



GEORGETOWN LAW

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Keynote Address from Chris Brummer

On the Occasion of the SEC Black History Month Celebration

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Hello wonderful friends, colleagues and former students. It is a pleasure and honor to be with you to celebrate and reflect on Black History Month. And frankly a bit terrifying. To follow Henry Louis Gates Jr.'s powerful remarks for this occasion just one year ago is a position that no professor would envy. But it is an opportunity to move the needle on an important conversation, and I want to thank Acting Chairman Lee for her support not just here but in the larger conversation taking place throughout the nation.

As has been remarked many times, yet still never enough, Black history is America's history—and if anything, financial regulation proves the point. When calamity hits the stock market, Black people feel it too, if not always in terms of lost savings, then certainly in terms of lost jobs when firms resort to layoffs. When charlatans peddle dangerous or risky financial products, whether stocks or mortgages, they tend to do so in our communities first. When rules are written concerning how and under what conditions individuals can access credit, or the obligations financial institutions have to their communities, we, like our fellow Americans, see the impact play out in the economic lives of our families, friends and neighbors. America's lifelines are our lifelines.

And down through the decades, African Americans have profoundly shaped American financial regulation – through that alphabet soup of agencies from the Federal Reserve to the FDIC to the SEC and CFTC and beyond. We walk in the steps of giants. From Andrew Brimmer, the son of sharecroppers who earned a Ph.D. at Harvard and a seat on the Federal Reserve Board, to Sharon Bowen, one of the first Black women to become a Wall Street partner and the first Black person ever to serve as a Commissioner on the CFTC. Their work, from Raphael Bostic's historic presidency in Atlanta to a Head Start teacher from Watts now chairing the House Financial Services Committee, is the work of our ancestors. Work to agitate. To educate. To protect. To make our union more perfect, and the markets that drive it, a little fairer.

And it is your work as well. The work of so many Black history makers—American history makers—who may not be in the papers every day. But whose work often is. Those of you watching who earn the

satisfaction of knowing that you are part of something special and essential for our great American family. And for the Black community.

Now I've said many times that financial regulators write the rules of capitalism. Their decisions determine how capital and opportunity are allocated. Who enjoys the protections of the government. The information about companies that are shared with very diverse stakeholders. They also make decisions that directly impact assets, their prices and value, and the gains and losses of those who hold them.

Yet despite its importance, or perhaps because of it, Black Americans, for all of their great history, have been singularly excluded from fully participating in the regulatory process.

I highlighted the problems in my Working Paper *What do the Data Reveal about (the Absence of Black) Financial Regulators?* I intentionally kept the parenthesis in the title, because the data tell us just as much about financial regulators generally, and the legitimacy of the system that empowers them, as it does Black regulators themselves. But the Working Paper brought to light headline numbers that were stark: As of July 4, 2020, of the 327 people who had been appointed to regulatory posts, only 10 had been black. A number that represents roughly 3% of 327 appointees, and a statistic that since then has actually gotten even worse.

Today, as we reflect on where we've been—and how much further we have to go—I'd like to share some of my new data: Information relating to not only leadership at the top of agencies, but also some historical data on how leadership within agencies has for generations been foreclosed to many of the best and brightest in the Black Community.

As many of you may recall, the Working Paper highlights that there has never been a Black Chairman of the SEC, CFTC, Federal Reserve, or FDIC. It also highlighted that there has never been a Black Comptroller of the Currency or Director of the CFPB. It noted that indeed, there have only been two Black heads of financial regulatory agencies— Mel Watt, who served as the director of the FHFA, and Rodney Hood, who was until recently the head of the NCUA.

Context, though even here, is important. We know that many of our agencies and mandates were born of the New Deal—a time period when Black Americans saw the best and worst of financial regulation. A period in which great institutions like the Securities and Exchange Commission were created to protect investors, and a time where practices like Redlining and segregated housing and lending discrimination became government policy, and were financed by banks and US capital markets. So nuance is important. There is always more to a story.

