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Allen Matkins

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About Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP is a California law firm with more than 230 attorneys practicing out of seven offices in Los Angeles, Century City, Orange County, Del Mar Heights, San Diego, San Francisco and Walnut Creek. The firm's broad based areas of focus include corporate, real estate, construction, real estate finance, business litigation, employment and labor law, taxation, land use, bankruptcy and creditors' rights, intellectual property and environmental. [more...](#)

California to Extend Significant Corporate Law Benefits to NASDAQ Capital Market Companies

On August 5, 2009, Governor Arnold Schwarzenegger signed AB 991 (Silva) into law. This new law extends several key corporate law exceptions to NASDAQ Capital Market companies. The law will take effect on January 1, 2010.

This alert applies to corporations with outstanding shares listed on the NASDAQ Capital Market.

California generally imposes stringent corporate governance requirements on California corporations. For example, it generally requires that directors be elected annually. By insisting on annual elections, California ensures that a change in control of a board can occur at one shareholder meeting. If directors are not subject to annual election, a change in control of the board can be delayed for two or more shareholder meetings. California also generally requires that directors be elected under the system of cumulative voting. Cumulative voting generally allows minority shareholders the opportunity to elect one or more people to the board.

California, however, provides an exception to these requirements for "listed corporations" in Section 301.5 of the Corporations Code. These are corporations with outstanding shares listed on the New York and American Stock exchanges or with outstanding securities listed on the Nasdaq National Market. A listed corporation may amend its articles or bylaws to divide its board of directors into two or three classes to serve for terms of two or three years, respectively. A listed corporation can also adopt an amendment eliminating cumulative voting. It is even

possible for a listed corporation to adopt both these amendments.

Recently, both the American Stock Exchange and the Nasdaq National Market changed their names. In 2008, the NYSE Euronext acquired the American Stock Exchange and renamed it the NYSE Amex, LLC. The Nasdaq National Market was renamed the NASDAQ Global Market in 2006. AB 991 was originally introduced simply to update these and other organizational name changes. However, the bill was amended to add the NASDAQ Capital Market to the definition of "listed corporations" in Section 301.5. The NASDAQ Capital Market is a listing tier for companies that do not meet the standards of the NASDAQ Global Market. As a result, a California corporation with outstanding shares listed on the NASDAQ Capital Market will be able to amend its articles or bylaws to classify its board, eliminate cumulative voting, or both (subject to the existing limitations on these type of amendments currently set forth in Section 301.5).

Foreign corporations (*i.e.*, corporations incorporated in other states) will also benefit from the enactment of AB 991. California has long imposed numerous provisions of its General Corporation Law on foreign corporations. Section 2115 of the Corporations Code is the most far reaching of these statutes. It applies if more than one-half of a corporation's outstanding voting securities are held of record by persons having addresses in California and most of its business is attributable to this state. The business test is determined by averaging the corporation's property, payroll and sales factors. California law requirements imposed by Section 2115 on foreign corporations include, among others, annual director elections, cumulative voting, the standard of care applicable to directors, limitations on shareholder distributions, and director and shareholder inspection rights. Foreign corporations with outstanding securities listed on the New York and American Stock exchanges or the Nasdaq National Market are not subject to Section 2115. AB 991 will expand this stock exchange exception to corporations with outstanding securities listed on the NASDAQ Capital Market. Unlike Section 301.5, which requires a charter amendment to take advantage of the exceptions, no action will be required on the part of the

corporation in the case of Section 2115. As a result, Capital Market companies will be able to apply their current charter documents and the law of their state of incorporation without regard to Section 2115. However, Capital Market companies and other foreign exchange traded corporations excepted from Section 2115 will be subject to other California Corporations Code provisions that are applicable to foreign corporations independent of Section 2115.

AB 991 makes numerous other updating and technical changes to the California General Corporation Law and the Corporate Securities Law of 1968. If you are interested in learning more about AB 991, please contact us.

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