



The Compelling Business Case for ESG and DEI – Why Adopting Firms Have a Competitive Advantage

*This material was sourced from Paul Weiss for a presentation at the American College of Bankruptcy Conference in April 2022

What Is ESG?

INTEGRATION OF ESG FACTORS INTO INVESTMENT ANALYSIS, PROCESSES, AND DECISION-MAKING

E nvironmental



Energy efficiencies, carbon, greenhouse gases, climate change mitigation, waste management, pollution mitigation, and water usage

S ocial



Workplace and board diversity policies, human capital management, labor standards, human rights, data privacy, supply chain management, pay/job equity, and product safety

G overnance



Board composition & structure, oversight & compliance programs, executive compensation, lobbying, and bribery & corruption

“[ESG] is capitalism, driven by mutually beneficial relationships between you and the employees, customers, suppliers, and communities your company relies on to prosper.”

- Larry Fink, BlackRock CEO



The Case for ESG and DEI: Why It Matters

ESG is a Major Topic in Boardrooms



CEO Mary Barra on General Motors' Bold Charge Toward an EV Future

In January 2021, General Motors Chair and CEO Mary Barra announced the company would transition to an all-electric light-duty fleet by 2035. But how do you exit a business that today accounts for nearly 100% of your profits?

In the latest episode of Exceptional Leaders/Exceptional Ideas, Adam Jonas, Head of Morgan Stanley's Global Auto & Shared Mobility research team, travels to Detroit to speak with Mary on this seismic shift to electric, transformational leadership and her vision for the future of mobility.

<https://youtu.be/Rdeiq-CXtos?t=151>

BlackRock's CEO Larry Fink recently joined Moody's CEO Rob Fauber for a conversation on what's next in the transition to a zero-carbon future. Watch now #OneBlackRock



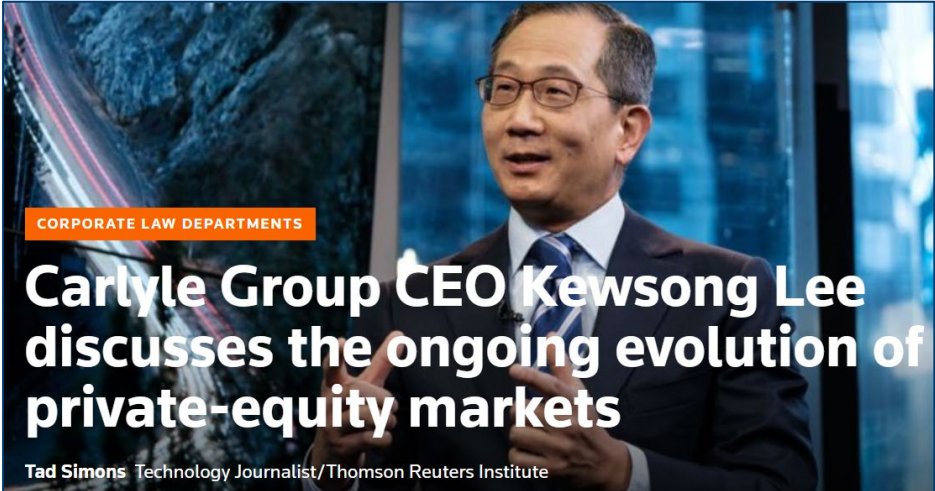
What's next in climate? | A conversation with Rob Fauber and Larry Fin...

<https://www.youtube.com/watch?v=xZgRHfVM7CM>



VIDEO 02:44 MICROSOFT'S SMITH ON Climate tech firms will be 'household names' by 2050, Microsoft exec says

<https://www.cnbc.com/2021/11/03/microsoft-president-brad-smith-climate-tech-race-like-jfk-moon-plan.html>



CORPORATE LAW DEPARTMENTS

Carlyle Group CEO Kewsong Lee discusses the ongoing evolution of private-equity markets

Tad Simons Technology Journalist/Thomson Reuters Institute

The ESG imperative

<https://youtu.be/B4MQ13DfBIE?t=1544>

One way CG is trying to build "better" companies is by integrating sustainable ESG principles of corporate governance into the everyday fabric and culture of the companies it supports. "Everybody is talking about ESG these days, but for us it's not a topic or a product or a metric – it's a mindset," he says. "ESG has to be cultural if you want to do it the right way."

