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May 17, 2018

The Honorable Kevin McCarthy
Majority Leader
United States House of Representatives
H-107, The Capitol
Washington, D.C. 20515

The Honorable Nancy Pelosi
Minority Leader
United States House of Representatives
H-204, The Capitol
Washington, D.C. 20515

Dear Majority Leader McCarthy and Minority Leader Pelosi:

Subject: Financial Regulatory Reform Legislation

On behalf of the California Public Employees' Retirement System (CalPERS), I write to express our views on issues of interest to CalPERS as Congress considers financial regulatory reform legislation.

CalPERS is the largest public defined benefit pension fund in the United States with \$355.94 billion in global assets, as of market close May 11, 2018. CalPERS manages investment assets on behalf of more than 1.9 million California public employees, retirees, and beneficiaries. As a global institutional investor with a long-term investment horizon, CalPERS relies on the integrity and efficiency of the financial markets to provide long-term sustainable, risk-adjusted returns.

CalPERS has long viewed effective regulation as the foundation upon which investors are given the confidence necessary to commit capital. That confidence was significantly compromised by the bipartisan policy shortcomings that led to the Financial Crisis of 2008-09 and that magnified the depth and duration of the Great Recession, including the decision to exempt swaps from regulation under the Commodity Futures Modernization Act of 2000. Accordingly, we worked assiduously with Congressional leaders in both parties to help shape many of the important reforms contained in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank). The most important of these is the new regulatory regime for derivatives embodied in Title VII of Dodd-Frank. These are not partisan issues and we urge our elected leaders come together to protect investors, to maintain fair, orderly, and efficient markets, and to facilitate capital formation. We continue to view such bipartisanship as critical to lasting regulatory reform.

Therefore, we commend the inclusive and thoughtful approach to crafting financial regulatory reform legislation in the Senate and appreciate the inclusion of three bipartisan House bills championed by CalPERS in S. 2155, the “Economic Growth, Regulatory Relief and Consumer Protection Act.” First, House Resolution (H.R.) 1312, the “Small Business Capital Formation Enhancement Act,”¹ was included as Section 503 of S. 2155. Section 503 would require the Securities and Exchange Commission (SEC) to assess the recommendations of the SEC’s Government-Business Forum on Capital Formation (the Forum) and to disclose any actions the SEC plans to take in response to the Forum’s findings. Second, H.R. 2864, the “Improving Access to Capital Act,”² was included as Section 508 of S. 2155. Section 508 would direct the SEC to expand its Regulation A+ rules (regarding small securities offerings) to include companies that are considered fully reporting companies under the Securities Exchange Act of 1934 (the Exchange Act). Third, H.R. 4279, the “Expanding Investment Opportunities Act,”³ was included as Section 509 of S. 2155. Section 509 would remove the exclusion of registered closed-end funds from the definition of “well-known seasoned issuers” and conform the SEC’s filing and offering rules for closed-end funds to those that apply to traditional operating companies. CalPERS believes that each of these provisions would help to foster more liquid financial markets and, ultimately, sustained economic growth in the economy, a stated objective of the broader bill.⁴

In addition, CalPERS appreciates the efforts undertaken in the House to achieve reform and particularly applauds the bipartisan work to preserve the core reforms necessitated by the 2008-09 Financial Crisis — including the Title VII derivatives provisions of Dodd-Frank mentioned above — and to facilitate capital formation. Moreover, we are pleased that the following measures that are opposed by CalPERS are not included in S. 2155:

- H.R. 4015, the “Corporate Governance Reform and Transparency Act.”⁵ This bill would create an unduly burdensome regulatory regime for proxy advisory firms by (among other things) granting issuers undue influence over the proxy recommendation process and establishing conflict of interest management requirements that are duplicative of existing SEC authority;
- H.R. 78, the “SEC Regulatory Accountability Act.”⁶ This legislation would create impracticable cost-benefit analysis-related rulemaking requirements for the SEC. CalPERS certainly appreciates the importance of cost-benefit analyses, but we also believe that the existing requirements are sufficient and that more onerous

¹ H.R. 1312 passed the House by a vote of 406-0 on May 1, 2017.

² H.R. 2864 passed the House by a vote of 403-3 on September 5, 2017.

³ H.R. 4279 passed the House by a vote of 418-2 on January 17, 2018.

