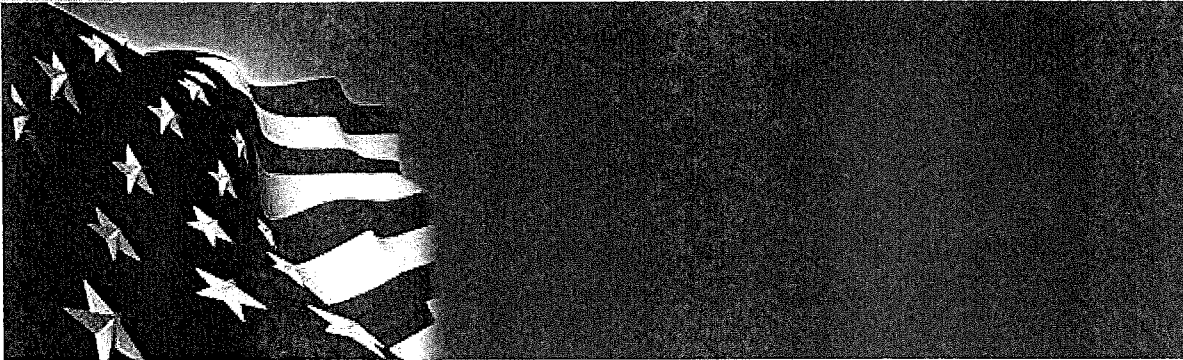


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CYPEN & CYPEN

NEWSLETTER

for

JUNE 12, 2014

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Stephen H. Cypen, Esq., Editor

Never Forget September 11, 2001

and

Always Remember May 2, 2011

1. CALSTRS IS SHAREHOLDER ACTIVIST: California State Teachers' Retirement System has a robust corporate governance function -- voting proxies, assisting in securities litigation, writing comment letters to the Securities and Exchange Commission, handling environmental/social responsibility programs, and implementing state divestment laws (mainly around Iran and Sudan). As reported by marketsmedia.com, CalSTRS also has a 21 Risk Factor Policy, which are risks that it expects all of its managers to consider when making investments. An investment officer identifies problematic companies or issues, meets with the companies to try to determine their involvement or exposure, then brings that information back to the 21 Risk Factor Review Committee to determine whether further actions need to be taken. The importance of corporate governance to CalSTRS is evidenced by the Corporate Governance team's status as a distinct asset class, an organizational structure not

often found in investment institutions. In addition, CalSTRS Corporate Governance unit is responsible for managing a public equity portfolio that features external managers that employ an activist investment philosophy. These managers work with undervalued public equity companies to improve governance profiles and business practices. Over 400 "campaigns" took place in each of 2012 and 2013, with 90 proxy fights last year alone. Although 60% of CalSTRS equity investments are indexed, CalSTRS is a long-term holder, so its concern is that companies are well-run. This year CalSTRS sent out letters to 100 companies on majority voting, and followed up with proposals, most of which ended up as negotiated settlements, and only five or so actually going to a vote.

2. NO ALTERNATIVE IF JERSEY PENSION PLAN STRUCK DOWN: More than a dozen unions representing New Jersey teachers, police officers, firefighters and state workers have now filed lawsuits seeking to stop Gov. Chris Christie from taking \$2.4 billion meant for the pension system. As reported by governing.com, the governor said that if he loses the looming court battle, there is nowhere else to find the money needed to balance the state's ailing budget. "There is no Plan B. This is the plan." Eleven unions joined the fray, led by the New Jersey Education Association teachers union and the Communications Workers of America, the state's largest workers union. Both filed lawsuits arguing the plan violates the state constitution and the contract rights of hundreds of thousands of New Jersey's public workers. Besides, grabbing the \$2.4 billion would show a flagrant disregard for pension-reform laws Christie himself signed in his first term. Workers began to pay more for their retirement and medical benefits in 2011, and in exchange, won stronger contracts with the right to bigger payments every year by the state into their troubled retirement fund. Does the term "bait-and-switch" ring a bell?

3. WHY PRIVATE EQUITY IS BECOMING A PUBLIC PROBLEM: A few weeks ago, a top official at the Securities and Exchange Commission reported on what he called a remarkable amount of potentially illegal behavior in the private equity industry (that is, the industry that buys up, changes and sells off smaller companies). According to a *Salon* report, the SEC official declared that half of all the reviews discovered violations of law or material weaknesses in

