PERSPECTIVES ON TRUST IN BUSINESS

Chief Legal Officers & Institutional Investors

by ACC RESEARCH & EDELMAN

Publicly traded corporations rely on trust to survive and thrive in the marketplace. In-house counsel see public trust from inside the corporation. Institutional investors see it from outside, albeit with more influence than the public at large.

In-house counsel and corporate investors in the United States and in other countries have somewhat different insights on issues associated with public trust and various corporate practices.

To learn about these inside and outside perspectives and about global differences, the Association of Corporate Counsel (ACC) partnered with Edelman to develop the *Perspectives on Trust in Business* report.

RESEARCH OBJECTIVES

The main purpose of this report is to provide insights on corporate culture; environmental, social, and governance (ESG) practices; and trust from a dual perspective: public investors and CLOs.

The results allow us to identify where perceptions and views diverge between legal department leaders and institutional investors. Both in-house counsel and corporate executives may take advantage of the insights presented in this report to learn where the priorities of investors lay and, if necessary, turn their attention to the issues that impact investors' trust. We present five ideas and recommendations to general counsel and chief legal officers for this purpose.

THE STUDIES

The respondent samples draw from two recent studies.

First, the *2019 Edelman Trust Barometer Special Report: Institutional Investors* polled professional investors in six industrial nations on trust, culture, and other business matters. Following that, ACC added six similar questions to its *2020 Chief Legal Officers Survey*.

The responses, coming from Chief Legal Officers (CLOs) in organizations around the world—a plurality of them in the United States—allow us to compare and contrast perspectives and insights for a specific look at trust in the corporate marketplace today.

METHODOLOGY

A subset of six questions was presented to participants to the *2020 Chief Legal Officers Survey* in public companies that were similar to questions included in Edelman's *2019 Trust Barometer*.

The survey was offered through an online survey platform and was in the field from September 17, 2019, to November 5, 2019. A total of 1,007 general counsel and chief legal officers participated.

The results included throughout the report compare the percentage of CLOs that selected each relevant response with the percentage of institutional investors that did so for the six questions that were adapted from Edelman's *2019 Trust Barometer.*

TRUST IS FALLING

In the United States and to a large extent around the world, trust in many major institutions has been sliding for quite a while.

For years surveys have shown that the public holds our most powerful, once-elevated societal institutions in low esteem. Trust in governmental bodies worldwide varies widely; though only 2 in 10 Americans thought of Congress as ethical in 2019, according to the Pew Research Center, "my representative" nearly always scores well, and incumbents are generally returned to office. The media, once highly trusted, have lost their luster. So too for religious leaders and (ahem) lawyers.

Add to that list, for many residents, police and, especially after a scandal, segments of the financial sector.

Yet it is through public trust that these institutions function. If citizens cannot feel they can trust their advocates, their protectors, their fiduciaries, democratic society will falter.

WHERE COMPANIES FIT IN

Public corporations are in a similar position. Public trust directly affects a company's reputation and the bottom line. In the legal department, CLOs and GC oversee the department where the C-suite and board of directors turn with questions on everything from compliance and risk management to cybersecurity and corporate governance. GC have an inside window on public trust.

Meanwhile, the institutional investors so important to publicly traded corporations see things from the outside. These investors are closer to the corporation than the general public. They wield influence mainly through stockholder votes and holding or selling their investments. Loss of investor trust can send stocks tumbling overnight or lead to a CEO's resignation over time.

DOES LEADERSHIP DIVERSITY HELP?

In recent years—in light of "lean in," #MeToo, Black Lives Matter, the Rooney Rule example, and other social change movements and trends—many companies have made more of an effort to diversify their boards of directors and executive teams. Critics have called these efforts slow and often ineffectual. Still, some progress has been made.

