

Katten

Financial Markets Litigation and Enforcement

Broadening the Pipeline: How to Increase Diversity in the Financial Services Legal Industry



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The year 2020 has been a highly unusual and disruptive year — from the COVID-19 pandemic to natural disasters — our daily lives have changed dramatically. Most notable is the social awakening that has taken place this year following the deaths of George Floyd, Ahmaud Arbery, Breonna Taylor and several other African-Americans. These deaths and the civil unrest and protests that have followed in streets and neighborhoods across America have sparked national conversations around systemic racism in a profound way that we have seen only a few times in our nation's history.

And systemic racism appears not only in the contexts highlighted by these tragic deaths and nationwide protests. Systemic racism also unfortunately haunts the financial services industry and legal profession. Banks and, more generally, financial institutions struggle with diversity. While banks are generally integrated in entry-level positions, as management responsibility increases, diversity decreases. For example, a recent study found that executive level positions consisted of 29 percent women and 71 percent men. But even starker: whites made up 81 percent of the executive suite.¹

Recognizing this persistent problem, Katten hosted a diversity panel discussion on October 1 to kick off its annual Financial Markets Litigation Enforcement Symposium. The panel — led by Financial Markets and Funds partner Carl Kennedy and included Glen A. Rae, Deputy General Counsel – Global Markets & International, Bank of America; Robin Lenhardt, Professor of Law at Georgetown University Law Center; Jane Shissler, General Counsel of Destra Capital; and Noah Heller, Katten's Chief Executive Officer — focused on how to increase the pipeline of racially diverse attorneys in the financial services industry. The panel discussion brought a sense of optimism, hope and renewed energy to building and nurturing diversity and inclusion efforts at law firms and, more specifically, in the financial services industry.

Conversations about reversing inequality by increasing the pipeline of racially diverse attorneys and other business professionals in the financial services industry are not new and, arguably, the biggest concern is that these conversations have been happening for decades but have not resulted in any appreciable change. Despite significant diversity and inclusion efforts, the representation of racially diverse attorneys and other business professionals within the industry has not improved in over 10 years. For example, in 2010, African-Americans represented 5 percent of the legal population and Asians represented 2 percent of the legal population.² In 2020, those statistics remain the same. Hispanic representation has increased from 4 percent in 2010 to 5 percent in 2020, while Hawaiian/Pacific Islander and Native American populations have decreased from 1 percent in 2010 to 0 percent in 2020.³

These statistics show that diverse individuals' representation in the US population is not commensurate with their representation in the legal field. A recent study found that this problem is particularly acute in the financial services

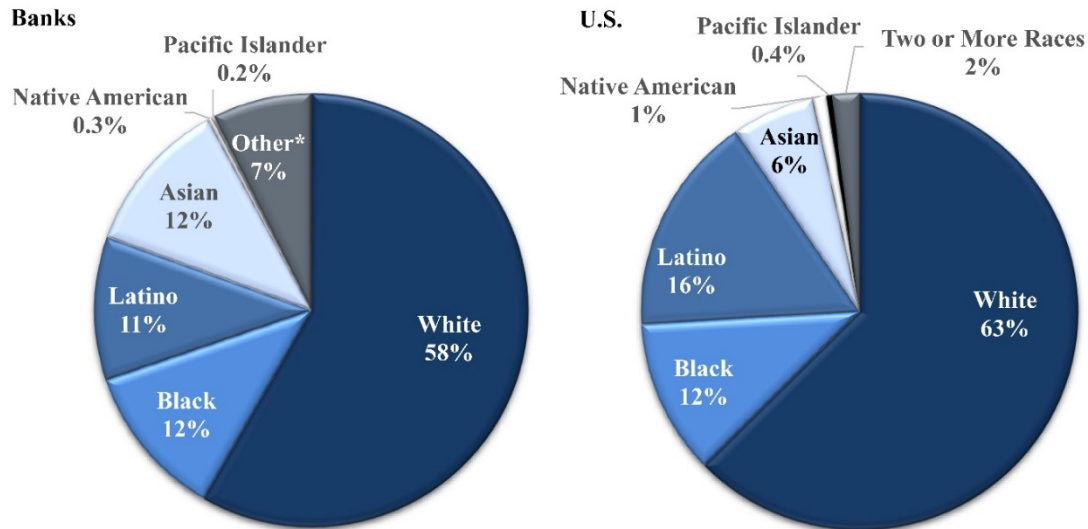
¹ The U.S. House Committee on Financial Services published a report on diversity and inclusion efforts at large banks. U.S. House Committee on Financial Services, *Diversity and Inclusion: Holding America's Large Banks Accountable*, Feb. 2020, at <https://financialservices.house.gov/issues/diversity-and-inclusion-holding-america-s-large-banks-accountable.htm>.

² American Bar Association, *National Lawyer Population Survey, 2020*, at https://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-demographics-2010-2020.pdf.

