

SIFMA Compliance and Legal Society Virtual Forum—Leadership Matters: Meaningful, Measured Impact in Diversity and Inclusion

INTRODUCTION

In 2009, the ABA set out to assess the state of diversity in the legal profession. It engaged in an extensive and exhaustive nationwide study of the legal profession and issued a report in 2010 titled, “ABA Diversity in the Legal Profession: The Next Steps.” The work of the ABA revealed that, while progress has been made, there was a lack of “genuine diversity” in the legal profession.

A decade later, the legal profession remains one of the least diverse professions in the country:

	Male	Female	White	Black	Hispanic	Asian	LGBTQ	Multi-Racial
Legal Profession	64%	36%	85%	5%	5%	3%	2.86%	1%
U.S. Population	49.2%	50.8%	60.7%	13.4%	18.1%	5.8%	4.5%	2.7%

This is so, even though, since 2000:

- The percentage of minority law school graduates has ranged from 20% to 30%
- Women have accounted for 46% to 49% of graduates, with the high point coming in the mid-2000s.

Resource Materials:

ABA Diversity in the Legal Profession: The Next Steps, April 2010
https://www.americanbar.org/content/dam/aba/administrative/diversity/next_steps_2011.authcheckdam.pdf

So despite a plethora of diversity initiatives over the past couple of decades, women and lawyers of color remain underrepresented in our profession. In addition, while incremental progress has been made over the decades, racial/ethnic diversity at the partner and senior in-house level remains unacceptably low and the voluntary attrition of lawyers of color remains high.

Resource Materials:

[2016 Diversity Benchmarking Report \(New York City Bar\)](#)

The urgent call for a more diverse profession embodied in the ABA report almost a decade ago is even more pronounced today. Our country is quickly becoming a “majority minority” population.

Moreover, diversity and inclusion are no longer just the right, fair or moral thing to do, but also, as we will see, lead to better products and better financial performance for the companies that embrace it. Indeed, years of experience and empirical research establish that diversity and inclusion practices improve the quality of analysis and decision-making. Research also demonstrates a statistically significant correlation between diversity on senior leadership teams and the financial performance of an enterprise.

Against this backdrop, we must recognize, as pointed out by the ABA, that:

As America races toward a future where minorities will be the majority and more marginalized groups make their voices heard, the legal profession's next steps towards advancing diversity must produce more viable, sustained outcomes.

I. **THE D&I LANDSCAPE IN FINANCIAL SERVICES: BENCHMARKS & UPDATES**

The financial services industry and federal regulatory agencies are similarly not very diverse. As reported by the US Government Accountability Office in April 2013, from 2007 through 2011 there were no substantial changes in the number of minorities and women in management.

Resource Materials:

[Diversity Management: Trends and Practices in the Financial Services Industry and Agencies after the Recent Financial Crisis \(U.S. GOA\)](#)

According to the GOA report, women represented close to 30% of senior management at financial firms and approximately 36% of senior management at financial regulators. However, the representation of minorities in senior management level positions is only 11% at financial firms and 17% at their regulators. In 2011, African Americans accounted for 2.7% of senior-level staff in the financial industry, while women held 28.4%.

Resource Materials:

[Diversity and Inclusion: The Financial Services Sector and Dodd-Frank \(American Bar Association\)](#)

Women represent just 23% of partners at law firms, despite having comprised nearly half or more of the students graduating law school. Minorities represent just 9% of partners and just 3% of partners are women of color (Asian 1.38%, Black .68% and Latina .77%).

Resource Materials:

https://www.nalp.org/uploads/2018NALPReportonDiversityinUSLawFirms_FINAL.pdf

[Vault/MCCA Law Firm Diversity Survey 2018 Report \(NALP\)](#)

II. LEADING INCLUSIVELY: THE GENERAL COUNSEL PERSPECTIVE

A. Deloitte Study—The Diversity & Inclusion Revolution: Eight Powerful Truths

Deloitte's research demonstrates that:

- High performing teams are both cognitively and demographically diverse.
- Diversity of thinking is a wellspring of creativity, enhancing innovation by about 20 percent. It also enables groups to spot risks, reducing these by up to 30 percent. And it smooths the implementation of decisions by creating buy-in and trust.