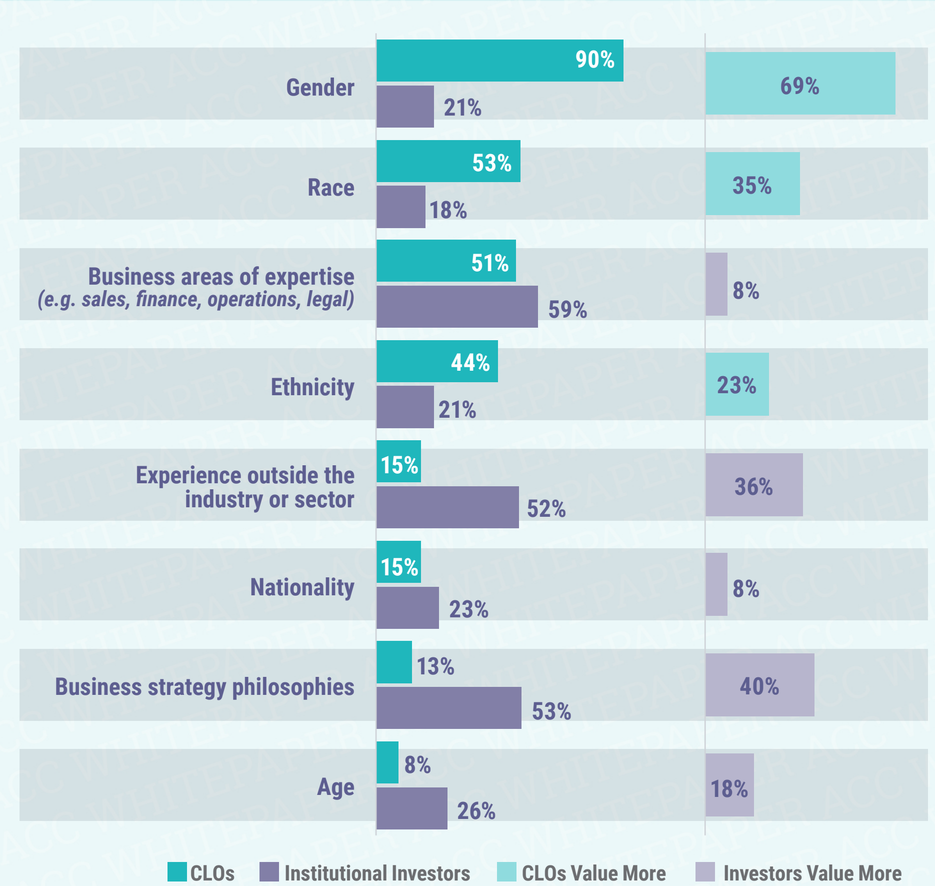
According to the Trust Barometer survey, investors say that increased diversity "has a significant positive impact on [their] trust in a company." But diversity in what areas? Investors and CLOs see the issue differently.

At the top, professional investors worldwide—investor results were not broken out by nation—value a diversity of voices in business matters: 59 percent believe variation in business area of expertise builds trust, 53 percent say "business strategy philosophies," and 52 percent say "experience outside the industry or sector." Gender and ethnicity rank low, and race comes in last at 18 percent.

By contrast, CLOs surveyed in the US rank gender at the top with 90 percent. The difference between CLOs and investors here is a startling 69 percent. Well below gender are race at 53 percent, business areas of expertise at 51 percent (a difference of only eight percentage points with the investors), and ethnicity at 44 percent (versus 21 percent from the investors).

Institutional investors are clearly ranking business experience as a trust factor well above demographic factors, while CLOs, for the most part, do the opposite. Is either group more correct, or is reality some combination of these approaches? Where does public perception fit in? How would trust in a corporation shift if, for example, a photo of its board of directors ended up on the front page of *The New York Times*?

IMPORTANT TYPES OF DIVERSITY TO BUILD TRUST



CLO Survey

Q5: *What types of diversity do you consider to be the most important when it comes to trust building?*

Investor Trust Barometer

Q6: *You just said that diversity within a company's Board of Directors and executive team has a significant positive impact on your trust in a company. What are the top 3 types of diversity you consider to be the most important when it comes to trust building?*

KNOCKING ON THE WRONG DOOR?

One area of great contention concerns topics that investors want to bring to companies' attention. According to the Trust Barometer, investors surveyed say they plan "within the next six months" to engage with their boards of directors on a range of environmental, social, and governance (ESG) topics. These range from data privacy and cybersecurity (74%), employee health and safety (73%), and eco-efficiency of company operations (72%) down to resource scarcity (64%).

