Part IV:
Promoting Economic Equality Through Expanded Business Corporate Relationships

Being a good corporate citizen by promoting and implementing diversity efforts extends beyond a company's employees, executives, and directors. The professional service firms and suppliers that a company chooses to enter relationships with can also have a significant and profound impact on racial equity across the economy. These types of initiatives should be advanced by all corporations, which pose little legal risk and can yield great benefits.

Law Firms

Large corporations often devote significant spending to legal services. This spending presents an opportunity for companies to make conscious decisions about which firms they choose to work with based on various diversity metrics.

Companies should hire and retain law firms that rank highly for diversity and engage in intentional inclusion practices by collecting and measuring outside counsel metrics on Black personnel, both at the senior and junior levels. These measures of diversity are generally publicly available for major law firms, most of which provide underlying data on an annual basis to The American Lawyer, which then publishes an annual diversity scorecard. The 2020 version of that report shows that since 2010, the representation of people of color in major law firms has increased 3.9%.[1] However, the 2019 report also noted that most of this growth has been driven by Asian and Latino attorneys. Since 2011, Black attorney representation at major law firms has increased by only 0.2%, whereas both Asian and Latino representation has increased 1.1%.[2]

To combat this problem, the single most important initiative that companies can undertake to impress upon law firms the urgency of improving diversity among Black attorneys is making a concerted effort to hire Black partners to serve as relationship partners for their organizations. This will impress upon law firms, in a very real and meaningful manner, the critical nature of not only hiring—but also retaining and promoting—Black attorneys within those law firms, if those firms wish to continue receiving revenue from their corporate clients. Without taking this sort of significant remedial action, law firms can often achieve diversity goals by having associates work on projects, without making meaningful changes within the firms to eliminate the barriers to advancement among Black associates. Along these lines, in January 2021 a major beverage company informed its outside law firms that it expects them to identify at least one Black attorney, among other diverse attorneys, as having the potential to succeed as the relationship partner for the company.

Companies should also consider asking law firms to participate in the Mansfield Rule certification process and to achieve certification within a certain period. The Mansfield Rule requires law firms to consider at least 30% women, attorneys of color, lawyers with disabilities, and LGBTQ+ lawyers for all senior lawyer lateral hiring, equity partner promotions, and appointments or elections to governance and leadership roles such as managing partner, practice group leaders, and compensation committee. Over the first three years that Mansfield Rule certification has been in effect, firms have reported significant improvements:[3]

- 96% of firms reported that after adopting the Mansfield Rule, their teams of lawyers participating in formal pitch meetings have become more diverse.
- 65% of firms reported that more lawyers from underrepresented groups were appointed or elected to their Management/Executive Committee than before they adopted the Mansfield Rule.
- 63% of firms reported that they have increased the percentage of lawyers from underrepresented groups promoted into equity partnership since adopting the Mansfield Rule.
- 58% of firms reported that their lateral partner hiring pool was more diverse following the adoption of the Mansfield Rule.

Similarly, companies can require their law firms to provide concrete information and plans on meeting diversity goals. For example, in January 2021, Coca-Cola began requiring its outside law firms to provide information on a number of diversity-related goals and metrics, such as:

- Self-identified diversity data on a quarterly basis for analysis to be conducted by the company;
- Published commitments to diversity, inclusion and belonging, and also set concrete, measurable goals; and
- Transparency about how the law firm allocates origination, relationship, and matter credit for matters for the company.[4]

Companies can consider **building in accountability for law firms towards achieving diversity goals**, with rewards or consequences. For instance, companies may ask firms to commit that at least a certain percentage of billed attorney time will be by diverse attorneys, with a certain proportion of that being from Black attorneys. This can be a powerful incentive for law firms to work to increase their diversity, as failure to do so could result in a reduction in fees or a loss of business.[5] Companies can also create awards for outside law firms that perform the best on diversity measures. For example, companies can consider awarding bonuses to law firms that meet certain diversity improvement goals, or otherwise recognizing those firms.[6] These types of programs can help with altering incentives at law firms to increase diversity.

Finally, companies can also partner with law firms and other professional service firms to provide Black students with job and development opportunities. For example, companies can ask their law firms to participate in law student hiring initiatives focusing on historically underrepresented groups or offer scholarships focusing on these groups. Companies can also encourage and create programs for partnering with outside law firms for secondments/internships for Black lawyers and accountants that involve splitting time between the firms and the company.

Accounting Firms

Perhaps even more so than in law firms, Black representation (and representation of other historically underrepresented groups more generally) in accounting firms lags behind other professional services industries. According to data published by the American Association of CPAs, only ***one percent*** of CPAs at public accounting firms in 2016 were Black and only ***0.3 percent*** partners at public accounting firms in 2016 were Black.[7] In comparison, approximately 13% of the U.S. population is Black. These are staggeringly low numbers that companies should consider when selecting which accounting firms to engage.

Many of the same recommendations made above are potentially applicable to accounting firms as well. Companies may nonetheless struggle, however, to identify accounting firms that meet their desired diversity targets, particularly with regard to Black accountants. This heightens the importance of programs that will help foster a young generation of Black accountants through corporate relationships and programs with universities and accounting firms to provide internships and other development opportunities to young Black accountants.

Supply Chain Diversification

An equally important step that companies can take is to **commit to a certain level of supply chain spend on Black-owned suppliers**. This approach enables major corporations to have a broad impact on numerous industries across the economy – many of which will be small- or medium-sized business – to help foster and empower Black-owned businesses and entrepreneurs. Furthermore, many consumers have started to make purchasing decisions based on factors beyond brand, price, and quality, and now consider corporate responsibility factors, such as the company's environmental record or the company's record on racial and diversity issues.

