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**December 18, 2017**

**Item Name:** Report to the Legislature – California Divest from Iran Act and Sudan Act Compliance

**Program:** Total Fund

**Item Type:** Information Consent

**Executive Summary**

Staff intends to submit the attached report to the California Legislature and Governor pursuant to the requirements of California Government Codes § 7513.6 and §7513.7, also known as the Sudan Act and the California Divest from Iran Act (the Acts), respectively. The Acts require the CalPERS Board of Administration (Board), consistent with its fiduciary responsibilities, to identify, engage, and potentially divest from companies meeting the criteria identified in the Acts.

The CalPERS 2017 California Divest from Iran Act and Sudan Act Legislative Report is provided as Attachment 1.

**Strategic Plan**

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

**Investment Beliefs**

This item does not support the CalPERS Investment Beliefs.

**Background**

*Establishment of the Acts*

In 2007, Assembly Bill 221 (California Public Divest from Iran Act) and Assembly Bill 2941 (the Sudan Act) were enacted to prohibit CalPERS and CalSTRS from investing in companies with specified business activities in Iran and Sudan, respectively, subject to the fiduciary duties of the Board as described in Section 17 of Article XVI of the California Constitution. In October 2011, Assembly Bill 1151 was passed, amending AB 221 to its current form.

*Requirements of the Acts*

Details on the requirements of the Acts are detailed in the California Government Code (G.C.) §7513.6 and §7513.7.

### *CalPERS 2016 Report Summary*

Several companies were approved for removal from monitoring and noted in CalPERS' 2016 California Public Divest from Iran Act and Sudan Act report. Regarding the California Divest from Iran Act:

- a. Alfa Laval AB was confirmed as not subject to the divestment provisions of §7513.7 and has been removed from the CalPERS monitoring list at this time.
- b. Legrand SA was confirmed as not subject to the divestment provisions of §7513.7 and has been removed from the CalPERS monitoring list at this time.
- c. MISC Berhad was confirmed as not subject to the divestment provisions of §7513.7 and has been removed from the CalPERS monitoring list at this time.

### **Analysis**

Following the revision of the section of CalPERS' Total Fund Investment Policy related to divestment, which was approved by the Investment Committee (Committee) in April 2017, staff began reviewing the divestment processes and historical practices related to the Acts. Staff anticipates returning to the Committee at a future committee meeting to review the Acts' divestment mandates and initiate the recurrent 5-year review cycle. In the meantime, minor formatting changes have been made to the CalPERS California Divest from Iran Act and Sudan Act Legislative Report for 2017. These changes are intended to streamline the report where possible and enhance ease of reading. For example:

- Additional definitional information is provided regarding how companies are grouped and displayed in the report (*e.g.*, “divested/restricted,” “under review,” “monitoring,” etc.).
  - Note, for the Sudan Act reporting, this has resulted in a number of companies shifting from the “monitor” category to the “divested/restricted” category in the report; however, there has been no actual change in the companies' treatment by CalPERS. The affected companies were restricted as part of a May 2006 position statement adopted by the CalPERS Investment Committee.
  - Companies that are subject to divestment or ongoing restriction have been grouped together because both statuses represent an active investment decision.
- The requirements of each Act are addressed in separate sections.
- Additional information regarding CalPERS constitutional and fiduciary mandates has been consolidated and provided for additional context.
- Report contents have been streamlined to focus on the elements required by the respective statutes
  - Information on recent developments related to the respective countries will be addressed in this agenda item instead of the report.
  - Restatements of definitions and compliance requirements not related to the annual reporting requirement have been removed (but are readily available on the [California Legislative Information](#) website).

Additional information on recent developments related to Sudan and Iran, and the implications for CalPERS, are included in the sections below.

### *Sudan*

According to the U.S. Department of the Treasury's Office of Foreign Asset Control (OFAC), sections 1 and 2 of Executive Order 13067 and Executive Order 13412 block the property of the Government of Sudan and generally prohibit U.S. persons from engaging in transactions with Sudan and the Government of Sudan.

Effective October 12, 2017, the aforementioned sanction provisions were revoked. As a result U.S. persons are no longer prohibited from engaging in transactions that were previously prohibited under the Sudanese Sanctions Regulations (SSR) as codified within the Code of Federal Regulations (C.F.R.). Consistent with the revocation of the sanctions provisions, OFAC is expected to remove the SSR from the C.F.R.<sup>1</sup>. OFAC sanctions related to the conflict in Darfur, however, remain unaffected and in force.

CalPERS staff are in the process of reviewing these recent developments in consideration of G.C. §7513.6 and the implications for ongoing compliance activities.

### *Iran*

On January 16, 2016 the International Atomic Energy Agency (IAEA) verified that Iran implemented its nuclear-related commitments described in the Joint Comprehensive Plan of Action (JCPOA). Contemporaneously with the IAEA verification, the European Union and United States took action to lift select sanctions. Additional information on the specific sanctions that were lifted is available on the OFAC website<sup>2</sup>.

At this time the "sunset" provisions noted within G.C. §7513.7 have not been satisfied, and CalPERS compliance activities will continue.

### **Budget and Fiscal Impacts**

Submission of the CalPERS 2017 California Divest from Iran Act and Sudan Act Legislative Report will be addressed using existing budgeted resources.

### **Benefits and Risks**

Failure to comply with the statutory requirement of the Acts could result in legal and reputational risk to CalPERS.

### **Attachments**

Attachment 1 – CalPERS 2017 California Divest from Iran Act and Sudan Act Legislative Report



<sup>1</sup> <https://www.treasury.gov/resource-center/sanctions/Programs/pages/sudan.aspx>

<sup>2</sup> [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa\\_fags.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_fags.pdf)

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**Katherine H. Crocker**  
Investment Director  
Investment Compliance and Operational Risk

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**Wylie Tollette**  
Chief Operating Investment Officer