controls. The announcement followed an earlier report on how the agency now believes a majority of private equity firms inflate fees and expenses charged to companies in which they hold stakes. At first glance, many probably dismiss this news as just an example of plutocrats bilking plutocrats. But that interpretation ignores how such malfeasance affects the wider economy. One way to understand it is through the simmering debate over pension obligations in states and cities across the country. Data from the National Association of State Retirement Administrators show that the average amount of pension dollars devoted to private equity and other so-called alternative investments has more than tripled over the last 12 years, growing from 7% to around 22% today. With public pensions now reporting \$3 trillion in total assets that is up to \$660 billion of public money subject to the rapacious fees being exposed by the SEC. Those fees are paid through a combination of tax increases and pension benefit cuts. Private equity shenanigans can also hurt the middle class by encouraging looting. For example, in the last decade, private equity firms have collected \$2 billion in so-called transaction fees, which are bonuses firms take for conducting their business of buying, managing and selling companies. This scheme has been called the crack cocaine of the private equity industry. *Salon* gives just one example of how it works: the *New York Times* recently examined a merger of two orthopedic implant manufacturers and how that merger resulted in a Wall Street jackpot. Indeed, the financial firms involved in the deal ended up extracting a 20% share of gains from the sale, as well as management fees of 1.5% to 2% charged to investors and a share in an estimated \$30 million in monitoring fees. This deal will be a gift that keeps on giving to the private equity firms involved because they will be paid millions more in fees for work that they are never going to do. Looks like the time to hang on to your athletic supporter.

4. NEW YORK CITY CUTS OUT PENSION BROKERS: Middlemen known as "placement agents" will no longer get a piece of the pie for brokering business with New York City's \$150 billion retirement system, according to the *New York Post*. The boards of trustees of all five city pension funds have passed a resolution barring intermediaries from helping arrange investments by the funds. The use of placement agents erupted in scandal in 2009, when two top aides to then-state Comptroller Alan Hevesi were busted for running a massive pay-to-play scheme involving state pension fund

investments. In 2011, Hevesi was sent to jail for accepting nearly \$1 million in cash, gifts and campaign contributions for steering \$250 million in state pension money. The new rule, which expands a ban on placement agents that previously applied only to stock market investments, sets a new tone and a new day for the New York City pension system. Supposedly, only two of about 250 investment firms currently doing business with the city's pension boards got their deals after hiring placement agents.

5. TAXPAYER BILL OF RIGHTS: All taxpayers have a set of fundamental rights they should be aware of when dealing with the Internal Revenue Service. Explore your rights and our obligations to protect them:

- **The Right to Be Informed.** Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.
- **The Right to Quality Service.** Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS; to be spoken to in a way they can easily understand; to receive clear and easily understandable communications from the IRS; and to speak to a supervisor about inadequate service.
- **The Right to Pay No More than the Correct Amount of Tax.** Taxpayers have the right to pay only the amount of tax legally due, including interest and penalties, and to have the IRS apply all tax payments properly.
- **The Right to Challenge the IRS's Position and Be Heard.** Taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions; to expect that the IRS will consider their timely objections and documentation promptly and fairly; and to receive a response if IRS does not agree with their position.

- **The Right to Appeal an IRS Decision in an Independent Forum.** Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the Office of Appeals' decision. Taxpayers generally have the right to take their cases to court.
- **The Right to Finality.** Taxpayers have the right to know the maximum amount of time they have to challenge IRS's position, as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. Taxpayers have the right to know when the IRS has finished an audit.
- **The Right to Privacy.** Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary; will respect all due process rights, including search and seizure protections and will provide, where applicable, a collection due process hearing.
- **The Right to Confidentiality.** Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information.
- **The Right to Retain Representation.** Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS. Taxpayers have the right to seek assistance from a Low Income Taxpayer Clinic if they cannot afford representation.
- **The Right to a Fair and Just Tax System.** Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty, or if the IRS has not resolved their tax issues properly and timely through its normal channels.

IRS Publication 1, <http://www.irs.gov/Taxpayer-Bill-of-Rights#informed>.

6. FPPTA 30TH ANNUAL CONFERENCE: The Florida Public Pension Trustees Association's 30th Annual Conference will take place on June 29 – July 2, 2014 at the Hilton Bonnet Creek, Orlando. A link on FPPTA's web site, www.fppta.org, will take you to the Hilton Bonnet Creek site to make your room reservations. You may access information and updates about the Conference at FPPTA's website. All police officer and firefighter plan participants, board of trustee members, plan sponsors and anyone interested in the administration and operation of the Chapters 175 and 185 pension plans should take advantage of this Conference.

7. WHY TEACHERS DRINK: Q. What is the fibula? A. A small lie.

8. TODAY IN HISTORY: In 1939, Baseball Hall of Fame opens in Cooperstown, New York.

9. KEEP THOSE CARDS AND LETTERS COMING: Several readers regularly supply us with suggestions or tips for newsletter items. Please feel free to send us or point us to matters you think would be of interest to our readers. Subject to editorial discretion, we may print them. Rest assured that we will not publish any names as referring sources.

10. PLEASE SHARE OUR NEWSLETTER: Our newsletter readership is not limited to the number of people who choose to enter a free subscription. Many pension board administrators provide hard copies in their meeting agenda. Other administrators forward the newsletter electronically to trustees. In any event, please tell those you feel may be interested that they can subscribe to their own free copy of the newsletter at <http://www.cypen.com/subscribe.htm>.

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