

ACCELERATING OPPORTUNITIES FOR DIVERSE LAWYERS IN THE FINANCIAL SERVICE INDUSTRY

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When it comes to diversity in the legal profession, it's clear we have work to do. Minority representation within law firms has increased, but people of color account for only 28% of partner track associates and 12% of partners. Black and Latina women each make up less than one percent of law firm partners. Yet 78% of law firm partners are male and 89% are white.

When it comes to the financial services industry, lack of gender and racial diversity in the financial service industry is well-known and widely acknowledged. The U.S. finance, insurance and real estate sector is a key driver of economic and entrepreneurial growth. Of the \$70 trillion in global financial assets under management across the investment universe, less than 1% are managed by minority-owned or women-owned firms. Women and people of color also are dramatically underrepresented at the board and senior management levels within the financial services industry.

In the past few years, several financial institutions made public commitments to increase gender and racial diversity at their institutions and on their boards. According to the U.S. House Committee Report on Diversity and Inclusion²:

Despite public racial equity commitments, the diversity and inclusion of investment firms did not increase substantially between 2019 and 2020. For example, women made up 26.2% of executives in 2019 and 27.5% of executives in 2020, an increase of 1.3 percentage points. People of color made up 16.6% of the executive workforce in 2019, and 17.6% of the executive workforce in 2020, only an increase of one percentage point. Importantly, only 3.0% of executives in investment management firms were Black in 2019. In 2020, this number rose to 3.4%, less than half a percentage point increase. Similarly, on average, only 3.0% of executives were Latinx in 2019, and this number rose less than half a quarter of a percentage point to 3.2% in 2020. . . . While some progress has been made over the last five years, there is more work to be done.

More progress also needs to be made for minorities inside the boardroom. According to a report released by the Board Diversity Action Alliance, “[B]lack directors have held only 49 of about 4,700 board seats created at companies backed by the top 18 private equity and venture capital firms.”³ According to the report, “[B]lack and Latinx directors each held about 1% of board seats, with women at about 10%. . . . And of about 3,800 positions in the executive suites of those companies, just 25 were held by Black people.”⁴

SEC Commissioner Allison Herren Lee said it best:

[I]t has often been argued that advocating for corporate diversity is about equality for equality's sake, and that corporate decision-making by contrast has to be about maximizing shareholder value. In other words, don't inject social ideals into the boardroom or the management suite. I could never quite buy in to the view that some 40 percent of the population in our country (if we're talking about minorities) or over half the country (if we're talking about women) must rationalize their inclusion in corporate boardrooms and elsewhere in economic terms instead of the reverse. How can one possibly justify—in economic terms—the systematic exclusion of a major portion of our talent base from the corporate pool? That is about as economically irrational as it gets. Nevertheless, to the extent one seeks economic support for diversity and inclusion (instead of requiring economic support for the lack of diversity and exclusion), the evidence is in.⁵

There is a business case for diversity in the financial service industry:

- Companies with the greatest ethnic diversity on executive teams outperformed those with the least by 36% in profitability.
- Companies with more than 30% women on their executive teams are significantly more likely to outperform those with fewer or no women executives.
- Firms with the highest proportion of women on their boards outperform those with the lowest.
- Companies with higher than average diversity on management teams report higher revenue from new products and services.

Financial service institutions serve as underwriters, asset managers, investors, advisers, bondholders, and lenders, among others, in some of the most important global finance transactions. Take for example, the largest financial transactions in 2021 a list of which is attached to this article as Exhibit A (see page 7). Consider for each of these transactions which institution served as underwriter or lender or investor or adviser. Each institution had the opportunity to select external counsel as underwriter counsel, lender's

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counsel, or investor and/or bondholder counsel. In such role, these financial institutions have the opportunity to accelerate diversity among the service providers who are providing services, including law firms. They can ask questions among their service providers including: Who will lead the team? Is the team diverse? Is the relationship partner diverse?

