

Why LGBTIQ+ inclusion should matter to investors

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LGBTIQ+ rights are often overlooked in investments. They matter from a financial, social and legal perspective. In this paper we provide steps every investor can take to take these rights into account.

In recent years, investors have been paying increasing attention to Diversity, Equity, and Inclusion – DEI -in part because of social justice protests which have swept the globe-. Though these terms collectively refer to corporate values, practices or policies that ensure that people of various backgrounds and social identities feel welcome and can contribute and thrive in the workplace, they each have a distinct definition. Broadly, **Diversity** refers to the presence of differences within a given setting; in the workplace, that may mean differences in race, ethnicity, gender, gender identity, sexual orientation, age and socioeconomic background. **Equity** is focused on fairness – ensuring that everyone has access to opportunity, resources and power. **Inclusion** captures how employees experience the workplace and the degree to which employees feel they can make meaningful contributions. Much has been written about the importance of DEI to employees so that they feel ‘welcomed, valued and supported.’¹ In our view, an important aspect of DEI in the workplace is the inclusion of LGBTIQ+ employees.

By LGBTIQ+ we mean

LGBTIQ+ is an initialism that stands for Lesbian, gay bisexual, transgender, intersex and queer identity and experience.²

Despite progress in corporate culture, legislation, and regulations, LGBTIQ+ employees still face challenges and hardships in their daily lives- including in the workplace. In 2020 for example, 40% of LGBTIQ+ employees surveyed by the Boston Consulting Group in the United States (U.S.) reported not being out at work³ with 26% of employees wishing they could acknowledge their sexuality in the workplace. Even worse, 75% of respondents reported at least one negative interaction pertaining to their LGBTIQ+ identity in the workplace during the past year, and over 40% reported experiencing over ten types of these interactions.

BUT SURELY THE SITUATION IS BETTER IN EUROPE...

Under European Law, LGBTIQ+ people have benefited from protections from discrimination on the grounds of sexual orientation at work for more than two decades. However, the acceptance and integration of LGBTIQ+ community varies tremendously across the region, and progress in terms of

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ensuring equal rights for all has been uneven. For example, a recent report documents signs that progress on LGBTIQ+ equality has regressed in some countries during the coronavirus epidemic.⁴ Such shifts are part of a worrying trend that has seen a variety of anti-LGBTIQ+ policies adopted across parts of Eastern Europe alongside increased attacks on the advancement of LGBTIQ+ rights globally.⁵

THE SHAREHOLDER CASE FOR INCLUSION

As investors, we believe that there are both moral and financial arguments which support creating inclusive workplaces. Shareholders have a clear interest in ensuring the companies they invest in create environments where employees can feel welcomed and safe. The moral argument is clear: all individuals should have equal rights and access in society. Moreover, our modern workforce is increasingly diverse in terms of personal characteristics such as race, ethnicity, gender, national origin, religion, gender identity, and sexual orientation and therefore building workplaces where inclusive policies and practices are the norm has become critical. But the business case may be even more compelling for some. For individual employees, LGBTIQ+-supportive policies result not only in less discrimination and increased openness about being LGBTIQ+, but have also been found to directly correlate with LGBTIQ+ employee engagement, productivity and effectiveness, lower turnover and higher retention rates, hence directly impacting the bottom-line.⁶

At the firm level, evidence is mounting that diverse and inclusive workplaces attract and retain top talent, improve customer orientation, decision-making, employee satisfaction, and help secure the organization's license to operate.⁷ We believe that talent is equally distributed across all people, though opportunity is not. To ensure the companies we invest in can benefit from the range of experiences and expertise that a diverse workforce can bring, we encourage them to prioritize diversity, equity and inclusion as part of their human capital management through for example:

- direct dialogue with companies in our investment portfolios
- by exercising our proxy votes in favor of greater diversity,
- filing shareholder resolutions in favor of setting targets for great diversity in senior management and
- Supporting public policy that demands better disclosure on diversity metrics at every level of the firm

Research from the Williams Institute has also shown that LGBTIQ-supportive policies lead to positive business outcomes, lower staff turnover, and increased job satisfaction.⁸ Strong diversity and inclusion practices, in our view, are linked to long-term shareholder value creation.

INCLUSIVENESS AS COMPETITIVE ADVANTAGE

The creation of a safe and inclusive space for all has social and economic benefits for employees, customers, suppliers and the wider community, but is of particular interest to the LGBTIQ+ community.⁹ A good example is Accor (Ibis) Hotels which was among the first large hotel chains to partner with the Proud Certified training program. Thirty percent of LGBTIQ+

travelers fear judgement when they check into a hotel and certification by a third party ensuring a welcoming environment creates goodwill and the likelihood of repeat business¹⁰ The partnership recognizes the strong demand from LGBTIQ+ travelers for spaces where they can feel welcome and safe.