ESG Is Driving Massive Market Investment Decisions

Assets in US sustainable funds totaled more than **\$330 BILLION** as of September 2021, **1.8 times** the amount from the 3rd quarter of 2020. (Source: Morningstar)

Globally, sustainable fund assets reached **\$3.9 TRILLION** in the third quarter. (Source: Reuters)

The 2021 Federated Hermes ESG Investing Survey, a survey of US investment professionals, found that: (Source: Federated Hermes)

81% of investors consider ESG factors in their investment process and

38% of institutions have ESG considerations in their investment policy statement.

54% of investors believe better ESG practices by companies result in stronger returns/valuations over time.

69% of institutional investors believe responsible investing will be a positive for global climate concerns.

By June 2021, there were globally **169 ESG shareholder proposals** in the 2021 annual general meeting season, which had garnered average support of almost 34% of shares voted. In comparison, only 171 resolutions were filed in the whole of 2020, with support averaging less than 29% of shares voted. (Source: Bloomberg)

In 2021, **34** regulatory bodies and standard setters in 12 markets undertook official consultations on ESG. (Source: MSCI)

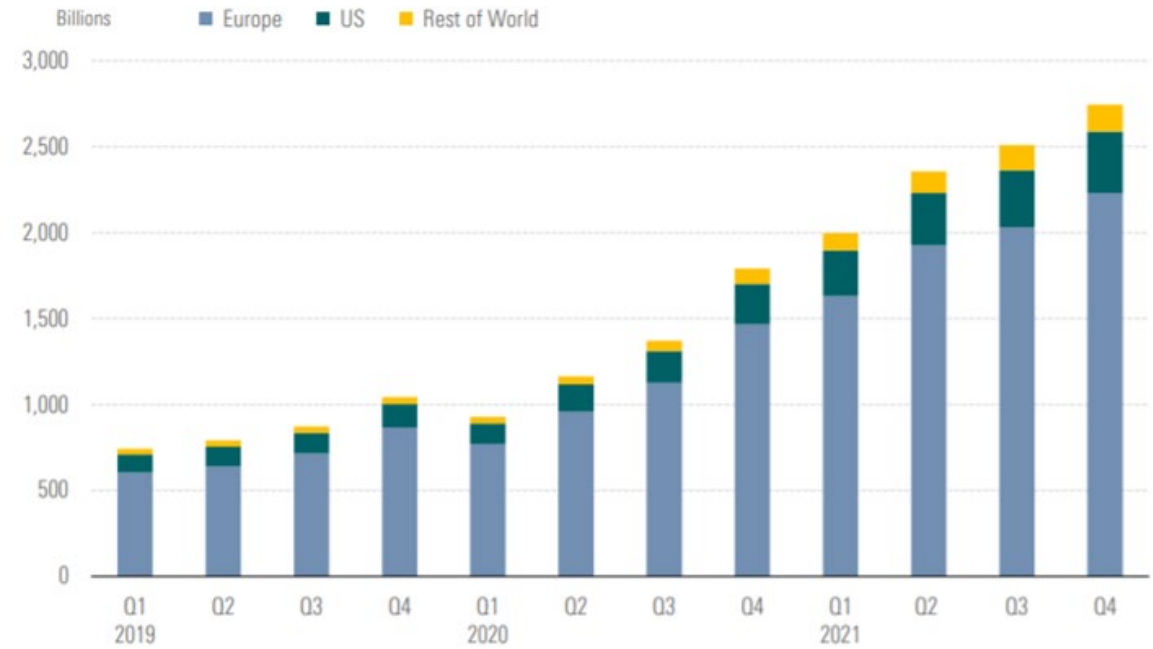
In 2021, **95%** of S&P 500 companies have made detailed ESG disclosures using CDP, SASB, GRI, TCFD and/or IR standards and published them online. 74% of S&P 500 companies have referred to CDP, 72% to SASB, 66% to GRI, and 48% to TCFD in their reports. (Source: Center for Audit Quality)

In 2021, ESG issues have been discussed in close to **20%** of global corporate earnings calls. (Source: MarketWatch)

150 companies in the S&P 500 cited the term ESG during their earnings calls. (Source: FactSet)

The public has consistently maintained that corporate leadership is the driving force behind just business behavior. A survey by JUST Capital found that the majority of respondents (**63%**) believe CEOs of large companies have a responsibility to take a stand on important societal issues. (Source: JUST Capital)

Exhibit 3 Quarterly Global Sustainable Fund Assets (USD Billion)



Source: Morningstar Direct, Manager Research. Data as of December 2021. *Q2 and Q3 data has been restated for Europe (for more details, see the Europe section).

