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October 11, 2018

The Honorable Mike Crapo
Chairman
Committee on Banking, Housing and
Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing and
Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Crapo and Ranking Member Brown:

Subject: S. 488, the "JOBS and Investor Confidence Act of 2018"

On behalf of the California Public Employees' Retirement System (CalPERS), I write to express our views on issues of interest to CalPERS as the Senate Banking Committee considers the "JOBS and Investor Confidence Act of 2018" (S. 488).

CalPERS is the largest public defined benefit pension fund in the United States with approximately \$360 billion in global assets, as of October 8, 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 views effective regulation as an important foundation necessary to investor confidence in our capital markets. 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. 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. We particularly applaud the bipartisan work to preserve these core reforms. We continue to view such bipartisanship as critical to lasting regulatory reform.

In that spirit, we are pleased that the following measures that are opposed by CalPERS are not included in S. 488:

- H.R. 4015, the "Corporate Governance Reform and Transparency Act."¹ 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."² 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 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,³ 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 also reiterate our support for enactment of the following House bills, each of which enjoys broad bipartisan support and are included in S. 488:

¹ 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").

² H.R. 78 passed the House by a vote of 243-184 on January 12, 2017.

³ CalPERS Governance & Sustainability Principles, Apr. 17, 2017, <https://www.calpers.ca.gov/docs/forms-publications/governance-and-sustainability-principles.pdf>.

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. 435⁴ 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 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. 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. 3903 would expand to all public companies certain provisions of Title I of the Jumpstart Our 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. 3903⁵ 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 decision⁶ 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.

⁴ 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 "TRIO Improvement Act of 2018, which passed the House by a voice vote on February 27, 2018.

⁵ 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.

⁶ SEC Division of Corporation Finance, Draft Registration Statement Processing Procedures Expanded (June 29, 2017), <https://www.sec.gov/corpfin/announcement/draft-registrationstatement-processing-procedures-expanded>.

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. 4792⁷ 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. 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. 4292⁸ 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.

Finally, we would also like to bring to your attention some continuing concerns about H.R. 3973,⁹ 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

⁷ H.R. 4792 passed the House by voice vote on January 29, 2018.

⁸ H.R. 4292 passed the House by a vote of 414-0 on January 30, 2018.

⁹ H.R. 3973 passed the House by voice vote on November 13, 2017.

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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.

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 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: Members, Senate Banking Committee