



## Risk and Audit Committee Agenda Item 6b

June 20, 2018

**Item Name:** Proposed Amendments to the Personal Trading Regulation (First Reading)

**Program:** Enterprise Compliance Division

**Item Type:** Action

### **Recommendation**

Approve the proposed amendments to the Personal Trading Regulation for submission to the Office of Administrative Law.

### **Executive Summary**

The purpose of this agenda item is to present, for approval, a regulation package to amend CalPERS' Regulations Enacting Personal Trading Guidelines for CalPERS Employees Personal Trading (2 CCR § 558.1) ("Personal Trading Regulation") to the Risk and Audit Committee. Upon approval by the Committee and Board staff will submit the regulation package to the Office of Administrative Law.

### **Strategic Plan**

This item supports the CalPERS 2017-22 Strategic Plan Goal: *Cultivate a risk-intelligent organization* and the strategic objective of providing enhanced compliance and risk functions throughout the enterprise.

### **Background**

In December 2012, CalPERS adopted the Personal Trading Regulation in an effort to prevent the misuse of material, non-public information and to protect CalPERS and its employees. Federal securities laws prohibit these activities and the potential penalties for violations include fines and imprisonment. Enacting personal trading regulations or guidelines is considered an industry standard and helps to ensure that employees are meeting their fiduciary duty to CalPERS and its members.

CalPERS Enterprise Compliance program promotes continuous improvement in our ability to achieve compliance standards in order to detect and prevent the misuse of material, non-public information (i.e., insider trading).

CalPERS' existing Personal Trading Regulation has not been amended since it was adopted in 2012. The proposed amendment seeks to (1) update the regulations to comply with more recent Securities Exchange Commission (SEC) guidance; (2) align terminology with SEC definitions; and (3) further clarify ambiguous or confusing areas of the regulations.

## **Analysis**

Federal securities laws prohibit the engagement of insider trading, front running, and other illegal trading practices. Enterprise Compliance proposes to amend the Personal Trading Regulation to align with SEC guidance, align with industry standards, and to increase efficiency and effectiveness of CalPERS Personal Trading oversight. The proposed changes include:

- Clarifying the definition of Covered Persons to align with SEC recommendations by eliminating “Covered Persons” who lack access to material, non-public information or are not involved in the investment decision-making process;
- Adding exchange traded funds (ETFs) as Covered Securities to align with SEC guidance;
- Clarifying language around holding periods for derivatives, non-designated brokerages, managed account certifications, and various definitions.

Upon approval of the proposed Personal Trading Regulation amendment by the Committee, staff will submit the final rulemaking documents to the Office of Administrative Law in accordance with the Administrative Procedure Act’s rulemaking process.

## **Budget and Fiscal Impacts**

The proposed regulatory action is largely technical and does not impose any budget or fiscal impacts to the state.

## **Benefits and Risks**

The proposed regulatory action would:

- Align the Personal Trading Regulation with latest SEC guidance
- Increase clarity and understanding of key provisions
- Provide for better oversight of Covered Persons

Without adoption of the regulation, there is a risk that the Personal Trading Regulation will be out of alignment with SEC guidance and a lack of clarity or ambiguity in language may cause confusion for Covered Persons.

## **Attachments**

Attachment 1 – CalPERS Personal Trading Regulation Amendment

Attachment 2 – § 558.1 Personal Trading Regulations (edited version)

Attachment 3 – § 558.1 Personal Trading Regulations (unedited version)

---

**Kami Niebank**

Deputy Chief Compliance Officer

---

**Marcie Frost**

Chief Executive Officer

