

# Client Alert

September 2020

## California State Legislature Passes Bill Requiring Each Public Company Headquartered in the State to Include a Minimum Number of Directors from Underrepresented Communities on its Board

On August 30, 2020, the California State Legislature passed a new and unprecedented bill intended to promote greater diversity in corporate boardrooms. If signed into law by the governor, California's Assembly Bill (AB) 979 would require each publicly held corporation whose principal executive offices are located in California to have a minimum number of directors from an "underrepresented community" on its board of directors. The bill defines "underrepresented community" to include any individual who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian or Alaska Native, or who self-identifies as gay, lesbian, bisexual or transgender. Two years ago, California became the first state to enact legislation requiring public companies headquartered in the state to include a minimum number of females on their corporate boards. If enacted, AB 979 would establish nearly identical requirements as the bill related to the representation of females on corporate boards and follow the prior bill as new Section 301.4 of the California Corporations Code.

The governor has until September 30, 2020 to sign or veto the bill. If signed into law, AB 979 will require every "publicly held" domestic or foreign corporation whose principal executive offices, according to the corporation's SEC Form 10-K, are located in California to have a **minimum of one director from an underrepresented community on its board no later than December 31, 2021**. No later than December 31, 2022, the required minimum would increase to (a) two directors from an underrepresented community for corporations with more than four but fewer than nine directors and (b) three directors from an underrepresented community for corporations with nine or more directors. A "publicly held" corporation is defined as a corporation with shares listed on a "major United States stock exchange."

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### Practice

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Under the bill, no later than March 1, 2022, and annually thereafter, the Secretary of State would be required to publish on its website the number

of corporations subject to Section 301.4 that were in compliance during at least one point during the preceding calendar year, the number of such corporations that moved their U.S. headquarters to California from another state or out of California into another state during the preceding calendar year, and the number of corporations that were subject to the requirements during the preceding year, but are no longer publicly traded. The bill would also authorize the Secretary of State to impose a fine of \$100,000 for failure to timely file board member information as required under the regulation, as well as a fine for noncompliance in an amount of \$100,000 for a first violation and \$300,000 for a second or subsequent violation.

Similar to the bill on female board representation, AB 979 would allow corporations to increase the number of directors on its board to comply with the new requirements. AB 979 also does not appear to restrict corporations from satisfying both requirements to add a female or individual from an underrepresented community with the same director.

AB 979 is expected to face the same legal challenges currently being faced by the previous bill requiring female board representation. Accordingly, we will continue to monitor developments relating to the legislation.

Please contact the Olshan attorney with whom you regularly work or one of the attorneys below if you would like to discuss further or have questions.

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