ESG Issues Are Dominating the Headlines

Mentions of 'ESG' and sustainability are being made on thousands of corporate earnings calls

Microsoft shareholders vote for the company to publish sexual-harassment report, in rare win for activists

A P. R. Giant Is Caught Between Climate Pledges and Fossil Fuel Clients

Edelman has worked for Exxon Mobil and Shell while making strong public statements in favor of environmental sustainability. At a recent companywide meeting, employees had some sharp questions.

Activision Blizzard lawsuit alleges discrimination, sexual harassment, and 'frat boy' culture

Target's Pledge to Boost Its Black Workforce Fell Short in 2020

Amazon, Facebook Among Targets in FTC Data Practices Review

GM CEO CALLED OUT BY BLACK-OWNED MEDIA EXECS IN FULL-PAGE AD

Since March 12, 2020, there have been 2,879 lawsuits filed against employers due to alleged labor and employment violations related to the coronavirus

Sustainable Business

Exxon loses board seats to activist hedge fund in landmark climate vote

Fired Amazon worker files discrimination lawsuit over pandemic conditions

Companies Need To Radically Rethink Diversity And Inclusion

Six more women sue Tesla over workplace sexual harassment

Hundreds of Google Employees Unionize, Culminating Years of Activism

The creation of the union, a rarity in Silicon Valley, follows years of increasing outspokenness by Google workers. Executives have struggled to handle the change.

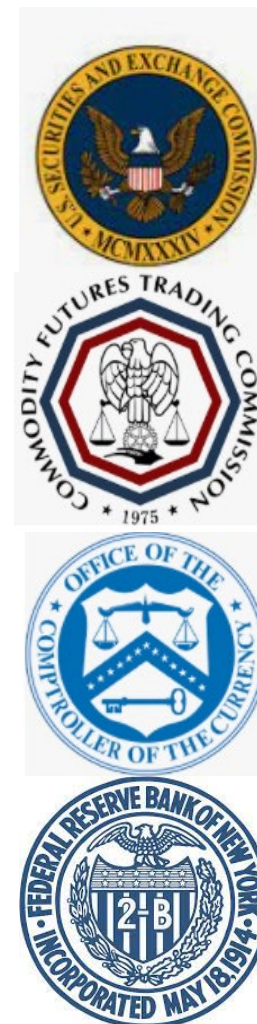
Apple could cut, or raise, executive bonuses by 10% based on their performance on environmental and social issues in 2021

Netflix employees join wave of tech activism with walkout over Chappelle controversy

Growing Regulatory Focus on Climate and ESG

ESG TAKES CENTER STAGE

- ▶ EU, UK and other regulators already require disclosures about commitments on climate, human capital and human rights
 - Increasing impact on clients even if they're in the US but operate globally
- ▶ The Biden Administration has made climate change a top priority for all federal agencies
 - SEC, Federal Reserve, OCC, CFTC, EPA will be promulgating rules requiring significantly more public disclosures about how companies address climate change, DE&I and related human capital initiatives
- ▶ This creates challenges for complex corporations who must not only disclose, but must also support those disclosures with detailed substantiation
- ▶ SEC and other agencies already investigating greenwashing and related claims



Making ESG Ubiquitous ...

August 11, 2021

John Kerry to ABA: “You are all climate lawyers now”

Share:



“You are all climate lawyers now,” John Kerry told the General Assembly of the [2021 ABA Hybrid Annual Meeting](#) in Chicago. The U.S. special presidential envoy for climate was the keynote speaker at the Aug. 4 virtual gathering.



“You are all climate lawyers now, whether you want to be or not... No practice area will be untouched by the climate crisis. Lawyers and non-profit attorneys are needed to assist people in the aftermath of devastating climate-change-driven storms and fires. **Bankruptcy lawyers will need to assess the infrastructure risks of their clients and advise them on safer, wiser planning.** Transactional lawyers will be crucial in the many deals necessary to expedite the transition to greener energy and support the adoption of innovative technology.”