Yet, the number and percent of diverse attorneys in the financial service industry is not known. While law firms complete numerous surveys throughout the year on law firm and in-house demographics, comprehensive data on diverse attorneys in the financial services industry is not available. Surveys generally do not request firms to track practice areas or industries by attorney or professional.⁶

Similarly, there is a noteworthy lack of diversity of financial regulators in the U.S. government. According to Commissioner Lee:

[J]ust **three percent** of top financial regulators in the past 106 years were Black. . . . “There are no Black Commissioners at the Securities and Exchange Commission (SEC). Or at the Commodity Futures Trading Commission (CFTC). There has never been a Black Chairman of the Federal Deposit Insurance Corporation (FDIC), SEC, or CFTC. And today, the staffs of political appointees—whether Democrat or Republican—are, with few exceptions, almost devoid of African Americans.”⁷

The financial services industry is a trillion dollar industry that spends hundreds of millions of dollars annually on professional services, including legal services. It is important to encourage law students and attorneys to consider careers in financial services given how vital the industry is to the U.S. economy. To solve the gap in federal regulators and senior executives in federal and state government, we need to increase the pipeline of attorneys and other professionals who can advance within our firms, in-house, in academia and in the government. The following is a series of recommendations that may be helpful in accelerating a sustainable

path for diverse attorneys in the financial services industry. As a result of section 342 of Dodd-Frank, several of our federal financial services agencies such as the SEC are already implementing several of these recommendations. External counsel and financial service institutions should do the same.

Recommendations

Outreach/Pipeline

- Education: Lawyers should collaborate and partner with internal and external stakeholders to mentor, counsel, and encourage middle and high school students to pursue a legal career in financial services, including conducting financial literacy courses.
- Partner with external organizations, such as affinity bar associations (such as National Bar Association, Hispanic Bar Association, NEPABA, SABA, NLGBTQ+ Bar Association, and post job openings with these bar associations).
- Expand the firms’ network of schools (colleges/law schools) to conduct on-campus interviews and collect resumes and recruit from schools (including HBCUs) that have a large minority student body.
- Coordinate with HBCU law schools regarding opportunities for successful legal careers in the financial services industry.

Recruitment

- Diversity starts at the top. For organizations (agencies/institutions):
 - communicate leadership support regarding supplier diversity into organization’s business planning cycles and initiatives;

- have an established policy to solicit bids from a certain number or percentage of minority- and women-owned businesses; and
- conduct targeted outreach to inform minority- and women-owned businesses or affinity groups representing these constituencies of contracting opportunities.
- Use metrics to identify a baseline and track M/WOB opportunities:
 - total amount spent annually buying and contracting goods and services;
 - availability of relevant minority- and women-owned businesses to compete in contracting opportunities; and
 - percentage of contract dollars awarded to minority- and women-owned businesses by race, ethnicity, and gender as compared to total contract dollars awarded for the calendar year.
- Consider opportunities for diverse counsel at majority firms:
 - have an established policy to solicit bids from a certain number or percentage of diverse attorneys at majority firms; and
 - conduct targeted outreach to inform diverse attorneys at majority firms or affinity groups representing these constituencies of contracting opportunities.

Retention/Fostering True Allyship

- Data collection: Collect and report disaggregated data on diverse attorney workforce by practice area. For external counsel, track attorneys by practice areas who are pitching for, working on, leading client teams and advising clients in the financial services industry.
- Communication: Disseminate information about DEI inclusion strategies and initiatives. Communicate job openings, leadership opportunities, and education initiatives.
- Consider at least one diverse candidate for all executive or firm leadership positions and board positions when there are openings.
- For institutions, encourage, solicit, and advocate team members for participation on financial service regulatory advisory committees (like SEC Asset Management

Advisory Committee, Fixed Income Market Structure Advisory Committee, Investor Advisory Committee).

- Encourage White male partners to actively participate in and lead DEI efforts. Get to know your diverse partners, including their areas of expertise and key clients, particularly with financial service clients. Invite them to pitch new business opportunities and speak at association events. Ensure your client teams are diverse. Recommend diverse partners for leadership positions, internally and externally. Speak up if a panel, pitch, or client team lacks diversity.
- Allyship: For external counsel, ensure diverse partners have opportunities to pitch for, lead a team, and be the relationship partner for financial service clients. When meeting with a financial service client, who are you “bringing to” the meeting? Be a sponsor to diverse attorneys.
- While our profession is not yet where it should be, implementing these strategies can bring about sustainable institutional change and empower firms to create an environment where there is true diversity in the financial services industry.