B. Leaders on Diversity & Inclusion—Internally

The 2019 State of Corporate Law Departments report (published by Thompson Reuters and ACRITAS) based on research from over 1700 companies, demonstrates that general counsels of corporate law departments who work with “very diverse” teams versus those that are “not diverse” have significantly better experiences with the delivery of legal services. Indeed, such GCs:

- are three times more likely to promote the diverse team or firm to others;
- are one and half times more likely to rank a diverse team a perfect 10 of 10 for performance; and
- spend 25% more with diverse teams, known as a greater “share of wallet,” over time.

The studies also reflect that:

- For law departments with annual legal spend in excess of \$50 million, 62% require diversity information from their law firms.
- High-performing law departments don't just ask for law firm demographics but demand diverse staffing on legal matters, measure the work being performed at the timekeeper level, and award bonuses based on diversity performance.

Resource Materials:

<https://www.acritas.com/diversity-insight>

C. Examples: Impacting Diversity and Inclusion in the Market Place

1. Vanguard

Vanguard Investment Stewardship Perspectives Board Diversity report represents a “call for greater board diversity.” And most importantly, it sets forth its board diversity expectations for the public companies in which they invest to achieve greater board diversity. These four practical guides include, (1) publishing your perspectives on board diversity; (2) disclosing your board diversity measures; (3) broadening your search for director candidates; and (4) making progress on this front by prioritizing and diversifying your board.

Resource Materials:

<https://about.vanguard.com/investment-stewardship/perspectives-and-commentary/>

2. PWC Director Survey

In 2018 Price Waterhouse Coopers issued its 2018 Annual Corporate Director's Survey—The Evolving Boardroom, Signs of Change, in which the firm noted that “[t]oday, most directors think that diversity in the boardroom brings value. Ninety-four percent (94%) agree that diversity brings unique perspectives to the boardroom and 84% think that it enhances board performance. More than four out of five (81%) also think that it improves relationships with investors.”

Resource Materials:

[https://www.pwc.es/es/publicaciones/consejos-y-buen-gobierno/pwc-annual-corporate-directors-survey-2018.pdf.](https://www.pwc.es/es/publicaciones/consejos-y-buen-gobierno/pwc-annual-corporate-directors-survey-2018.pdf)

III. THE MARKET VIEW: THE IMPACT OF DIVERSITY & CORPORATE SOCIAL RESPONSIBILITY ON INVESTOR CONFIDENCE

A. The Regulators

On February 6, 2019, the U.S. Securities and Exchange Commission's (SEC) Division of Corporate Finance issued two new Compliance & Disclosure Interpretations concerning public company board diversity disclosure requirements under Items 401 and 407 of Regulation S-K.

Resource Materials:

<https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm#116-11>;
<https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm#133-13>.

The recent guidance applies to disclosure concerning self-identified diversity characteristics of board members or nominees in proxy statements or other SEC filings where the individual has consented to the company's disclosure of those characteristics.

B. The McKinsey Reports on Corporate Diversity Efforts

• 2015 McKinsey Report: Why Diversity Matters

“[N]ew research makes it clear that companies with diverse workforces perform better financially.”

• 2018 McKinsey Report: Delivering Through Diversity

“[W]e have seen a growing awareness of the business case for inclusion and diversity.”