⁴ *Crapo, Brown Request Proposals to Foster Economic Growth*, U.S. Senate Committee on Banking, Housing, and Urban Affairs (Mar. 20, 2017), <https://www.crapo.senate.gov/media/newsreleases/crapo-brown-request-proposals-to-foster-economic-growth>.

⁵ H.R. 4015 passed the House by a vote of 238-182 on December 20, 2017, and is related to Subtitle Q of H.R. 10, the “Financial CHOICE Act” (the “FCA”).

⁶ H.R. 78 passed the House by a vote of 243-184 on January 12, 2017.

requirements could impede the ability of the SEC to achieve its three-part mission;

- Section 843 of H.R. 10, the “Financial CHOICE Act” (the FCA). This provision would require that executive compensation only be included on a proxy resolution if there is a material change to such compensation from the previous year. Consistent with our Governance & Sustainability Principles,⁷ we believe that a non-binding “say on pay” vote should occur annually;
- Section 844 of the FCA. This provision would revise SEC Rule 14a-8 to require 1 percent ownership over a three-year period (vs. 1 percent or \$2,000 for one year) to submit a shareholder proposal. We believe that the current shareholder proposal process works well by allowing both small institutional investors and individual shareowners to engage corporate boards on a range of governance and long-term risk management issues. Section 844’s one-percent requirement would take institutional investors, including CalPERS, out of the shareholder proposal process in most cases; and
- Sections 858 and 859 of the FCA. Section 859 would create an exemption for private equity funds from various books and records requirements. Section 858 would roll back protections established under Dodd-Frank that require greater private equity fund transparency, protect investors and enhance the ability to effectively monitor systemic risk in the industry. Notably, the SEC has used information obtained from filings required under this provision as the basis for an investigation that discovered fraud by private equity advisers.

For the reasons discussed above, we continue to oppose these measures and urge that they be excluded from any financial regulatory reform legislation that might be enacted until such time as these concerns are adequately addressed.

We are also mindful that dozens of bipartisan bills have been considered in the House and that some of these could become law. Although we continue to evaluate the potential impact of many of these measures, we would like to take this opportunity to express our support for enactment of the following House bills, each of which enjoys broad bipartisan support.

H.R. 3903, the “Encouraging Public Offerings Act of 2017”

Access to and allocation of capital is vital to the effective functioning of the U.S. capital markets, which are the most dynamic and robust markets in the world. CalPERS provides this much-needed capital through its role as a long-term investor and, therefore, supports initiatives aimed at facilitating capital formation. H.R. 3903⁸ would expand to all public companies certain provisions of Title I of the Jumpstart Our

⁷ CalPERS Governance & Sustainability Principles, Apr. 17, 2017, <https://www.calpers.ca.gov/docs/forms-publications/governance-and-sustainability-principles.pdf>.

⁸ H.R. 3903 passed the House by a vote of 419-0 on November 1, 2017, and is related to Section 499 of the FCA.

Business Startups (JOBS) Act that only apply to emerging growth companies. In particular, the bill would allow all issuers to submit to the SEC confidential draft registration statements for initial public offerings (IPOs) and for follow-on offerings within one year of an IPO. Additionally, H.R. 3903 would expand the ability to use the JOBS Act's "testing the waters" provisions to all issuers, thereby allowing companies in the IPO process to gauge the interest of accredited and institutional investors in a securities offering. We note that the bill would appropriately build upon the SEC's Division of Corporation Finance's decision⁹ in 2017 that makes it easier for companies to access the capital markets, while at the same time keeping in place essential retail investor protections.

H.R. 4792, the "Small Business Access to Capital After a Natural Disaster Act"

As natural disasters become more severe and costly, their impacts are often felt by small business owners who are confronted with increased bills and a reduction in revenue. Because we believe that long-term value creation requires the effective management of three forms of capital - financial, physical and human, we favor legislation to provide relief to impacted business owners. H.R. 4792¹⁰ would amend the Exchange Act to require the SEC's Advocate for Small Business Capital Formation (the Small Business Advocate) to identify any unique challenges facing small businesses impacted by hurricanes or natural disasters when assessing problems that such businesses have in securing access to capital. In addition, the bill would require that the Small Business Advocate include in its annual report a summary of these issues. In 2017, many small businesses were adversely impacted by Hurricanes Harvey, Irma, and Maria, as well as the California wildfires and subsequent flooding and mudslides. As such, we support H.R. 4792 to help small businesses secure the much-needed capital in order to continue operating after these climate- and weather-related events.