RECRUITMENT AND RETENTION FOR INCLUSION

In 2016 Trillium filed a shareholder proposal at Arkansas-based transportation company J.B. Hunt asking the company to amend its equal employment opportunity (EEO) policy to protect all (LGBTIQ+) employees. At the time, LGBTIQ+ employees did not benefit from workplace protections against discrimination in 28 states in the U.S. The proposal led to conversations with senior management and the proposal was reviewed by the board. Despite the request to add just 5 words (sexual orientation and gender identity) to the EEO policy the company declined to make this change. In accordance with the shareholder proposal process Trillium presented the proposal at the company's June annual meeting in Lowell, Arkansas. Although J.B. Hunt management advised shareholders to vote against these changes, the proposal received a remarkable 54.7% vote.¹¹ In response to the majority vote, the board immediately appointed an internal task force to study, compile, and identify the practical effects of amending its EEO policy to include sexual orientation and gender identity or expression. One month later the board met again, and the J.B. Hunt directors approved the policy amendment, ultimately providing protections for its 19,000 employees across the country.¹² Happily, in 2020, the Supreme Court extended employment protections across the U.S. to LGBTIQ+ workers from workplace discrimination.

THE BIGGER PICTURE

In this article we focus on the discrimination of LGBTIQ+ employees and the effects it has on them, on companies and on shareholders. We strongly believe that much of this analysis is not exclusive to LGBTIQ+ employees but there are similarities between this analysis and those for employees of color, with mobility challenges, neurodiversity etc. We choose to focus on one aspect of diversity – recognizing and encouraging the use of this approach with respect to other disadvantaged groups and especially when these groups overlap.

GLOBAL APPROACHES TO LGBTIQ+ INCLUSION

Unsurprisingly, the laws and regulations regarding the disclosure of personal sensitive information including sexual orientation and ethnicity differ considerably around the world as do attitudes towards the LGBTIQ+

Despite recent court cases advancing the protection of LGBTIQ+ rights, there remain at least 69 countries where homosexuality is criminalized and only 77 countries have employment non-discrimination laws that protect the rights of LGBTIQ+ workers.¹³

Globally, customs and legislation differ. While this article focuses on the US and Europe investors can always ask companies

wherever they operate globally to support the creation of an inclusive environment for their own employees. For example, companies should ensure that family and medical benefits extend to LGBTQI+ families. In cases where this is prohibited by law companies should seek to offer health insurance and/or pension plans that allow the employee to name a beneficiary who is unrelated to them. Some health insurance and/or pension plans may include naming a beneficiary of the employees' choice. Companies can be a positive force in defending the rights of their LGBTQI+ employees even in countries where their rights may not be legally recognized. Before the right to marry in the US was granted to same-sex couples for example, many companies such as Ford extended benefits to the same sex partners of employees.¹⁴

US AND EUROPE – SOME CULTURAL DISCLOSURE DIFFERENCES THAT ARE GOOD TO KNOW FOR INVESTORS

In the U.S., all companies with more than 100 employees are obliged to report to the Equal Employment Opportunities Commission (EEOC) concerning employees' job categories, and ethnicity, race, and gender. However, there is no requirement to make these reports public nor is there a requirement to collect information on the sexual orientation or gender identity of employees. A relatively new requirement approved by the Securities and Exchange Commission (SEC) in 2021 requires companies listed on the NASDAQ U.S. exchange to have at least two diverse directors, including one self-identified woman director as well as one director who self-identifies as an underrepresented minority or an LGBTQI+ individual. Conservative groups and seventeen states controlled by Republicans have supported a lawsuit challenging the diversity rule. In the face of this growing backlash, fueled in part by populist politicians across at least the U.S. and (partly) Europe, we believe that meaningful inclusion of marginalized populations within the workforce is an important facet of responsible business behavior and an additional indicator of long-term thinking by corporations.

There is also reasonable cause to believe that LGBTQI+ inclusion is legally threatened in the future. Though a Supreme Court decision in 2019 (*Bostock v. Clayton County*),¹⁵ protects LGBTQI+ workers from workplace discrimination other rights are at risk. For example, federally recognized gay marriage remains legal, but in his opinion that overturned the constitutional right to an abortion, Justice Clarence Thomas of the U.S Supreme Court called for his colleagues to re-examine and potentially overturn rulings that protect gay marriage and access to birth control.¹⁶ Unfortunately, in addition to protecting the rights and dignity of LGBTQI+ employees we already see other areas where corporations may be called upon to provide human rights protections for their employees where politicians or the courts threaten these rights.