*John Kerry, U.S. Special Presidential Envoy for Climate
(emphasis added)*



Drill Down on DEI: Why It Matters and What It Means

Level-Setting: What Is DEI(B)?

- ▶ What is DEI(B)?
 - **Diversity** is numerical representation of employees across a range of demographics.
 - **Equity** is recognizing that different employees have different skillsets and needs and calibrating responses accordingly.
 - **Inclusion** is a measure of how employees feel valued, respected and encouraged to contribute their ideas, perspectives and concerns.
 - **Belonging** is experiencing a sense of acceptance, attention and support as a valued member of the professional community.
- ▶ DEI(B) is an integral part of ESG.



EQUALITY



EQUITY


The Benefit of DEI

The business case for inclusion & diversity is stronger than ever

Diverse companies are **more likely** to financially outperform their peers

Difference in likelihood of outperformance of 1st vs 4th quartile¹

 Gender

 Ethnicity



15%

2014



21%

2017



25%

2019



35%

2014



33%

2017



36%

2019

McKinsey has been researching the returns on investing in diversity for years and has found that those companies with the highest levels of gender and racial/ethnic diversity in management outperform those with the lowest levels.

Source: McKinsey Diversity Wins: How Inclusion Matters (2020)



Investors Are Taking Action

The Institutional Limited Partners Association, with over **500 member institutions** representing more than **\$2 trillion** USD of private equity assets under management, in 2020 announced a new Diversity in Action Initiative. Members commit to:

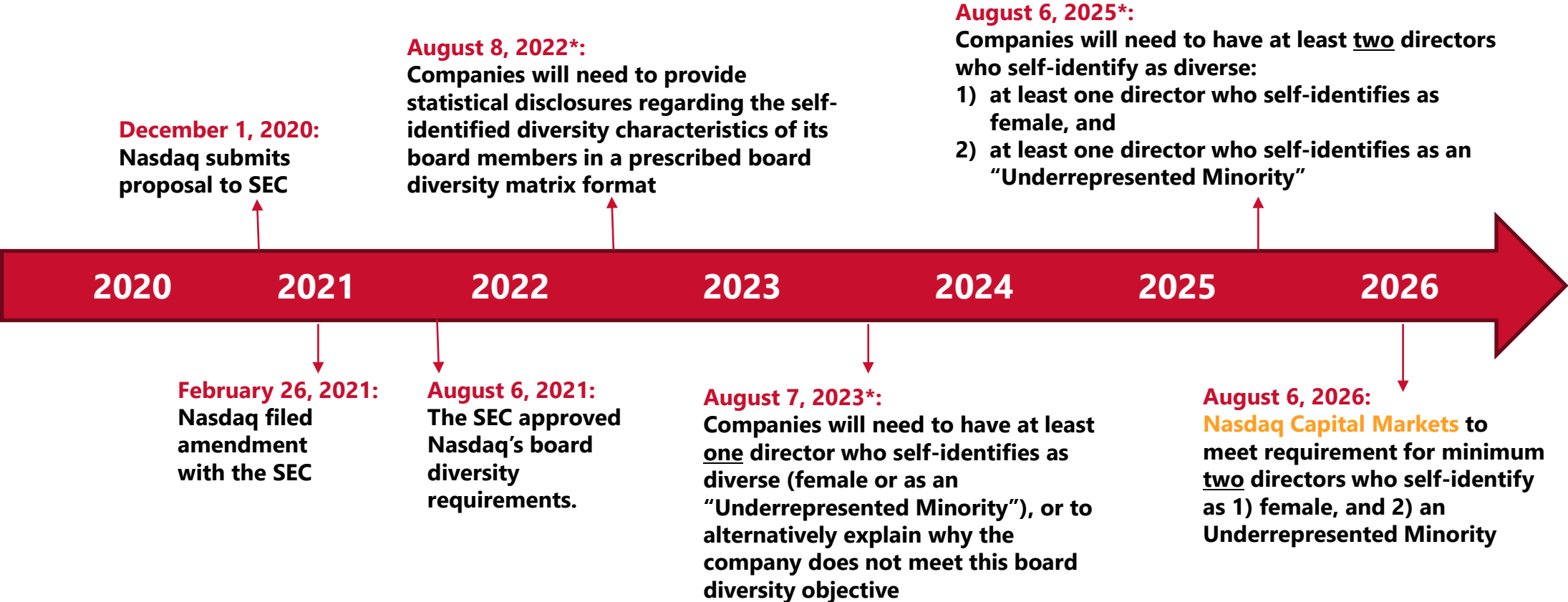
DEI statement	Internal DEI Tracking	Organizational Goals
DEI demographic data	Action (one of optional nine)	Action (one of optional nine)

