

YEAR-END TOOL KIT

CALIFORNIA DIRECTOR DIVERSITY SUPPLEMENTAL QUESTIONNAIRE

2020

**PREPARER NOTES:**

***Please note that this Supplemental California Director Questionnaire requires revisions prior to distribution***

This document is provided for informational purposes with the understanding that it does not constitute the rendering of legal or other professional advice by Goodwin Procter LLP or its attorneys. This document (which is in Microsoft Word® format) may be saved and edited so that it can be modified for a specific company (for example, name of the company, name of the contact person, etc.). This document may also require other revisions to render it suitable for a specific company’s circumstances. In the event this document is substantively modified (for example, to shorten or simplify it), the preparer should verify that the questionnaire, as modified, will still gather the information necessary in connection with applicable California law, discussed below. Please review the discussion that follows concerning the scope and use of this questionnaire, especially “Legal Review Recommended.”

Please note that this questionnaire is limited in its scope and is intended to be used with the additional separate questionnaires that are available in our Year‑End Tool Kit:

(1) Director and officer questionnaire (general);

(2) Director and committee member independence requirements under SEC and stock exchange rules;

(3) Independence standards of Institutional Shareholder Services Inc. and the Council of Institutional Investors;

(4) Iran Threat Reduction and Syria Human Rights Act matters;

(5) Foreign Corrupt Practices Act matters;

(6) Annual Form 5 reporting and disclosure under Section 16; and

(7) Rule 506(d) and Rule 506(e) “bad actor” events.

This document has been prepared for use by public companies that have their principal executive offices in California, as shown on the cover of the company’s Annual Report on Form 10-K, and have their common stock listed on a U.S. stock exchange, and is not appropriate for use by companies that may be subject to the requirements of other jurisdictions. This document is not a substitute for advice of qualified attorneys. We recommend that you consult with your regular Goodwin Procter LLP attorney prior to using this document.

**Background and Use of this Questionnaire**

This questionnaire supplements the other questionnaires in the Goodwin Procter Year-End Tool Kit. This questionnaire includes two sections: (1) this introductory background discussion that should be deleted before distribution and (2) two questions for the Company’s directors. The first question has been drafted principally to address current and pending California laws regarding director diversity for certain public companies. The second question asks for information about military service for companies that wish to be aware of that information. If the Company does not wish to gather information about military service, question 2 can be deleted.

Public companies can use the sample questions below concerning diversity demographics and military service for one or more purposes. The information in the first question below supports the publicly available filings that California requires under Senate Bill 826 (“SB 826”) and will require under Assembly Bill 979 (“AB 979”) from companies that:

* are listed on a “major US stock exchange” (not defined, but would include the NYSE, Nasdaq stock exchange and NYSE American (formerly AMEX) stock exchange, at a minimum); and
* have a California address for the company’s principal executive office on the cover page of its Form 10-K annual report.

Certain other states noted below have requirements similar to the California law that mandates female representation on corporate boards. Among these states are Illinois, Maryland and New York. Although not required by other states as of December 2020, a number of other states are considering similar gender and/or minority representation mandates.

In addition to compliance with California law, the Company can also use this questionnaire to solicit information to be used internally to support the Company’s diversity programs. Further, in recent years many companies have begun voluntarily disclosing director diversity information in their proxy statements and elsewhere, to highlight the company’s social responsibility position or as a result of pressure from institutional investors, proxy advisory services and others. The Company may use this questionnaire, with any appropriate modifications, to support these disclosures, which could include (for example) disclosure to investors in the Company’s proxy statement, on its corporate website, or in meetings with investors (subject to any applicable Company policies that might affect this disclosure).