When establishing goals for supplier diversity programs, companies should examine industry standards and set benchmarks that are both achievable and measurable.[8] For example, instead of only tracking diverse supplier spend, companies should consider tracking diverse supplier count to keep track of where companies might need to expand their supplier base.[9] Expanding the number of diverse suppliers may also help businesses avoid potential challenges to meeting diversity goals if, for example, a diverse supplier is purchased by a majority-owned company or if diverse companies let their certifications lapse.[10] Suppliers should also consider, among other things, the economic impact of working with Black-owned suppliers. For example, companies should examine: How many jobs are being created and/or sustained when your Tier 1 partners work with diverse suppliers?[11] How much tax revenue is generated for local, state, and federal governments as a result of that Tier 2 activity?[12]

Many companies have made these types of commitments in recent years. For example, since 2007, Proctor & Gamble has spent more than $2 billion with diverse-owned business (defined as at least 51% owned, operated and controlled by a United States citizen who is a person of color, woman, LGBTQ+, Veteran or Person with Disability) every year.[13] In February 2019, AT&T expanded its diversity supplier program with a commitment to spend $3 billion with Black suppliers across the U.S. by 2020.[14] And since the launch of its substantive supplier diversity program in 2016, Facebook has invested more than $1.1 billion with suppliers that are certified as having diverse ownership.[15] Beginning in 2021, the company has committed to spend $1 billion annually with diverse suppliers, including $100 million specifically earmarked for Black-owned businesses.[16]

A supply chain diversity program can cover several types of supply chain diversity metrics. A "single-tier" program involves contracting with or purchasing from suppliers that meet some metric of diverse ownership. A "two-tier" program involves contracting with vendors that may themselves not have diverse owners, but can qualify for the program so long as they subcontract with other companies with diverse ownership. Similarly, companies can require that their suppliers *also* implement some type of supply chain diversity program to qualify for RFPs or other types of business contracting arrangements. Mandatory regular reporting on these metrics or annual target spend by Tier 1 suppliers can be a powerful incentive to encourage diversity throughout a company's supply chain.

A multi-tier supply chain diversity program can be particularly important for companies that might struggle to locate Black-owned suppliers that have the scale to serve as Tier 1 suppliers. Companies in this situation should consider taking steps to assist their Tier 1 suppliers in locating Black-owned sub-suppliers. For instance, companies can hold supplier conferences to help Black-owned suppliers develop relationships with Tier 1 or Tier 2 suppliers. Other options for larger companies are the formation of a supplier-development institute, which provides knowledge and insights to Black entrepreneurs on starting and operating successful businesses, or (particularly in higher-tech industries) the adoption of a Science and Technology Entry Program (STEP) to support Black entrepreneurs through training, education, and mentorship.

To help with identifying third-party suppliers that are Black-owned, corporations can look to organizations, such as the National Minority Supplier Development Council (NMSDC), which advocate for and assist Black-owned suppliers with integrating into corporate supply chains. These organizations offer certification programs which suppliers can use to market themselves as bona fide minority-owned businesses. Companies should also consider supporting these organizations through financial support or leadership roles to help these organizations thrive.

One possible way to incentivize the diversification of a company's supply chain is to **tie executive compensation to meeting certain supply chain diversification metrics**. For instance, stock option awards or cash bonuses (as opposed to salary payments) could be tied to achieving certain supply chain diversity metrics.

Endnotes

[1] Dylan Jackson, "The 2020 Diversity Scorecard Shows Progress, but It's More Precarious Than Ever," *The American Lawyer*, May 26, 2020.
[2] Dylan Jackson, "Diversity Scorecard: African American Lawyers Are Being Left Out," *The American Lawyer*, May 28, 2019.
[3] "100 Law Firms Announced as Mansfield Rule 3.0 Certified," Diversity Lab.
[4] Michele Gorman, "Coke's GC Tells Firms To Diversify—Or Risk Getting Canned," *Law360*, January 28, 2021.
[5] For instance, in 2017, HP informed its outside law firms that it may withhold up to 10% of invoiced fees if the firms failed to meet certain diversity goals. Debra Cassens Weiss, "HP general counsel tells law firms to meet diversity mandate or forfeit up to 10% of fees," *ABA Journal*, February 15, 2017. Similarly, in January 2021, Coca-Cola informed its outside law firms that it may withhold up to 30% of invoiced fees if the firms fail to meet diversity goals for two consecutive quarters. Michele Gorman, "Coke's GC Tells Firms To Diversify—Or Risk Getting Canned," *Law360*, January 28, 2021.
[6] For instance, Bank of America's Legal Department has established an annual law firm diversity and inclusion award. *See, e.g.*, "O'Melveny Earns Bank of America Legal Department's 2017 Diversity and Inclusion Business Council Award," June 1, 2017, O'Melveny & Meyers LLP.
[7] 2017 Trends, American Institute of Certified Public Accountants.
[8] John Suarez, "5 Quick Wins to Grow Your Company's Supplier Diversity," January 26, 2020, CVM Solutions.
[9] Id.
[10] Id.
[11] CVM Solutions, "Multi-Tier Diverse Spend Tracking and Why It Is Important," June 15, 2020.
[12] Id.
[13] P&G, "Supplier Diversity at Procter & Gamble," 2020.
[14] "AT&T Commits $3 Billion Spend with Black Suppliers across the U.S. by 2020," February 18, 2019, AT&T.
[15] Sonia Thompson, "How Facebook Uses Their Supplier Diversity Program to Invest In And Connect With Minority Communities," *Forbes*, December 29, 2020.
[16] Id.