And so numbers are, I've found, quite helpful in putting into proper context just how severe the barriers have been for the Black community. We all see lots of missing diversity in regulatory leadership, but how significant is it? Well, we have new numbers to help provide some perspective. According to our preliminary data compiled November 24, 2020, there had by that point been approximately 129 heads of the major regulatory agencies since the founding of the Federal Reserve in 1913.

Two have been black.

Table A.1
 Black Leadership of Financial Regulatory Agencies
 (Historical)

	Total Historical Number of Black Agency Leaders	Total Historical Number of Agency Leaders	Percent of Black Agency Leaders
CFPB	0	2	0.00%
CFTC	0	13	0.00%
FDIC	0	21	0.00%
FHFA	1	3	33.33%
Fed	0	16	0.00%
NCUA	1	11	9.09%
OCC	0	31	0.00%
SEC	0	32	0.00%
Total	2	129	1.55%

Statistically, this translates to **1.55%** of all financial regulatory leaders. Notably our data do not include heads of defunct agencies like the OTS, where none of its half dozen Directors (0%) were Black. It also doesn't reflect changes we have already seen since July.

Now, these numbers are sobering in and of themselves. But the original Working Paper also highlighted how the inequality and absence of opportunity reflected in political appointments has replicated itself internally in our agencies—a point underscored in a near absence of Black people in the critical policy leadership roles and positions in Commissioner and Chairman offices.

We emphasized in our analysis at that point that our data only represented a snapshot of one moment in time, just one day. And we did not have any information as to how representative that data were when compared to the historical norm. But since releasing the paper, I decided to do broader a sweep of history to see how many Divisional heads there have been at either the SEC or CFTC. As you know, for all of the importance of Chairmen and Commissioners, it's the Division heads that are relied on to get things done.

They execute agendas. Prepare documents and litigation for review and voting by Commissioners. They give speeches, prepare guidance, and provide moral and legal leadership for the team.

This, I figured, would be valuable information. And could demonstrate that perhaps we were unlucky in our original snapshot.

But the data remain unambiguous.

Table A.2
 Black Divisional Directors at the SEC and CFTC
 (Historical)

	Title	Total Number of Black Directors of Division in History of Agency
SEC (1934-2020)	Division, Corporation Finance	0
	Division, Economic and Risk Analysis	0
	Division, Enforcement	0
	Division, Investment Management	1 (1998-2005)
	Division, International Affairs	1 (2018-2020)
	Division, Trading and Markets	0
CFTC (1975-2020)	Division, Clearing and Risk	0
	Division, Enforcement	0
	Division, Market Oversight	0
	Division, Market Participants	0
	Division, Data	0

The findings above add yet more evidence of, and context to, a multi-generational absence of Blacks from financial regulatory leadership posts.

Now, I am not presenting this data to discourage. Now is not a time to quit. America is, as President Obama eloquently stated, a nation that is a constant work in progress. “That's why we are exceptional” he said. “We don't stop. There's a gap -- there always will be -- between who we are and the ‘perfect union.’” But what makes this country exceptional, what makes us Americans is that we speak out against injustice—regardless of our race—for those who can't or have no voice, and make the sacrifice necessary to shrink that gap, to make it smaller, over time.

It is work that the heroes of Black history—America's history—know too well. Not just the legends of our history books like Frederick Douglas and Dr. King, but also the countless black, white brown American heroes whose names may not have been recorded but even today march, as Obama recognized, to change this country for the better.

But I will be honest. The obstacles here, in our industry and field, are enormous. The democratic deficit in regulatory policy is not a Black problem, it's an American problem. And it's one we've seen before. Fixing it will require the same singularity of attention and focus as was the case when breaking down barriers decades ago in country clubs, lunch counters, swimming pools and water fountains.

