



## Risk and Audit Committee

# Agenda Item 7e

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**June 18, 2019**

**Item Name:** Approval to Submit Proposed Amendments to the Personal Trading Regulation to the Office of Administrative Law

**Program:** Enterprise Compliance

**Item Type:** Action

### **Recommendation**

Enterprise Compliance recommends submission of the final rulemaking package to the Office of Administrative Law for adoption.

### **Executive Summary**

The purpose of this agenda item is to obtain final Board approval to submit to the Office of Administrative Law (OAL) the regulation packet amending the Personal Trading Regulations (2 CCR § 558.1). At its June 2018 meeting the Risk and Audit Committee approved the proposed amendments to the Personal Trading Regulation and authorized staff to commence the rulemaking process and solicit public comment. The 45-day public comment period for the proposed amendment closed on April 15, 2019 and CalPERS did not receive any public comments. The proposed amendments, therefore, are unmodified from the version the Board approved in June 2018. Following submission to and approval by OAL, the amended regulation is anticipated to be effective on October 1, 2019.

### **Strategic Plan**

This agenda item supports the 2017-22 CalPERS Strategic Plan, Risk Management Goal to cultivate a risk-intelligent organization and the objective to enhance compliance and risk functions throughout the enterprise.

### **Background**

At the June 2018 Board meeting, the Board approved the proposed regulatory amendment to the Personal Trading Regulations. CalPERS subsequently filed a Notice of Proposed Regulatory Action with OAL, initiating a 45-day public comment period where interested parties could submit public comments relevant to the proposed regulatory action. The Notice of Proposed Regulatory Action was published in the California Regulatory Notice Register (File Number Z2019-0219-04) on March 1, 2019. The 45-day comment period commenced on March 1, 2019 and closed on April 15, 2019. CalPERS did not receive any public comments

during this period, and thus did not make any changes to the proposed regulation approved by the Board in June 2018. The proposed amendment seeks to (1) update the regulations to comply with more recent Securities and Exchange Commission (SEC) guidance; (2) align terminology with SEC definitions; and (3) further clarify ambiguous or confusing areas of the regulation.

## **Analysis**

Federal securities laws prohibit the engagement of insider trading, front running, and other illegal trading practices. Enterprise Compliance proposes to amend 2 CCR § 558.1 (Regulations Enacting Personal Trading Guidelines for CalPERS Employees Personal Trading) 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, and managed account certifications.

With Board approval of the proposed amendment, the rulemaking package will be prepared and submitted to OAL, which has 30 days to review the package. If OAL approves the proposed amendment, it will file the regulation with the Secretary of State for official publication in the California Code of Regulations and the regulation is anticipated to be effective on October 1, 2019.

## **Budget and Fiscal Impacts**

The proposed regulatory action is 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 – § 558.1, Personal Trading Regulations

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