Are the general counsel really serious about this initiative?

Yes. We have experienced rapid change in our American demographics, which is only accelerating. To meet the needs of our customers; to recruit and retain the best and brightest talent; and to have diverse teams that bring different perspectives to solve complex problems, our businesses must work diligently to have a diverse workforce.

General counsel also view their outside counsel law firms as an extension of their legal teams – the rationale that drives their businesses to seek a diverse workforce equally applies to their law firms. If law firms fail to diversify, companies suffer because they do not have the best and brightest legal teams solving our most complex business problems.

Many companies have encouraged, and even pushed, the firms to diversify. However, the statistics prove that despite their efforts and monetary spend, changing the landscape of the legal profession has not been successful. As a result, companies have grown increasingly frustrated because their request has been translated by many firms to mean diversifying very junior associates. This irritation is driven by the failure to see diversity at all levels of responsibility within the firms they retain – which is necessary to obtain the full value of diversity. The companies just are not getting meaningful progress they expect.

Individual data on their individual matters may look good, but the overall data of law firms and the profession as a whole shows essentially no improvement in gender or other diversity at the higher levels of responsibility. As women and minorities decrease as you rise up in the ranks of the profession, it appears firms are merely rotating diverse associates to comply with client requests.

Through data transparency focused on the entire firm, companies will know what they are really buying and can make rational decisions on what they want to buy or not buy.
It’s known that the initial request to participate in this initiative was directed to the general counsel of the Fortune 1000. Must a signatory be a general counsel of a Fortune 1000 to participate in this initiative?

No, absolutely not. The initial letter was sent to the general counsel of the Fortune 1000 only because that was the mailing list that was available. We would value participation by all general counsel who are making decisions on retention of outside counsel. That would include governmental entities, non-public companies, not-for-profit entities, significant subsidiaries, and U.S. entities of multi-national operations. The important thing is to have law firms know that that general counsel are looking at the data and using it in retention decisions.

Will the law firm’s data be published?

No, unless a law firm voluntarily chooses to publish its own completed survey, e.g., put data up on its web site, a law firm’s individual data will not be published. It is anticipated that firms may elect to publish their survey results on their web sites. Some have already indicated they will. Hopefully over time, all will. Other firms should consider publishing their diversity data. Publication of individual firm data would not only be good transparency, but it would benefit those with good diversity as more clients will be interested in doing business with diverse law firms. While the names of firms participating in the survey will be listed, all response information will be aggregated and released in a statistical or summary form. In addition, ABA will not report results in categories small enough to allow the identity of any participating law firm or individuals to be inferred. Thus, the ABA’s research findings will not identify the names of individual attorneys.

Will law firms have a significant burden in responding to the Model Diversity Survey?

No and quite the opposite. Currently, firms must respond differently to dozens (and in the case of large firms, hundreds) of requests for diversity data. Those requests are each different and use inconsistent definitions for similar questions, which require very different answers.

This survey will allow the firm to complete it and provide the same results to every organization that adopts the survey. Moreover, the Working Group at the ABA (“Working Group”) that drafted the Model Diversity Survey included representatives from law firms as well as those from corporate legal departments. Their view remains that this Model Diversity Survey is simpler than many they receive.
Completed once annually, the Model Diversity Survey can be provided to any requestor(s) in the time it takes to send an email. Its uniformity in questions and use across many law firms ensures more accurate data and comparison. It was the ease of use, lack of the need to answer duplicate surveys, and a more uniform measurement tool that led the Association of Law Firm Diversity Professionals to endorse use of the ABA Model Diversity Survey.

**Will many firms need to complete the Model Diversity Survey?**

Yes. Based on the number of general counsel that have already signed on to this initiative and agreed to use the Model Diversity Survey, we anticipate every major law firm in America will receive and answer it. One of the great benefits of the Model Diversity Survey is the broader the use, by law firms of all sizes, the better and more accurate the data that will be collected.