Founding Members include:

APOLLO	 .406 Ventures
<hr/> THE CARLYLE GROUP <hr/>	
TOWERBROOK	Charlesbank
	Blackstone
 WHITEHORSE LIQUIDITY PARTNERS	 PineBridge INVESTMENTS
 SIRIS	 TPG

Diverse Board Representation Rule: Implications for the Future

IMPLICATIONS FOR NASDAQ GLOBAL SELECT AND GLOBAL MARKETS LISTED COMPANIES



* or the date of the company's proxy/information statement for its annual meeting (if later)



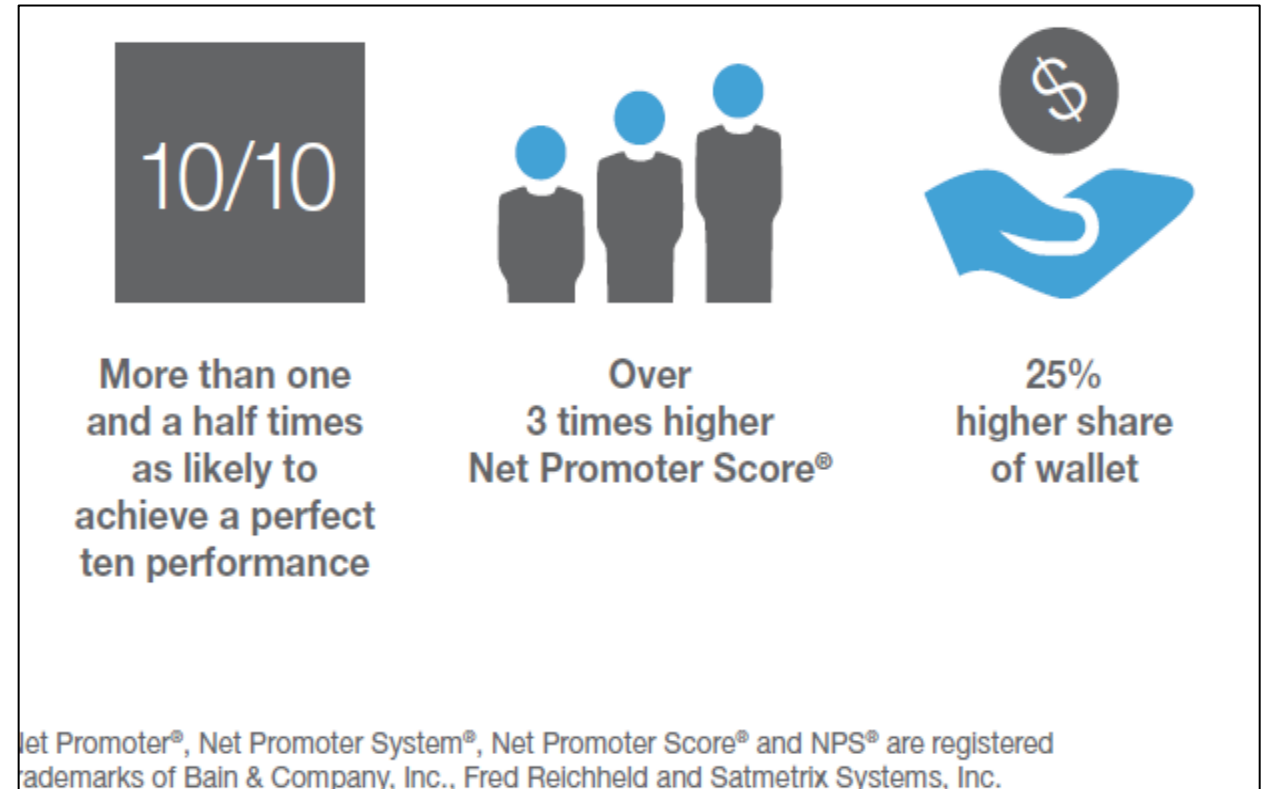
DEI and the Legal Profession: Why It Matters

