

APPENDIX 7
CalPERS "White Paper"

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WHEREAS, The federal government is in a position to review and monitor the offering of securities by a foreign government or by any person or entity that is an agent for, or is controlled, in whole or in part, directly or indirectly, by a foreign government or any political subdivision of a foreign government; and

WHEREAS, The President of the United States and Congress may restrict United States' entities from doing business with a foreign company if it would pose a threat to national security; and

WHEREAS, Legislation has been introduced, but not enacted, in Congress to screen for questionable activities or ownership of any foreign-based company that intends to enter capital markets within the United States; and

WHEREAS, The decision by the Supreme Court of the United States in Crosby v. National Foreign Trade Council (2000) 147 L.Ed.2d 392, held that the supremacy clause of the federal Constitution preempted certain state laws involving restrictions on foreign trade; and

WHEREAS, The decision by the Supreme Court of the United States in Crosby v. National Foreign Trade Council (supra) raised concerns about the constitutionality of state laws involving restrictions on foreign trade even in the absence of a specific federal

law on the issue; and

WHEREAS, There is no single, comprehensive, current list of prohibited foreign investments to which investors may refer; and

WHEREAS, Though the United States has banned trade and other financial dealings with some nations over the years, capital from the United States continues to be accessible to certain foreign businesses from those nations; and

WHEREAS, Certain foreign investments made by public pension funds have been subject to criticism; and

WHEREAS, The globalization of financial markets has increased dramatically in recent years creating an environment in which United States' nationals may invest in foreign companies or nations engaged in activities that are adverse to the security interests of the United States; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That they recognize that the creation and implementation of foreign policy is the sole responsibility of the federal government; and be it further

Resolved, That the Assembly and Senate of the State of California, jointly, call on the President and the Congress of the United States to find a just, viable,

and lasting solution to the problem of identifying foreign investments that are counter to the national security interests of the United States; and be it further

Resolved, That the Assembly and Senate of the State of California, jointly, desire to see these investments placed on a federally prescribed list of prohibited investments; and be it further

Resolved, That the Assembly and Senate of the State of California, jointly, encourage appropriate federal measures be taken to deny these prohibited entities access to capital from the United States in the domestic and international marketplace; and be it further

Resolved, That the Chief Clerk of the Assembly and the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the United States House of Representatives, the Minority Leader of the House of Representatives, the Majority and Minority Leaders of the Senate, and to each Senator and Representative from California in the Congress of the United States.

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