Endnotes

1. Lorraine McGowen is a partner at Orrick, Herrington & Sutcliffe LLP, a member of the firm’s Management Committee and Partner-In-Charge of its global Diversity & Inclusion Initiative.
2. U.S. House Committee on Financial Services, Diversity and Inclusion: Holding America’s Largest Investment Firms Accountable, at 4, 117th Cong., 2d Sess., Dec. 14, 2021, https://financialservices.house.gov/uploadedfiles/largest_investment_manager_1214.21.pdf
3. M. Abelson & S. McBride, Private Equity-Backed Firms Shut Out Black Directors, Data Show, (Bloomberg, Sept. 7, 2021), <https://www.bloomberg.com/news/articles/2021-09-07/private-equity-backed-firms-shut-out-black-directors-data-show>.
4. *Id.* at 2.
5. Commissioner Allison Herren Lee, Diversity Matters, Disclosure Works, and the SEC Can Do More: Remarks at the Council of Institutional Investors Fall 2020 Conference, <https://www.sec.gov/news/speech/lee-cii-2020-conference-20200922>. See also *Brief for Amici Curiae Leading Science and Technology Businesses in Support of Respondents, Students for Fair Admission, Inc. v. President and Fellows of Harvard College*, Nos. 20-1199 & 21-707 (continuing importance to science and technology companies of race-conscious, holistic university admissions practices. To find the next superb employee and create the next superb team, amici depend on universities admitting talented students from all backgrounds, and helping each student learn how to thrive in a diverse setting).
6. Generally, an individual is able to self-identify practice area in their bios, and in publications, such as *Diversity & the Bar*, and in directories, such as those provided by MCCA or DiversityLab.
7. Lee, *supra* note 5 (citations omitted, emphasis in original).

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EXHIBIT A

Top 10 Largest Finance Deals 2021

Top 10 Largest IPOs 2021					
Princing Date	Issuer Name	Issuer Country	Sector	Exchange	Money Raised (USD) (Billions)
11/9/21	Rivian Automotive, Inc.	United States	Consumer Discretionary	NASDAQ-US	13.7
1/29/21	Kuashou Technology	China	Technology	Hong Kong Exchange - Main Board	6.2
3/10/21	Coupang Inc.	South Korea	Consumer Discretionary	NYSE	4.6
6/29/21	DiDi Global Inc.	China	Consumer Discretionary	NYSE	4.4
1/27/21	InPost SA	Poland	Industrials	Amsterdam	3.9
7/29/21	Krafton Inc.	South Korea	Consumer Discretionary	Korea Exchange-KOSPI	3.8
5/7/21	China Three Gorges Renewables (Group) Co. Ltd.	China	Utilities	Shanghai Stock Exchange	3.5
10/27/21	GlobalFoundries Inc.	United States	Technology	NASDAQ-US	2.9
10/29/21	Volvo Car AB	Sweden	Consumer Discretionary	Stockholm	2.7
3/17/21	Vantage Towers AG	Germany	Telecommunications	Frankfurt Stock Exchange-Prime	2.6

Top United States Investment Grade Corporate Deals 2021				
Issue Date	Issuer	Domicile Nation	Deal Size (US\$mil)	Macro Sector
3/11/21	Verizon Communications Inc.	United States	24,898	Telecommunications
10/21/21	AerCap Ireland Capital	Ireland-Rep	20,957	Financials
5/10/21	Amazon.com Inc.	United States	18,437	Retail
4/16/21	Bank of America Corp.	United States	15,000	Financials
3/22/21	Oracle Corp.	United States	14,965	High Technology
2/1/21	Apple Inc.	United States	13,960	High Technology
4/15/21	JPMorgan Chase & Co.	United States	13,000	Financials
1/27/21	7-Eleven Inc.	Japan	10,935	Retail
3/2/21	Siemens NV	Germany	9,989	High Technology
1/4/21	Broadcom Inc.	United States	9,971	High Technology
2/2/21	Boeing Co.	United States	9,825	Industrials
10/18/21	Goldman Sachs Group Inc.	United States	9,000	Financials
7/15/21	Morgan Stanley	United States	8,500	Financials

