



August 14, 2017

VIA EMAIL AND FIRST CLASS MAIL

Marcie Frost, Chief Executive Officer
California Public Employees'
Retirement System
400 Q Street
Sacramento, CA 95811

Re: CalPERS's Ongoing Payments to CIM Fund III

Dear Ms. Frost:

Thank you for your letter of July 28, 2017. Although you acknowledge the seriousness of the issues raised in our correspondence, the lack of action you have outlined in response is inconsistent with the legal and ethical implications arising from CalPERS's investment in CIM Fund III. Moreover, the admission that CalPERS has not yet reached any conclusions regarding the legality of the payments CalPERS is making to CIM Fund III, in light of the fund's fee agreement with the Trump Organization, is extremely troubling.

Assuming that CalPERS has acted with normal due diligence in managing its investments, CalPERS has been aware that CIM Fund III acquired Trump SoHo and of the underlying payment arrangements with the Trump Organization since 2015. As a result, CalPERS has had over 8 months since the presidential election to analyze the legal implications with respect to the Domestic Emoluments Clause and act. Nonetheless, your letter indicates no course of action other than continuing to "monitor and analyze" the issue while making ongoing payments to CIM Fund III without consideration as to whether such payments violate the law and your ethical responsibilities. Not only does your response raise concerns about CalPERS's current procedures for ensuring that its investments comply with the law, but it also raises questions about CalPERS's level of due diligence in managing its investment in the fund at the time of the acquisition of the Trump SoHo property. Suspensions and investigations surrounded the project from its inception including concerns about the source of the original financing of the project, the ties of its co-

developers to Russian organized crime, allegations of fraud from buyers of the units, and concerns that it may be an active vehicle for criminal money laundering.¹ This checkered history has led Special Counsel Robert Mueller to focus attention on the property as part of his active investigation into the Trump Organization's ties to Russia.

Indeed, the letter re-ignites long-standing concerns over how CalPERS handles its private equity investments² and whether it receives adequate accounting for the substantial performance and management fees that it pays when investing in such alternative funds,³ while also casting a shadow over recent discussions about whether CalPERS has sufficient capabilities or exercises sufficient diligence to engage in the private equity markets either through partnerships or through direct investments.⁴ As the CEO, you have a duty to ensure that such investments meet the fiduciary requirements established by the California Constitution and statutes governing management of the fund. Instead, the letter seems to indicate that you believe that CIM Fund III, rather than yourself and the Board, are responsible for ensuring that the investment is managed in the best interests of your members. That is not the case. You have an ongoing duty to manage the investments in the best interests of your members, and that includes disposing of them, when they are no longer prudent or when they are determined to be in conflict with the restrictions of the California Constitution or law.⁵

Equally concerning is the claim that CalPERS cannot intervene to prevent its members' funds from being caught up in a scheme of corruption because it is a limited partner. This statement indicates an abdication of your legal and ethical duties as a fiduciary and as a public officer bound to follow the laws of the State and the United States Constitution. This characterization also grossly understates the size of CalPERS's stake as compared to the other partners in the fund. CalPERS's

¹Tom Burgis, "Dirty Money, Trump and the Kazakh connection," Financial Times (October 2016) <https://www.ft.com/content/33285dfa-9231-11e6-8df8-d3778b55a923>; Greg Farrell, "Mueller Expands Probe to Trump Business Transactions," Bloomberg (July 2017) <https://www.bloomberg.com/news/articles/2017-07-20/mueller-is-said-to-expand-probe-to-trump-business-transactions>; Craig Unger, Why Robert Mueller Has Trump SoHo in his sights, Vanity Fair (August 2017) <https://www.vanityfair.com/news/2017/08/why-robert-mueller-has-trump-soho-in-his-sights>.

²Steptoe & Johnson, Report of the CalPERS Special Review, (March 2011) (including settlement agreement with CIM Group to reduce fees to compensate for malfeasance).

³Dawn Lim and Heather Gillers, "Calpers is sick of paying too much for private equity," Wall Street Journal (April 16, 2017) <https://www.wsj.com/articles/calpers-is-sick-of-paying-too-much-for-private-equity-1492254008>; Alexandra Stevenson, "Calpers's disclosure on fees brings surprise, and scrutiny," New York Times (June 25, 2015) <https://www.nytimes.com/2015/06/26/business/dealbook/calpers-disclosure-on-fees-brings-surprise-and-scrutiny.html>.

⁴Randy Diamond, "CIO Eliopoulos sees direct investment in CalPERS' future," Pensions & Investments (July 17, 2017) <http://www.pionline.com/article/20170717/ONLINE/170719840/ceo-eliopoulos-sees-direct-investment-in-calpers-future>.

⁵Ca. Govt. Code § 20190.

initial buy-in of roughly \$700 million equates to almost 30% of the total investment in the fund when it closed in 2006 and appears to make CalPERS's stake in the fund the largest of any of the limited partners. Even as a limited partner, CalPERS should have recourse to remedies in cases where the terms of an investment violate the law. In that regard, it is important to note that the Attorneys General for Maryland and the District of Columbia have already reached the opinion that these payments constitute illegal emoluments and have included them as one of the allegations in their legal action against President Trump.⁶ As that case proceeds, CalPERS may find itself in the position of being called into court to defend these payments. If you have any question about whether the Domestic Emoluments Clause applies squarely to private payments based on market transactions or investments, please see Plaintiffs' brief in *CREW v. Trump* and the Historians' Amicus Brief.⁷

CalPERS should act now to resolve these issues as expeditiously as possible. To that end, we are outlining a few of the actions that CalPERS could take immediately to better understand its exposure and reach an outcome that protects its beneficiaries upholding the law.

1. Request and disclose a full accounting of the performance and management fees that CalPERS has paid to CIM Fund III from November 9, 2016 to the present, including the purpose and nature of the fees.
2. Request and disclose a full accounting of the payments that CIM Fund III has made to Trump International Hotels Management LLC from January 20, 2017 to the present, including whether CIM Fund III used any performance and management fees to make those payments.
3. Request that CIM Fund III cooperate fully with any investigative requests from Special Counsel Mueller with respect to the suspicions of the use of Trump SoHo for ongoing money laundering.
4. Request that CIM Fund III provide an accounting of the potential losses or gains that would result from liquidation of Trump SoHo from the fund.
5. Provide an analysis of the implications of (a) divesting from CIM Fund III, (b) having CIM Fund III liquidate Trump SoHo, and (c) having CIM Fund III terminate its arrangement with Trump International Hotels Management LLC to manage and market Trump SoHo.

⁶*The District of Columbia and the State of Maryland v. Donald J. Trump* (filed June 12, 2017, D. Md.) available at http://www.marylandattorneygeneral.gov/pages/emoluments/dc_v_trump.pdf.

⁷*Citizens For Responsibility and Ethics in Washington v. Trump*, No. 1:17-cv-00458, available at <http://guptawessler.com/wp-content/uploads/2017/06/11.18-FINAL-FINAL-FINAL.pdf>; Brief of Amicus Curiae by Certain Legal Historians on Behalf of Plaintiffs, No. 1:17-cv-00458, attached.

You have an obligation and an opportunity to protect your members from investments that implicate corruption, illegality, and conflicts of interest. We stand willing to help you reach a resolution that meets your fiduciary duties and upholds the Constitution. If you are unwilling or unable to meet our requests, we will be forced to consider exhausting all available legal remedies. We are available to discuss this request with you further at your convenience, and we look forward to hearing from you. Thank you for your consideration.

Sincerely,

Shanna Cleveland

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