- ▶ Women and people of color are the majority of law students today and they are placing increasing emphasis on DEI when making career choices
- ▶ Women and/or people of color were over 50% of new GCs of the Fortune 500 in both 2019 and 2020 and there is increasing pressure on in-house departments to diversify
- ▶ Clients are increasingly demanding diverse teams from their law firms



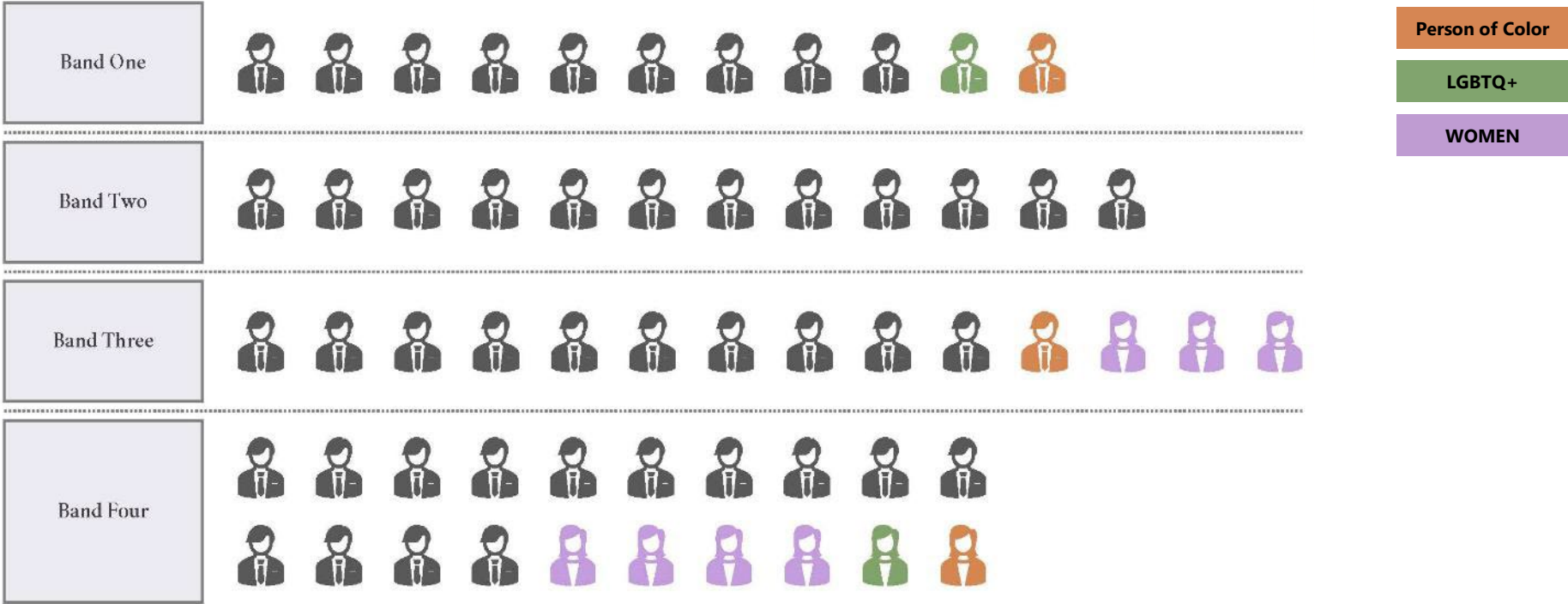
Black General Counsel 2025 Initiative aims to have 100 100 Black GCs of Fortune 1000 Companies by 2025.

Benefits of Diverse Teams According to In-House Counsel



Source: Acritas Diversity Report 2016

Does the Bankruptcy Profession Reflect The (ESG) Future?



American College of Bankruptcy Commission on Diversity, Equity and Inclusion
Chambers and Partners – USA Nationwide Bankruptcy/Restructuring Elite Legal Rankings – 2021