Top 10 Global Syndicated Loans 2021				
Closing Date	Borrower	Target Nation	Package Amt (US\$mil)	Primary UOP
5/17/21	Magallanes Inc.	United States	41,500.0	Acquisition Fin.
6/17/21	Vonovia SE	Germany	26,669.4	Refinancing
2/24/21	Verizon Communications Inc.	United States	25,000.0	General Corp. Purp.
8/5/21	Vonovia SE	Germany	23,841.5	Acquisition Fin.
8/6/21	Daimler AG	Germany	21,168.0	General Corp. Purp.
11/3/21	Roche Holding AG	Switzerland	20,765.7	Stock Repurchase
3/30/21	AerCap Holdings NV	United States	19,000.0	General Corp. Purp.
4/7/21	General Motors Co.	United States	17,500.0	General Corp. Purp.
4/27/21	Walmart Inc.	United States	17,060.0	General Corp. Purp.
9/29/21	Ford Motor Co.	United States	15,500.0	General Corp. Purp.

Top 10 Global Financing Transactions Q4 2021				
Company	Deal Value (USD)	Location	Industry	Stage
J&T Express	\$2.5B	Jakarta, Indonesia	E-commerce	Late-stage VC
Commonwealth Fusion Systems	\$1.8B	Cambridge, U.S.	Cleantech	Series B
Gopuff	\$1.5B	Philadelphia, U.S.	Retail	Late-stage VC
Regor Therapeutics	\$1.5B	Shanghai, China	Biotech	Early-stage VC
Sierra Space	\$1.4B	Broomfield, U.S.	Spacotech	Series A
Lacework	\$1.3B	San Jose, U.S.	Network Management Software	Series D
GTA Semiconductor	\$1.25B	Shanghai, China	Semiconductors	Early-stage VC
Nanjing LingHang Technology	\$1.2B	Nanjing, China	Automotive	Series A
Thrasio	\$1B	Walpole, U.S.	E-commerce	Series D
Pupumall	\$950M	Fuzhou, China	Retail	Late-stage VC

Top 10 Global Announced Deals of 2021				
Quarter	Target Name	Target Country (HQ)	Buyer(s)	Buyer Country (HQ)
Q3	Warner Media	United States	Discovery	United States
Q4	Telecom Italia	Italy	KKR	United States
Q4	Altimeter Growth	United States	Grab Holdings	Singapore
Q3	Suez SA	France	Ardian, Global Infrastructure Management	Multiple Countries
Q4	Lionheart Acquisition Corp. II	United States	MSP Recovery	United States
Q4	Medline Industries	United States	Investor Group	Multiple Countries
Q3	Kansas City Southern	United States	Canadian Pacific Railway	Canada
Q4	Celestial Transportation Finance Ireland, GECAS Trading Ireland, GE Capital Aviation Services	Ireland	AerCap Holdings	Ireland
Q1	Cerner Corporation	United States	Oracle Corporation	United States
Q2	Afterpay Limited	Australia	Lanai (AU) 2	Australia

Top 10 Structured Finance Deals 2021				
Date	Sponsors	Issuer, Series	Amount (US\$mil)	Collateral Type
9/30/21	Rabobank	BEST SME BV, 2021	19,237.5	Small-business loans (Non-U.S.)
11/30/21	Intesa Sanpaolo	Brera SEC Srl, 2021 RMBS	8,692.2	Residential mortgages, Non-U.S. residential loans
2/24/21	KBC Group	Phoenix Funding, Ltd., 7	7,155.4	Residential mortgages, Non-U.S. residential loans
7/12/21	Santander Group	Fondo de Titulizacion RMBS Santander, 7	6,600.1	Residential mortgages, Non-U.S. residential loans
11/5/21	Yorkshire Building Society	Tombac PLC, No. 3	6,544.3	Residential mortgages, Non-U.S. residential loans
3/12/21	Bank of America	Wilmington Cards PLC, 2021-1	6,055.4	Credit Cards
2/26/21	Jupiter Seller	Jupiter Mortgage PLC, No. 1	4,036.3	Residential mortgages, Non-U.S. residential loans
5/13/21	Nelnet	Nelnet Student Loan Trust, 2021-A	4,031.7	Student loans, private accounts
3/25/21	Banque Populaire	FCT ELIDE II, 2021-01	3,422.1	Residential mortgages, Non-U.S. residential loans
6/10/21	Grupo BBVA	BBVA RMBS Fondo de Titulizacion de Activos, 20	3,030.0	Residential mortgages, Non-U.S. residential loans