In Europe, employees cannot be forced to reveal their gender identity, sexuality, ethnicity etc. We believe it is possible to collect diversity data from employees in a way consistent with the requirements of the European General Protection Data Regulation (GPDR) as long as surveys are voluntary and anonymous. Several good examples such as SER Diversity at Work exist of how to do this consistent with European Law.¹⁷

HOW RESPONSIBLE INVESTING CAN CONTRIBUTE TO CREATING A SAFE AND INCLUSIVE WORKSPACE

Investors should of course not micromanage a company but as responsible owners, they can and should advocate for safe and thus productive work environments. Not every measure (identified below) will be suitable for every investor. Smaller investors can also outsource some of the steps suggested and/or collaborate with a larger group.

Below we provide six steps on how LGBTQI+ right can achieve a mature place into Responsible Investment practices. These six steps are inspired by the UN Guiding Principles on Business & Human Rights and the OECD-guidelines,¹⁸ and for each step we provide suggestions what could be done. Not every step is usually necessary in a case.

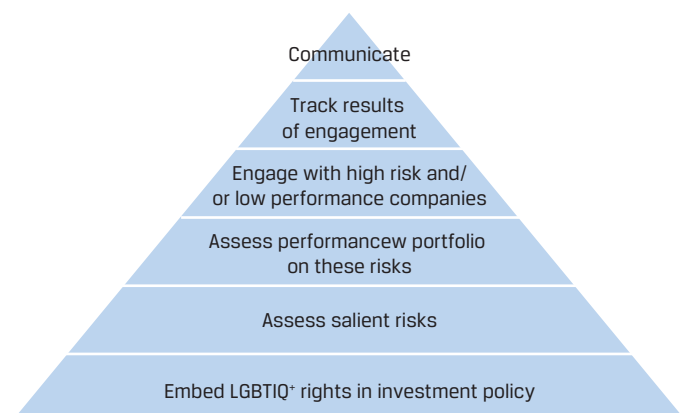
1. Embed LGBTQI+ rights into the responsible investment policy

In your investment policy, check whether you've a check on labor conditions at investees and add LGBTQI+ workplace safety to it. This can be used for exclusion, best-in-class and ESG-integration techniques, depending on the investment strategy of the fund manager.

2. Identify where LGBTQI+ rights are most at risk in your portfolio

- Several (combination of) perspectives can be taken to identify the most salient sectors, countries and companies:
- An approach that maps the countries in which LGBTQI+ rights are most at risk and which companies are active in those countries
 - Specific sectors for which the topic is most relevant from an employee or client's perspective

Figure 1
Six steps towards integrating LGBTQI+ rights in investment policy and practice



- A perspective that maps companies based on their performance on the topic.

3. Assess performance on LGBTIQ+ rights in the most salient parts in your portfolio

In assessing corporate performance several proxies can be used. From checking if a company has LGBTIQ+ policies in place, more importantly whether the company reports on this issue in workplace satisfaction and also general indicators such as work harassment and indications for bullying can be used. Data on practice is more meaningful than data on policies.

4. Engage the most relevant companies from a salience and performance point-of-view, with the following engagement goals

- *Policy*: Developing LGBTIQ+ policies. For example, addressing topics such as policies that provide LGBTIQ+ employees with the same rights.
- *Governance*: the topic is on the agenda of the board and/or is assigned to a board committee. Board members are informed by experts, research and a structural dialogue with LGBTIQ+ representatives of employees to enable effective board oversight.
- *Corporate monitoring*: The company monitors employee satisfaction under their LGBTIQ+ staff and reaches actively out to employees on the topic.
- *Implementation*: What does the company do in practice to enable LGBTIQ+ rights. Do LGBTIQ+ employees for example get leave for child adoption or do companies take additional steps to protect LGBTIQ+ employees in countries in which LGBTIQ+ rights are at risk?
- *Grievance Mechanism*: Have sufficient grievance mechanisms that are safe to use for LGBTIQ+ employees or clients.

- *Remediation*: In case of significant damages done by the unsafe working conditions, encourage the company to remediate this with the (ex) employees.

5. Track implementation and results

- Take ownership and follow up: get in touch with the company on a regular basis and monitor the status of progress and encourage steps to be taken.

Escalate when necessary, for example

- Raise the issue at shareholder meetings (AGMs)
- Work together with other investors on this topic. For example, through a joint letter.
- Vote against remuneration and/or the nomination of board members if the topic is not sufficiently addressed at board level.
- File a shareholder resolution on the topic.

6. Communicate how impacts are addressed

Report on your policy, dialogue and voting in your engagement and voting reports. Show what you did and share, if possible, what's on your to-do-list.

TO CONCLUDE

Progress is more important than perfection. We believe these steps will create a safer, healthier and more productive workplace for LGBTIQ+ employees in particular, but with positive impacts for all employees in the end because it stimulates people to appreciate differences and feel welcome to be themselves. Making workplaces safe and positive environments enables people to focus on their performance instead of fear. A place where people get the job done is the best investment.

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Notes

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