H.R. 435, the "Credit Access and Inclusion Act of 2017"

As discussed above, our belief in the effective management of human capital informs our support for legislation to expand access to credit and relatedly, economic opportunity, to consumers with little or no credit. H.R. 435¹¹ would amend the Fair Credit Reporting Act to allow the reporting of certain positive consumer credit information to consumer reporting agencies. In particular, persons or the U.S. Department of Housing and Urban Development would be allowed to report information about consumers' performance in making payments either under a lease agreement for a dwelling or under a contract for a utility or telecommunications service. Under the bill, information

⁹ SEC Division of Corporation Finance, *Draft Registration Statement Processing Procedures Expanded* (June 29, 2017), <https://www.sec.gov/corpfin/announcement/draft-registration-statement-processing-procedures-expanded>.

¹⁰ H.R. 4792 passed the House by voice vote on January 29, 2018.

¹¹ The House Financial Services Committee reported H.R. 435 favorably to the full House by a vote of 60-0 on February 16, 2018. H.R. 435 was included as Section 3 of H.R. 5078, the "TRID Improvement Act of 2018, which passed the House by a voice vote on February 27, 2018.

about such lease agreements or utility or telecommunications contracts can be reported only to the extent that the information relates to the consumer's payment for such services or other terms of provision of the services. For energy-utility firms, H.R. 435 would prohibit reporting a consumer's outstanding balance as late if the consumer meets the obligations set forth in a payment plan entered into with the firm. Allowing the reporting of utility and telecommunications payment history to credit reporting agencies would enable millions of consumers to build strong credit and the financial security to become future investors in our capital markets.

H.R. 4292, the "Financial Institution Living Will Improvement Act of 2017"

We have long advocated appropriately tailored and effective regulation and, consequently, we support common-sense reforms to enhance regulators' financial crisis management capabilities. H.R. 4292¹² would amend Dodd-Frank to reform the "living will" process by requiring bank holding companies (BHCs) to submit to the Federal Reserve Board (FRB) and the Federal Deposit Insurance Corporation (FDIC) resolution plans (or living wills) every two years rather than "periodically," which has been interpreted to be annually. Additionally, the bill would require the FRB and FDIC to provide feedback to BHCs about submitted living wills within six months of the submission. H.R. 4292 would also require the FRB and FDIC to publicly disclose the assessment framework utilized to review the sufficiency of the living wills. CalPERS supports this bill because it would enable the FRB and FDIC to have sufficient time to properly evaluate BHCs' living wills and give such BHCs adequate time to incorporate feedback from regulators. This would enhance the ability of regulators to effectively wind down large, interconnected financial institutions.

H.R. 3973, the "Market Data Protection Act of 2017"

Finally, we would also like to bring to your attention some concerns about H.R. 3973,¹³ the "Market Data Protection Act of 2017." The SEC previously adopted rules requiring the creation of the Consolidated Audit Trail (CAT) to be a single, comprehensive database designed to provide for more effective monitoring of trading in equity and option securities in U.S. markets. CalPERS has long supported timely completion and operation of the CAT so that regulators are able to identify risks that threaten our equity and option markets and to appropriately take action to mitigate those risks. We are concerned that, in its current form, H.R. 3973 would cripple development of the CAT, thus impeding the ability of regulators to monitor and address predatory and illegal trading and to protect investors.

¹² H.R. 4292 passed the House by a vote of 414-0 on January 30, 2018.

¹³ H.R. 3973 passed the House by voice vote on November 13, 2017.

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Thank you for your leadership and for considering these views. We look forward to continuing to work with Congress as financial regulatory reforms are considered. Please do not hesitate to contact me at (916) 795-3818 or Gretchen Zeagler, Assistant Division Chief of Federal Policy at (916) 795-2911 if we can be of any assistance.

Sincerely,

MARCIE FROST
Chief Executive Officer

cc: The Honorable Jeb Hensarling, Chairman, House Financial Services Committee
The Honorable Maxine Waters, Ranking Member, House Financial Services
Committee
The Honorable Mike Crapo, Chairman, Senate Banking Committee
The Honorable Sherrod Brown, Ranking Member, Senate Banking Committee