



Investment Committee

Agenda Item 5a

November 13, 2023

Item Name: Revisions to the CalPERS Investment Policy for Insider Trading -- Second Reading

Program: Total Fund

Item Type: Action

Executive Summary

This item is seeking approval from the Investment Committee (Committee) to update the CalPERS Investment Policy for Insider Trading.

Strategic Plan

This agenda item supports the CalPERS Strategic Plan goal to strengthen the long-term sustainability of the pension fund.

Background

The existing Statement of Investment Policy for Insider Trading (Insider Trading Policy) was approved by the Board in May 2014. The Insider Trading Policy is intended to ensure that CalPERS Board members and team members are aware of and comply with the anti-fraud provisions of the federal securities laws. The Policy is reflective of the requirements and prohibitions of Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5, which prohibit the purchase or sale of securities on the basis of material, non-public information in breach of a duty of trust or confidence.

Analysis

Under Section II of the existing Insider Trading Policy, there is a presumption that if any team member receives material nonpublic information (MNPI) on a publicly traded security, the knowledge is imputed to all team members for insider trading purposes. This provision requires that CalPERS implement trading restrictions in public asset classes (i.e., Global Public Equity and Global Fixed Income) in cases where a private asset class (i.e., Private Equity, Real Assets, and Private Debt) is evaluating a potential transaction, such as a "take private" co-investment deal involving a publicly traded security. As a result, a trade-off exists between the benefits to a private asset class (e.g., participating in a no-fee, no-carry co-investment) and the drawbacks to a public asset class (e.g., taking unintended risk and tracking error created by the inability to trade the security under evaluation by the private asset class).

One solution is to ring-fence the private teams that receive MNPI using well-designed information barriers (physical and technological walls), which ensures that there is no actual knowledge possessed by, and therefore no restriction applied to, the public teams. Information barriers are widely used by asset owners, asset managers, and broker-dealers to mitigate insider trading-related compliance risks and conflicts of interest.

As CalPERS continues to pursue more private market transactions and more active and innovative investment strategies, INVO, in collaboration with the Legal Office, is seeking to implement information barriers consistent with industry best-practice so that both public and private asset classes may continue to grow and evolve without negatively impacting each other.

Section IV of the existing Insider Trading Policy specifies the circumstances when securities of companies on the Restricted List may still be traded by CalPERS notwithstanding CalPERS possession of MNPI about the company. The revisions to this section economize on and streamline policy language while simultaneously affording the Legal Office the ability to work with INVO to avail CalPERS of any exceptions that are appropriate, such as information barriers.

In addition, ministerial changes to reflect readability, clean-up, and formatting have been made.

Budget and Fiscal Impacts

Not Applicable.

Benefits and Risks

The changes support maintenance of a strong risk and controls framework for the management of the System's assets.

Attachments

Attachment 1 -- California Public Employees' Retirement System Statement of Investment Policy for Insider Trading (clean view)

Attachment 2 -- California Public Employees' Retirement System Statement of Investment Policy for Insider Trading (mark-up view)

Attachment 3 -- Consultant Opinion Letter -- Wilshire Associates (General Pension Consultant)

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