

California Law Requiring Female Directors on Public Company Boards Held Unconstitutional



A California court has [held](#) that California [Senate Bill 826](#), which required that “publicly held” corporations that listed a California address for their principal executive offices on the cover page of their Form 10-K reports must have specified numbers of female directors by certain dates, violates the California constitution and has enjoined the use of California taxpayer funds to carry out the 2018 law. This ruling follows the [decision](#) of another California court in April 2022 holding that California [Assembly Bill 979](#) violated the California constitution and the issuance of a similar injunction preventing California from using taxpayer funds to implement that law. Assembly Bill 979 was enacted in 2020 to add a requirement that publicly held corporations that were already subject to Senate Bill 826 also have specified numbers of directors from “underrepresented minorities,” as defined in the law, by certain dates. If the state does not appeal these decisions and California appellate courts do not overturn these decisions, it appears that both of these legislative initiatives to promote more diverse representation on public company boards will have come to an end.

Read the [client alert](#).

SEC Approves NASDAQ Board Diversity Rules



On August 6, 2021, the U.S. Securities and Exchange Commission [approved](#) Nasdaq’s [Board Diversity Rules](#) (the “Rules”). The Rules require Nasdaq-listed companies to have or explain why they do not have at least two diverse directors. Companies are also required to annually disclose statistical information on board diversity using a standardized [board diversity matrix](#). To assist companies in identifying diverse directors, the SEC also approved [rules](#) that provide Nasdaq-listed companies with free access to a variety of board

recruiting services. The Rules apply to nearly all Nasdaq-listed companies, including Smaller Reporting Companies and, with some accommodations for home country requirements, Foreign Private Issuers. The requirement to have or explain the lack of diverse directors becomes effective in two steps that will affect proxy statements for annual meetings of calendar year-end companies in 2023 and 2025 (2023 and 2026 for companies listed on The Nasdaq Capital Market). The requirement to disclose board diversity factors using the Nasdaq [matrix](#) will apply to proxy statements for annual meetings of calendar year-end companies starting in 2022.

Read the full insight [here](#).

Goodwin previewed the now approved Nasdaq Board Diversity Rules in its December 2020 [“Nasdaq Takes a Stand: Board Diversity is Good Corporate Governance, Not a Trend”](#) blog post.