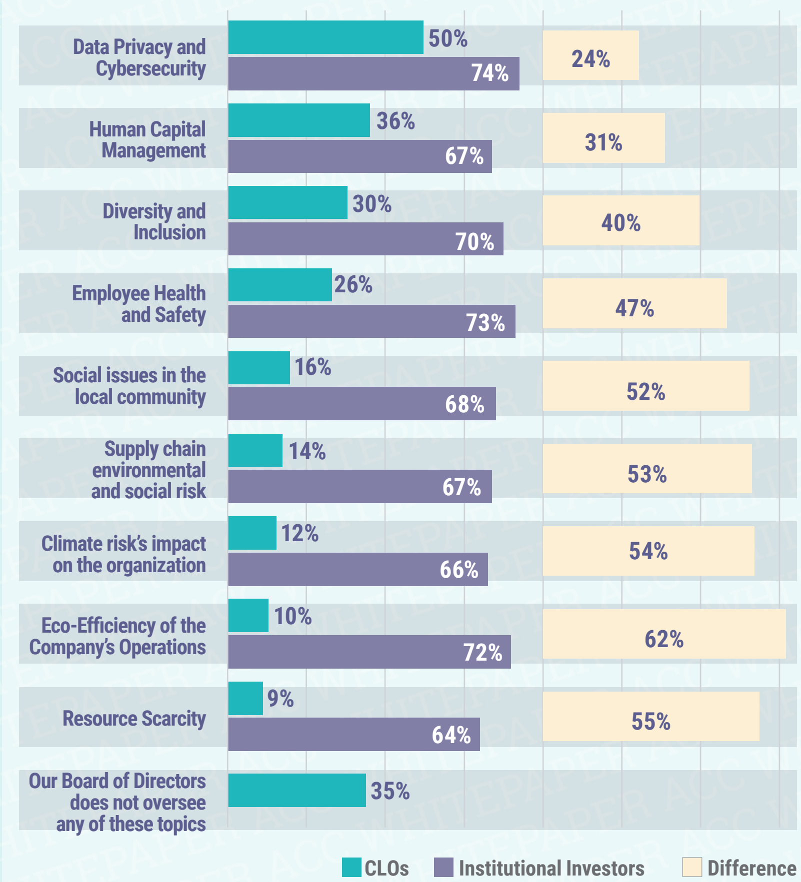
Trouble is, CLOs say the board largely doesn't oversee these topics. In fact, to the nine topics mentioned, 35 percent of CLOs polled note that "our board of directors does not oversee any of these topics."

The most overlap is on data privacy and cybersecurity—certainly a top corporate concern these days—where half of CLOs allow that their own company's board is answerable. The difference between CLOs and investors is 24 percentage points.

Differences widen from there. Investor topic interests that, as CLOs point out, boards oversee less than 15 percent of the time include supply chain environmental and social risk, climate risk's impact on the organization, eco-efficiency of company operations, and resource scarcity.

Should investors approach senior management with their concerns instead? Should they go through outside channels, such as social media or advertisements? Should they craft resolutions and go to the board anyway, in effect forcing the board to oversee their areas of concern? Each corporation and each campaign will vary, but these are questions for investors—and by extension, CLOs—to consider.

BOARD OVERSIGHT AND INVESTOR ENGAGEMENT



CLO Survey

Q4.2: *Which of the following ESG topics does your Board of Directors oversee?*

Investor Trust Barometer

Q26: *Do you plan to engage with the Boards of the companies you invest in on any of these ESG topics within the next six months?*

GROWING INVESTOR TRUST

Why do investors want to engage the board on these ESG topics? Probably in part because they believe ESG practices have a positive effect on trust.

Investors responded to questions about corporate behavioral and governance practices that may affect their level of trust in a company they invest in or may invest in or recommend. Then CLOs answered a similar set of questions: How much do you believe each of these practices positively affects *investors'* trust in your company? Comparisons are revealing.

