Act.

The Committee directed staff to divest from the fourteen thermal coal companies that met the criteria for divestment as specified by the Act, and to restrict future investments in those companies as well as an additional eight companies where CalPERS had no holdings.

All applicable holdings were divested in advance of the July 1, 2017 deadline specified by the Act.

Analysis
The CalPERS 2017 Public Divestiture of Thermal Coal Companies Act Report is provided as Attachment 1.

Budget and Fiscal Impacts
Submission of the 2017 CalPERS Public Divestiture of Thermal Coal Companies Act Report will be addressed using existing budgeted resources.

Benefits and Risks
California Government Code § 7513.75(e) specifies the reporting required for compliance with the Act. Failure to comply with the statutory requirement of the Act could result in legal and reputational risk to CalPERS.

Attachments
Attachment 1 – CalPERS 2017 Public Divestiture of Thermal Coal Companies Act Report

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Investment Compliance and Operational Risk

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Chief Investment Officer