³ *Id.*

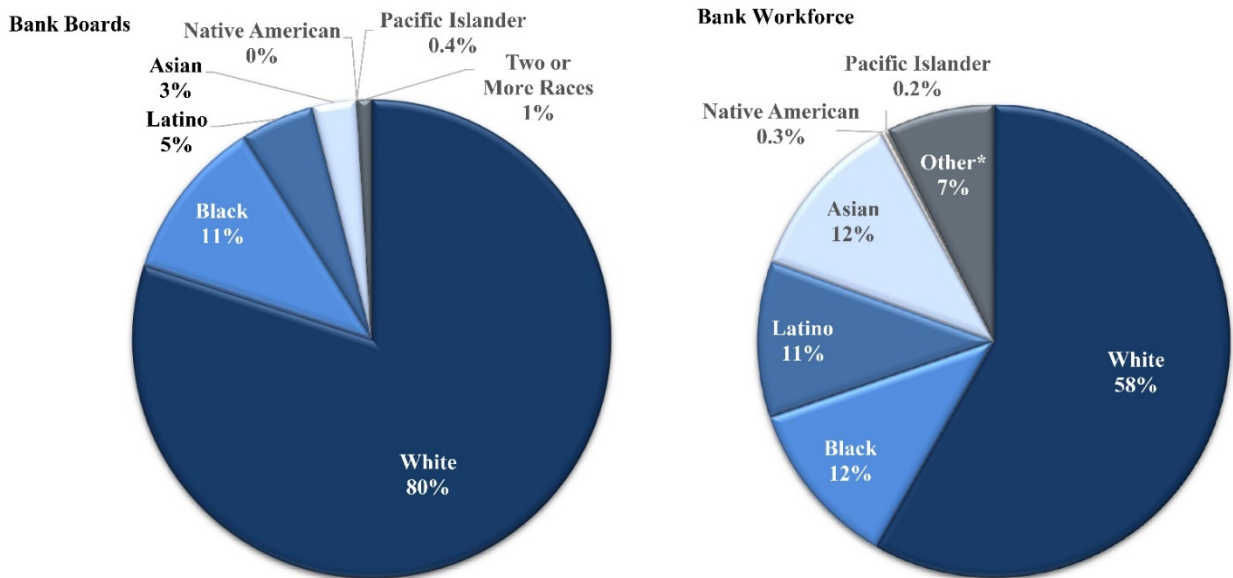
profession. In addition, in the financial services industry, board diversity generally does not reflect the diversity of the same institutions' workforce diversity. Consider the following⁴:

Figure 1. Comparison of Banks' Workforce Versus U.S. Employed Workforce by Race and Ethnicity 2018



Source: U.S. Bureau of Labor Statistics & U.S. House Financial Services Committee Staff Analysis of Bank Diversity Data

Figure 8. Comparison of Banks' Board and Workforce Diversity (Most Recent Year Reported)



Source: U.S. House Financial Services Committee Staff Analysis of Bank Diversity Data

⁴ U.S. House Committee on Financial Services, *Diversity and Inclusion: Holding America's Large Banks Accountable*, Feb. 2020, at <https://financialservices.house.gov/issues/diversity-and-inclusion-holding-america-s-large-banks-accountable.htm>.

The panelists candidly talked about systemic racism within the financial services industry specifically and legal profession more broadly and its stifling and pervasive effects. They talked about the need for the industry and profession to go beyond diversity trainings and grievance procedures. They shared their personal thoughts regarding potential solutions and actions to address these effects. Solutions and actions centered on targeted recruitment, holding service providers accountable, building external and internal relationships, and mentorship and sponsorship programs are rightfully receiving more attention and focus.

These thought leaders have witnessed one reoccurring theme over the last several months — people want to help and want to do the right thing. Whether looking for opportunities to get involved in pro bono projects related to racial injustice, partaking in internal allyship programs, or hosting a diversity panel during a financial services symposium, firms and companies are pushing for change.

The following encapsulates the leaders' thoughts on actionable steps that can be undertaken by the financial services industry and legal profession at the macro and micro/individual levels to address the lack of progress in broadening the pipeline.

Mentorship and Sponsorship

A hallmark of success in the legal industry is networking and exposure to new opportunities. Social dynamics can make it difficult for attorneys of color to break into groups that assist with their career progression. Diverse attorneys may consider speaking up or being noticed more of a risk than a benefit, and the legal industry must create an environment in which they feel comfortable enough to be vulnerable and build relationships.

When it comes to diversity, it is incumbent upon the legal industry to make people feel welcome. This requires purpose. Katten, for example, is focusing heavily on sponsorship as a long-term sustainable project. Sponsorship should be an intentional relationship where a person with power within the firm supports the person they are sponsoring and their advancement, including taking ownership of that person's career behind closed doors. Individualized relationship building is central to creating a change in the number of diverse attorneys retained and promoted.

The goal of mentorship and sponsorship programs, whether informal or formal, is promotion and inclusion. For lawyers just beginning their career, when they do not see role models in the group they are interested in, they may change to a different group because the chances of success are higher in a different group with more diversity. Sectors like the financial services industry struggle to recruit diverse attorneys because there are less diverse partners and associates in those groups. This makes the purposeful mentorship and sponsorship relationships that much more important.