***California Requirements.***California enacted SB 826 in 2018. SB 826 applies to public companies that have their headquarters in California, regardless of the jurisdiction in which the Company is organized, if the company’s common stock is listed on the NYSE, the Nasdaq stock exchange of the NYSE American (formerly Amex) exchange. SB 826 requires these companies to have a specified minimum number of female directors and to report their compliance status to the California Secretary of State. Another California law, AB 979, enacted in September 2020, will impose similar requirements on the same companies with respect to underrepresented minorities, as defined in AB 979, by the end of 2021. Question 1 below can be used to support these reporting obligations. Although AB 979 does not impose any obligations on companies covered by SB 826 until 2021, Question 1 includes the underrepresented minorities categories specified by AB 979 to facilitate preparation for its effectiveness in 2021.

*This questionnaire has been prepared to assist companies to comply with California law only.* Certain other states have related diversity requirements, which are very briefly summarized below. Companies that are subject to these laws should consult with their regular Goodwin legal team or another qualified lawyer before using this questionnaire for any purpose other than gathering information to assist the Company to comply with California law.

* *Maryland* law imposes generally similar requirements for female director on business entities of all types that have their corporate headquarters in Maryland, with certain exemptions for privately-held businesses.
* *Illinois* law also imposes requirements generally similar to California law, and applies to racial and ethnic diversity in addition to gender. Illinois law also requires certain information about qualifications for board and executive officer positions, as well as a variety of other corporate governance information.
* *New York* law requires the New York Department of State and the Department of Taxation and Finance to conduct a study on the number of female directors who serve on the board of directors of each corporation authorized to do business in New York. This will require corporations that are authorized to do business in New York to file a biennial statement reporting the number of female directors and the total number of directors to the New York Department of State.

**Note that the introduction to the questions below includes alternative language that should be modified as appropriate, based on whether the Company is subject to the California law, a similar law in another state, or is soliciting this information voluntarily.**

***Legal Review Recommended.***Diversity questions can present a number of issues, including the sensitive nature of the information and the potential SEC and state disclosure impacts. The questions below may be used as written, or modified as desired, but in all cases it is recommended that the Company obtain the advice of [their regular Goodwin attorney][qualified legal counsel] before using or modifying these questions and before the Company solicits responses to these questions. **This legal review should include not only state reporting and disclosure laws, which may change without notice, but also state laws governing collection and use of personal information and consent to disclosure of personal information.** The questionnaire below and this discussion are provided for informational purposes only. They should not be considered as a recommendation that the Company take any specific action, and are not legal advice.

Companies that wish to collect and/or disclose demographic information should also consider appropriate engaging in an internal discussion and review process concerning the scope and format of any information requests and potential disclosures. This could include the Company’s directors as a group and the nominating/corporate governance committee(s) of the Board of Directors. It could also include the Company’s disclosure committee and/or investor relations group. Among other things, the Company may wish to review peer disclosures before establishing any plans concerning internal use or any public or private disclosure of this information. This may be especially important if the Company is considering disclosing this information in its proxy statement or on its website.

***Verification/Diligence Limitations.***Demographic information may be difficult or impossible for the Company to verify. As a result, companies that expect to disclose this information publicly or privately should consider making clear that any demographic information is based solely on information concerning how an individual self-identifies that has been provided to the Company by the directors (and executive officers, if applicable) and that the Company has not independently confirmed any of this information.

***State Filing Requirements.***California and certain other states now require certain companies to diversify their boards of directors and to report on their compliance to a state agency or official. Some directors may consider demographic information to be confidential personal information and may not feel comfortable responding to questions involving their personal demographic identities. They may also be uncomfortable about the Company disclosing this information.

California law requires each “publicly held” company (which means having shares listed on the NYSE, Nasdaq or NYSE American (AMEX) stock exchanges) with its principal executive office located in California (as shown on its Form 10-K report filed with the SEC), to have a specified minimum number of directors who self-identify as female and to report on the company’s compliance when it files its annual Corporate Disclosure Statement with the California Secretary of State. The Company’s disclosure statement and the compliance report prepared by the California Secretary of State are publicly available online and identify the Company by name. The other demographic self-identification information in question 1 below will be required by a California law enacted in September 2020 that will apply to the same companies by the end of 2021. To help directors to understand the reasons that the Company is asking these questions and the ways in which the Company may use this information, the questions below state that this information may be provided in response to legal requirements (such as the California or other state requirements) or inquiries from governmental agencies. Note that there is litigation challenging the constitutionality of the law mandating a minimum number of female board members, and similar litigation is expected to challenge the 2020 expansion of California law that applies to other minority or underrepresented communities.