- **The 2018 Report makes four key findings that are essential to making progress on diversity and inclusion:**
 - *The relationship between diversity and business performance persists*—there is a statistically significant correlation between a more diverse leadership team and financial outperformance.
 - *Leadership roles matter*—
 - Companies in the top-quartile for gender diversity on executive teams were 21% more likely to outperform on profitability and 27% more likely to have superior value creation.
 - The highest-performing companies on both profitability and diversity had more women in line (*i.e.*, typically revenue-generating) roles than in staff roles on their executive teams.
 - *It's not just gender.* Companies in the top-quartile for ethnic/cultural diversity on executive teams were 33% more likely to have industry-leading profitability.
 - *There is a penalty for opting out.* The penalty for bottom-quartile performance on diversity persists. Overall, companies in the bottom quartile for both gender and ethnic/cultural diversity were 29% less likely to achieve above-average profitability than were all other companies in the data set.
- **Notwithstanding progress there is still work to do:**
 - The 346 companies in McKinsey's 2015 research (mostly based in the US and UK) have increased average gender representation on their executive teams only 2 percentage points, to 14%, and ethnic and cultural diversity by 1 percentage point, to 13%.
 - What's more, many companies are still uncertain as to how they can most effectively use D&I to support their growth and value creation goals.

IV. BEST PRACTICES IN LAW FIRM & IN-HOUSE INCLUSION STRATEGIES

The Harvard Business Review series on Diversity from 2016 tells us that programs that get the best results include:

- Effective approaches are voluntary and “promote engagement, contact and accountability.”
- Moving forward it will be important to focus on the work experience and intersectionality: our plural identities that add to the diversity that each of us represent

- And, inclusion strategies will be mission critical - people not only need to feel that they belong, but also that they belong together!

V. OWNING IT: UNCONSCIOUS BIAS & PIPELINE ISSUES

Resources Materials:

[How to Interrupt Implicit Bias in the Legal Workplace – Part I \(Baker Donelson\)](#)

VI. FOR ADDITIONAL BACKGROUND INFORMATION AND RESOURCES. PLEASE SEE THE FOLLOWING:

- [Section 342 of the Dodd Frank Wall Street Reform and Consumer Protection Act](#), Pub. L. No. 111-203, 124 Stat. 1376, July 11, 2010, codified as 12 U.S.C. § 5452
- [Fiscal Year 2019 OMWI Annual Report to Congress, Securities and Exchange Commission](#)
- [Fiscal Year 2019 OMWI Annual Report to Congress, Treasury](#)
- [Final Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies](#) (80 FR 33016, June 10, 2015) (SEC Release No. 34-75050)
- [SEC Contract Standard for Contractor Workforce Inclusion](#) (80 FR 8119, February 13, 2015) (SEC Release No. 34-74239)
- [Diversity Assessment Report for Entities Regulated by the SEC \(PDF\)](#)
- [A Retrospective View of Corporate Diversity Training From 1964 to the Present \(The Winters Group\)](#)
- [Diversity Management: Trends and Practices in the Financial Services Industry and Agencies after the Recent Financial Crisis \(U.S. GOA\)](#)
- [Financial Services Diversity Initiative \(U.S. Congress Library\)](#)
- [Tackling unconscious gender biases in wealth management \(World Finance\)](#)
- [Gender Bias and Practice Profiles in the Selection of a Financial Adviser \(Financial Planning Association\)](#)
- [The Financial Services Sector's Not-So-Secret Gender Discrimination and Harassment Problem \(Outten & Golden\)](#)
- [10 Surprising Findings About the Gender Gap at Financial Institutions \(Women's World Banking\)](#)
- [Why Women Aren't Making It to the Top of Financial Services Firms \(Harvard Business Review\)](#)
- [MCCA General Counsel Report \(MCCA\)](#)
- [Black Women in Law Face Gender Discrimination and Racial Bias \(Eisenberg & Baum\)](#)
- [You Can't Change What You Can't See: Interrupting Racial & Gender Bias in the Legal Profession \(LawFuel\)](#)
- [Diversity Management: Trends and Practices in the Financial Services Industry and Agencies after the Recent Financial Crisis \(U.S. GOA\)](#)
- [The CFPB Announces Final Diversity Standards under Dodd-Frank Section 342 are Completed \(Ballard Spahr\)](#)