These programs should be thoughtful, personal and do not have to be limited to internal programming. In-house and law firm partnerships can ensure diverse associates are staffed on consequential matters and help create a book of business to increase chances of partnership.

Outside Vendors

From a business perspective, it is increasingly important to have a diverse workforce that serves and reflects the diverse population in the United States. Studies show that there is a strong business case to having diverse leadership and diverse business and legal teams: “Companies in the top-quartile for gender diversity on executive teams were 21 [percent] more likely to outperform on profitability. . . . Companies in the top-quartile for ethnic/cultural diversity on executive teams were 33 [percent] more likely to have industry-leading profitability.”⁵ Many in-house legal departments understand that diversity matters both within their own ranks and with their providers.

In-house attorneys at global and local companies can have an impact on how seriously their service providers take increasing diversity representation. Some institutions have been using scorecards for a number of years. Scorecards ask firms to evaluate their diversity efforts and to submit certain metrics. These scorecards are particularly useful when companies analyze the data submitted and keep track of companies and law firm’s progression through the years. Teams dedicated to analyzing the data submitted can help assess whether law firms are retaining and promoting diverse associates, whether associates on pitches are also staffed on matters and whether diverse partners are leading cases.

Smaller financial firms that do not hire many lawyers or recruit directly from law schools may not have many opportunities to hire internally so they focus their energy on their service providers, such as auditors and law firms. As the relationship with the outside vendor progresses, more candid and comfortable conversations may emerge. In-house lawyers should begin these conversations, even during the vetting phase, and feel at liberty to ask about their service provider’s policies and procedures regarding diversity and inclusion and ask questions regarding their recruitment efforts.

Recruitment and Retention

For years, lawyers (and non-lawyers) have attended panels in which leadership assured their employees that diversity was a focus. Frustration over the lack of a substantial increase in diversity is pervasive, but the dialogue is changing and there is a focus on identifying the source of the problem. We cannot discuss diversity and inclusion issues at law firms and in the financial services industry without addressing the structural inequality that creates the initial barriers — communities impacted by inequality in education, wealth and housing inform whether people in these communities can get their foot in the door to law school.

The financial services industry requires specific knowledge and experience gained by dealing with public companies and complex financial instruments. Many communities, including ethnic and immigrant communities, may not routinely discuss financial products or markets, causing an unfamiliarity with the industry. The mystery of financial markets and products can inhibit diverse attorneys from entering the field due to a lack of familiarity and comfort. Providing law students with the foundation to help build the relationship and tools with potential law firms is important. These partnerships are excellent ways for students to learn and explore multiple and unfamiliar legal topics.

⁵ Vivian Hunt et. al., *Delivering through Diversity*, McKinsey & Company (January 2018), https://www.mckinsey.com/~media/McKinsey/Business%20Functions/Organization/Our%20Insights/Delivering%20through%20diversity/Delivering-through-diversity_full-report.pdf?shouldIndex=false.

While it is important to discuss the steps that law firms and companies should take, it is equally (if not more) important to highlight the need that colleges, universities and law schools reconsider how their criteria for admission are barriers controlled by access to various resources. For example, some law schools such as Harvard no longer require the LSAT for admission.

Law firms and in-house legal departments also need to reassess their recruitment efforts. One step that law firms can take is to expand the number and types of colleges and universities law firms host for on-campus interviews, focusing on, for example, historically black colleges and universities or other institutions with a diverse student body. Many in-house legal departments do not recruit directly from law school, but there are options to partner with law firms to discuss how firms are improving diversity measures understanding that many law firm attorneys move in-house.

The ultimate goal is not to only find or recruit attorneys of color but to create an environment in which the population of the law firm or in-house legal departments reflect the population they serve. The objective reaches beyond inclusion; companies should strive to create an environment in which all diverse lawyers can be their authentic selves and feel like they belong. This requires acting with intention, establishing relationships and providing the right opportunities across firms and companies. Retaining diverse talent ultimately leads to the recruitment of diverse talent, so building foundational relationships are one of the most important vehicles to change.



Carl E. Kennedy

Partner

New York
+1.212.940.8544
carl.kennedy@katten.com



Nicole A. Saleem

Associate

Chicago
+1.312.902.5453
nicole.saleem@katten.com

USA Offices

Charlotte

550 South Tryon Street
Suite 2900
Charlotte, NC 28202-4213

Chicago

525 West Monroe Street
Chicago, IL 60661-3693

Dallas

2121 North Pearl Street
Suite 1100
Dallas, TX 75201

Los Angeles – Century City

2029 Century Park East
Suite 2600
Los Angeles, CA 90067-3012

Los Angeles – Downtown

515 South Flower Street
Suite 4150
Los Angeles, CA 90071-2212

New York

575 Madison Avenue
New York, NY 10022-2585

Orange County

100 Spectrum Center Drive
Suite 1050
Irvine, CA 92618-4960

Washington, DC

2900 K Street NW
North Tower - Suite 200
Washington, DC 20007-5118

International Offices

London

Paternoster House
65 St Paul's Churchyard
London, EC4M 8AB
United Kingdom

Shanghai

Suite 4906 Wheelock Square
1717 Nanjing Road West
Shanghai, 200040
P.R. China

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