**What types of law firms are meant to answer the Model Diversity Survey?**

All law firms are welcome to answer the Model Diversity Survey. One of the benefits of the Model Diversity Survey is that it can be answered by firms from small to large. In fact, the Working Group specifically included in the Model Diversity Survey’s definitions and identification sections a place to identify the size of the answering law firm and to denote whether the firm is women-owned, minority-owned, disabled-owned, or LGBT-owned.

**Do the law firms need to respond to all the questions on the survey?**

Yes, law firms are required to answer all of the questions in the online Model Diversity Survey in order to submit. Companies with firms that do not respond to the Model Diversity Survey are encouraged to take that action very seriously in determining whether they wish to continue to use that firm. Companies that sign on to this initiative are encouraged to share with each other when firms have not answered completely and/or when they decide to stop utilizing firms for that reason.

**What should companies do if a law firm asks that their data be kept confidential?**

A company can inform law firms that it will not publish or share individual survey results with a third-party without their consent. That company will use that restriction as part of our decision on whether to engage the firm or continue to use the firm.
Do the law firms have to provide their data to the ABA?

The law firms that are asked to complete the Model Diversity Survey submit their completed response to the general questionnaire to the ABA portal found at [http://www.americanbar.org/diversity-portal/diversity-inclusion-360-commission/diversity-survey.html](http://www.americanbar.org/diversity-portal/diversity-inclusion-360-commission/diversity-survey.html). Of course, the decision to do so will be theirs and that should not stop them from responding to the company requesting the data. Individual law firm data, while available to any signatory company requesting it, will not be published by the ABA.

Should “Client Matters” document found at the end of the Model Diversity Survey be provided to the ABA?

No. That is confidential information and should only be provided to a client.

Do companies need to ask the law firms they use to answer all the questions to sign on to this initiative?

To sign on to this initiative, companies will need to share the link to the Model Diversity Survey with the outside counsel for which they would like demographics data and share the list of law firms they invited to fill out the survey with the ABA. The important thing is that law firms understand that companies want to see their diversity data, and it makes a difference in companies’ buying decisions.

If law firms provide their data to the ABA, how will it be used/published?

The data will be anonymized and aggregated. It will not be published or disclosed as specific firm data. The hope is that with aggregated data we can all see how the profession is changing over time. Further, it will allow the companies to compare the data of their firms to the aggregated data and make better buying decisions.

When do companies ask their significant firms to provide their data to them?

General counsel can start now, which may be most appropriate for collecting diversity information on multiple firms you are considering for a new engagement. Because the data is always as of December 31 – if you ask for the Model Diversity Survey to be filled out now, the data should be as of December 31 of the year that just ended. For the firms that provide significant services to you, the view is that clients will send a request to law firms at the
beginning of January asking for their data as of December 31 of the previous year to be provided by the end of January of the current year.

**Within certain locations/cities how can companies work together to make sure the firms realize the data is important to them?**

We have heard from some companies that they plan to get together with others in their area to talk to the major law firms they use about their data and steps they plan to make in order to improve. This is encouraged. It will be incredibly powerful for firms to hear from several of their major clients – together – that companies are watching the data and it matters.

**Are there any plans to create a list of the firms that have been requested to provide their data as well as those that have, so when companies ask for it, the process is efficient?**

This is a great idea/suggestion. The ABA Commission on Racial and Ethnic Diversity in the Profession will manage the Survey in the future and will work to create a repository for this information.

**How should my company define “significant law firms” or a “significant matter” when determining when to use the Model Diversity Survey?**

To paraphrase Justice Potter Stewart, you know the matter when you see it. For simple non-reoccurring matters — e.g., an immigration application for a single employee — it may not be worth the administrative time on both sides for the firm to complete the Model Diversity Survey. As to those you consider “significant law firms” on your panel, those firms that fall within the top 80% of your outside counsel billings are “significant” and should be included.

**How do I ask my significant law firms to provide their data to my company?**

The ABA will provide a template letter/email that can be modified by the company and will be provided for use by participating companies by the end of November of each year. Upon becoming a signatory, this same template, along with a hard copy of the Model Diversity Survey and these FAQs, will be provided.
Where will my company’s name appear as supporting this initiative?