That said, the politics facing what is essentially the integration of our regulatory leadership ranks are complex. For all of our talk on the racial wealth and income gaps, the importance of regulators—which you know and understand—is only now beginning to be properly appreciated in the broader public. Obviously, the major catalyst has been the death of George Floyd and a growing awareness that social injustice is rooted in or amplified by economic injustice. But any time new faces enter a conversation, they will face resistance from entrenched interests who are happy with the status quo and their own privilege—interests that span ideologies and parties.

I have observed far too many times how Black Americans face not only higher standards for leadership roles, but also double standards. My data show that as a group, Black political appointees to regulatory agencies have been better educated than their nonblack peers, and frankly have had to be to even be considered. And it's my sense that not just the would-be politicians face elevated or unjust expectations: Black civil servants have complained for years of the need to be twice as good for the same job as their white peers—from the early days of the CFPB to the great chambers of the Federal Reserve, where only two of 400 economists are Black.

Meanwhile, Black nominees or prospective nominees to regulatory agencies are almost uniformly attacked by critics for having corporate ties, or supporting corporate interests, whereas a blind eye is cast to white nominees who have made millions on Wall Street or Silicon Valley. Meanwhile, critics fail to fully contemplate the disparate impact such logic holds for those Americans who often find themselves the first in their families to secure education, and do not have the luxury of family inheritance or connections to build their financial lives. And they ignore the serious ethical and moral questions that arise when agencies are dominated by former Senate staffers as patronage rewards in a system where few Congressional aides are Black.

It's for reasons like these I believe that the process by which leadership appointments are made to regulatory agencies requires dramatic reform. The talent pool for our federal regulatory system is limitless. There are thousands of heads of CDFIs and MDIs, law firm associates and partners, academics,

financial services professionals, and state and local regulators—and federal civil servants—ready to serve and lead. The pipeline myth of Black talent is as disingenuous as it is insidious.

Given the obstacles, policymakers need to go big on democratizing our financial agencies. In the wake of a collapse in public trust in government, sprawling inequality, and persistent historical inequalities, diversity goals should be formulated not only in the context of hiring going forward, but also in light of the existing makeup of institutions. There are virtually no appointed Black or Latino financial regulators, anywhere, in the U.S. government right now. Wall Street is more diverse than the leadership of our regulatory agencies. As we work to right-size decades of neglect—and structural racism—agencies should aspire to achieve workforce outcomes where institutions and their leadership reflect the great heterogeneity and diversity of the country. One or two appointments even at the highest levels of leadership won't begin to change the overall level of representation. We need a “democratic stimulus” in our agencies, from the top down.

The stakes couldn't be greater. Financial regulation has been critical to Black people in this country since the Panic of 1873, and the failure of the Freedman's Bank which due to risky investments in railroad companies and real estate wiped out the first generation of wealth created by newly freed African Americans. Since that failure, which underscored in part a failure of the all-white trustees of the bank to understand the nuances, vulnerability and needs of the communities they served, Black people have sought to bend the arc of history and gain a footing into a system where they have long been ignored.

Over the years, the concerns of the community have percolated up from time to time, asking questions that may seem peripheral for some, but in fact lay at the heart of our agencies' regulatory mission. Like who is a “reasonable” investor—and what is “significant” given the total mix of information? What does disclosure mean in a world where transparency about corporate conduct concerning diversity, equity and inclusion can have widely disparate economic repercussions for investors' personal lives? When Federal Reserve interventions prop up assets, what does this mean for the racial wealth gap? Do Black Farmers and Latino ranchers have needs for hedging and risk mitigation tools, or stronger protections, that may depart from multinational end users and large corporations?

I can't imagine how to address these and countless other questions without everyone around the table, with experiences from all our communities taking part in our great American journey.

The promise of our institutions rests on the bravery, judgment, and thoughtfulness that so many of our regulators bring to the table. Regulators of every background – Black, white, Latino, Asian – come to work to make a difference. But it is time to ensure that in our mission to create ladders of opportunity we do not embed infrastructures of inequality. Together, we can create a new chapter of Black history—and American history—that our posterity will be proud of. It's time to take those first steps.

I am delighted to take your questions.