***SEC Staff Interpretive Guidance.***The staff (Staff) of the SEC’s Division of Corporation Finance issued interpretive guidance that relates to solicitation, use and disclosure of this information in 2019. The Staff’s compliance and disclosure interpretation (C&DI), C&DI 116.11 and identical C&DI 133.13 under Items 401 and 407 of Regulation S-K, address disclosure of a director’s self- identified diversity characteristics. The Staff guidance states that if a board or nominating committee has considered the self-identified diversity characteristics such as race, gender, ethnicity, religion, nationality, disability, sexual orientation, or cultural background of an individual in determining whether to recommend a person for board membership, and the nominee or director has consented to disclosure of this information, the Staff expects the Company’s proxy statement will include, but not necessarily be limited to, identification of those characteristics and how they were considered. The C&DIs also state that the Staff expects that the Company’s description of its diversity policies in its proxy statement will discuss how the Company considers the self-identified diversity attributes of nominees, as well as any other qualifications its diversity policy takes into account, such as diverse work experiences, military service, or socio-economic or demographic characteristics.

**[Company Name]**

**Diversity Questionnaire for Directors**

In order to assist the Company to understand how it is achieving its diversity goals [and to support the Company’s public reporting of its progress [as required by California law that applies to the Company]], please [consider answering][answer] the following questions. **[*If the Company is a public company with its principal executive office located in California, use the following sentences:*** The Company is required by California law to report this information to the office of the California Secretary of State, which makes this information publicly available on its website. If you check the appropriate box below, we will also treat this as your consent to disclosure of this information in the Company’s public documents and communications.] **[*If the Company is a public company that does not have its principal executive office in California, use the following sentence:*** This section is voluntary, but unless you indicate otherwise in question 3 below, if you respond (other than by indicating “I do not wish to respond”), we will treat this as your consent to disclosure of this information in the Company’s proxy statement and other public and private documents and communications.] As examples, this may include the Company’s proxy statement sent to its shareholders and filed with the SEC, information posted on the Company’s public website, reports sent to state regulators and agencies, disclosure and/or reporting based on the Sustainability Accounting Standards Board and Global Reporting Initiative frameworks, and communications with the Company’s institutional or other significant shareholders and proxy advisory services, among others. The Company will also provide this information to the extent required by applicable legal requirements or inquiries from governmental agencies or regulatory bodies.

1. *Demographic Information.* Do you self-identify as any of the following? Please indicate ‘yes’ to any one or more that apply to you.
2. Female □ Yes
3. Black □ Yes
4. African American □ Yes
5. Hispanic □ Yes
6. Latino □ Yes
7. Asian □ Yes
8. Pacific Islander □ Yes
9. Native American □ Yes
10. Native Hawaiian □ Yes
11. Alaskan Native □ Yes
12. Gay □ Yes
13. Lesbian □ Yes
14. Bisexual □ Yes
15. Transgender □ Yes
16. Other minority or underrepresented

community – please indicate

in the adjacent space □ Yes \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. I do not wish to respond □
2. *Veteran/Military Service.* Are you now on full-time active duty with the Armed Forces, or have you ever served on active duty in the U.S. Armed Forces, military Reserves, or National Guard? If yes, please indicate the branch and approximate years of active duty in the box below.

 □ Yes \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. I understand that the Company will provide this information to governmental agencies and regulatory bodies as required by applicable laws, rules or regulations or as requested, directed or ordered by a governmental agency, court or administrative body, independent commissions established by law and other similar bodies. In addition, I consent to the following:
	1. Internal use by the Company only

□ Yes □ No

* 1. Internal and external use by the Company, which may include public or private disclosure, as described above

□ Yes □ No

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_