On the ABA website found at [http://www.americanbar.org/diversity-portal/diversity-inclusion-360-commission/diversity-survey.html](http://www.americanbar.org/diversity-portal/diversity-inclusion-360-commission/diversity-survey.html). This website will be periodically updated. Your company’s name will also appear from time to time in various articles/publication demonstrating its support of the initiative.

Why is the ABA doing this as compared to other groups?

The ABA represents all attorneys in America, including law firms, solo practitioners, government, not for profit, in-house, etc. It is not affinity or diversity specific – in fact, the majority of the association is not minority. It is not geographic specific. It is not large firm/large company specific. The ABA is the largest and most diverse organization within the legal profession. It is hoped that the Model Diversity Survey reflects the most applicable and widely available diversity survey in the legal profession.

What else makes the Model Diversity Survey different from those of other groups?

There will be no cost to obtain or use the Model Diversity Survey, even if your company or attorneys are not members of the ABA.

Do firms have to use the “Client Matters” template at the end of the Model Diversity Survey?

No. Use of the “Client Matters” template at the end of the Model Diversity Survey is up to individual companies and individual firms. Each company can collect individual team data in its preferred way, whether through the use of the “Client Matters” template, an electronic case management system, or any other determined methodology.

Do companies have to use the “Client Matters” template at the end of the Model Diversity Survey if they prefer to focus on alternative billings, as compared to hourly billings?

No. But, keep in mind many firms “shadow bill” so you can figure out who is really working on your matters with these questions. In addition, for alternative fee structures, the overall makeup of the firm becomes all that more valuable since the company may not know who is working on its matters.
Can companies still send other surveys to the firms they use?

Yes. While it is hoped that companies will coalesce around the Model Diversity Survey and use it for the profession to collect uniform data, participating companies are still able to send other surveys to law firms that they utilize.

Does the use of this Model Diversity Survey impact the use of other diversity surveys?

The Model Diversity Survey is not intended to replace or impact the use of other diversity surveys. Indeed, all transparency of data is valuable. Nevertheless, one of the reasons law firms have supported use of the Model Diversity Survey is that it reduces the need to complete multiple surveys. So, it benefits law firms and the profession when purchasers of legal services interested in diversity work together. We support and encourage others to continue working to help us all improve in this regard.

Is there a time frame when one has to agree to join the general counsel initiative?

No. There is no deadline to join this initiative. It is the hope that more companies will join over time. And the sooner the better to continue to build momentum.

If our company chooses to join this initiative, who should be advised?

Keevin Woods, Director, Commission for Racial and Ethnic Diversity in the Profession at the American Bar Association, keevin.woods@americanbar.org and resolution113@americanbar.org.

Will the survey be changed over time?

• The Model Diversity Survey was accepted by participating general counsel as a tool that would be simple, consistent, and on the same time frame. They accepted these representations and the Model Diversity Survey form in agreeing to use it.
• The Economics Case subcommittee of the Diversity and Inclusion 360 Commission – the Working Group – reviewed dozens of diversity surveys and debated the most common and relevant subjects to include. The Working Group then presented its suggestions to the entire ABA Diversity and Inclusion 360 Commission. That Commission unanimously voted to approve this form of the Model Diversity Survey. To substantially deviate from it would be inconsistent with the intent of the Commission’s appointed members.
• The ABA will always be open to input and suggestions for continuous improvement. These suggestions should be directed to the ABA staff member liaison to the Commission.

Updated February 2018
on Racial and Ethnic Diversity, currently Keevin Woods keevin.woods@americanbar.org and resolution113@americanbar.org.

- The Model Diversity Survey will only be modified once a year after suggestions are reviewed and considered by the ABA’s Commission on Racial and Ethnic Diversity.
- In any revisions, the ABA will keep in mind that the Model Diversity Survey was created with a careful balance on the need for key data against simplicity (more information would clearly be interesting, but if the Survey becomes too complex, it may become too burdensome and less useful).
- It is not anticipate that any significant changes will be made to the Model Diversity Survey (if they were made, we do not capture consistent year over year data).
- The Model Diversity Survey should remain no more than 4-5 pages and the “Client Matters” template no more than 1 page, with the latter to be expanded only by individual companies as desired.