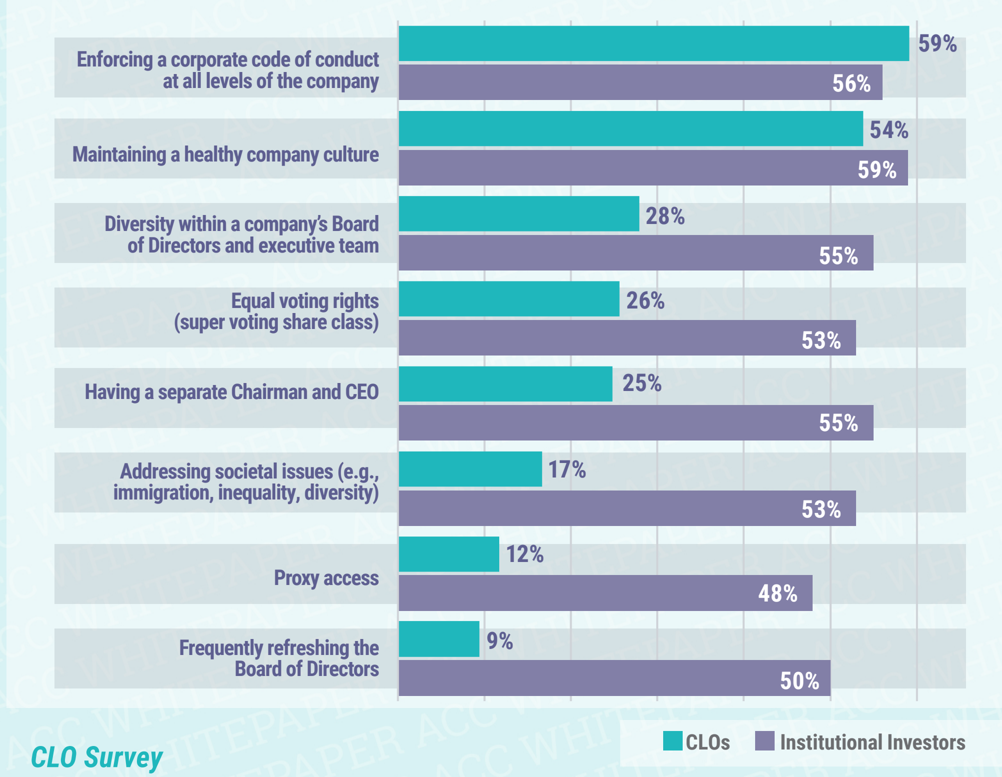
The two groups coalesce the most (only three percentage points apart) around "enforcing a corporate code of conduct at all levels of the company." This is the only practice on which the CLOs thought investors would say it more than they actually did. The next-closest match (five percentage points apart) is on "maintaining a healthy company culture."

For the most part, 50 to 60 percent of responding investors say each behavioral or governance practice would positively affect their trust in a company. However, most of the practices won only about a quarter or fewer of the votes of CLOs who put themselves in their investors' place.

And while fully half of investors cite a frequent refresh of the board of directors as something that would earn their trust, only 9 percent of CLOs believe their investors would think so. Maybe it's familiarity speaking: Are CLOs thinking, "If you knew our directors as I do, you wouldn't want to replace them"? Or alternatively, do CLOs simply understand that directors need to have enough time on the board to deeply understand the business?

Perhaps these corporate practices are a wish list for investors—or practices they see at companies they already invest in. After all, presumably the two groups of respondents represent a Venn diagram; there is only partial overlap. Or CLOs simply do not know investors' minds as well as the investors do. Some questions that might result: How might investors act on their beliefs? And how much do the differences matter?

POSITIVE IMPACT ON TRUST



CLO Survey

Q4.3: *How much do you believe each of the following corporate behavioral practices positively impacts the level of trust investors have in your company? For each one, please indicate the level of impact using a 9-point scale where 1 means "no positive impact on trust" and 9 means "a great deal of positive impact on trust." Values 8 and 9 on the 1–9 scale reported.*

Q4.6: *How much do you believe each of the following corporate governance practices positively impact investors' trust in your company? For each one, please indicate the level of impact using a 9-point scale where 1 means "no positive impact on trust" and 9 means "a great deal of positive impact on trust." Values 8 and 9 on the 1–9 scale reported.*

Investor Trust Barometer

Q3: *How much do each of the following corporate behavioral practices positively impact your trust in a company that are/may consider investing in or recommending? For each one, please indicate the level of impact using a 9-point scale where 1 means "no positive impact on trust" and 9 means "a great deal of positive impact on trust." Top 2.*

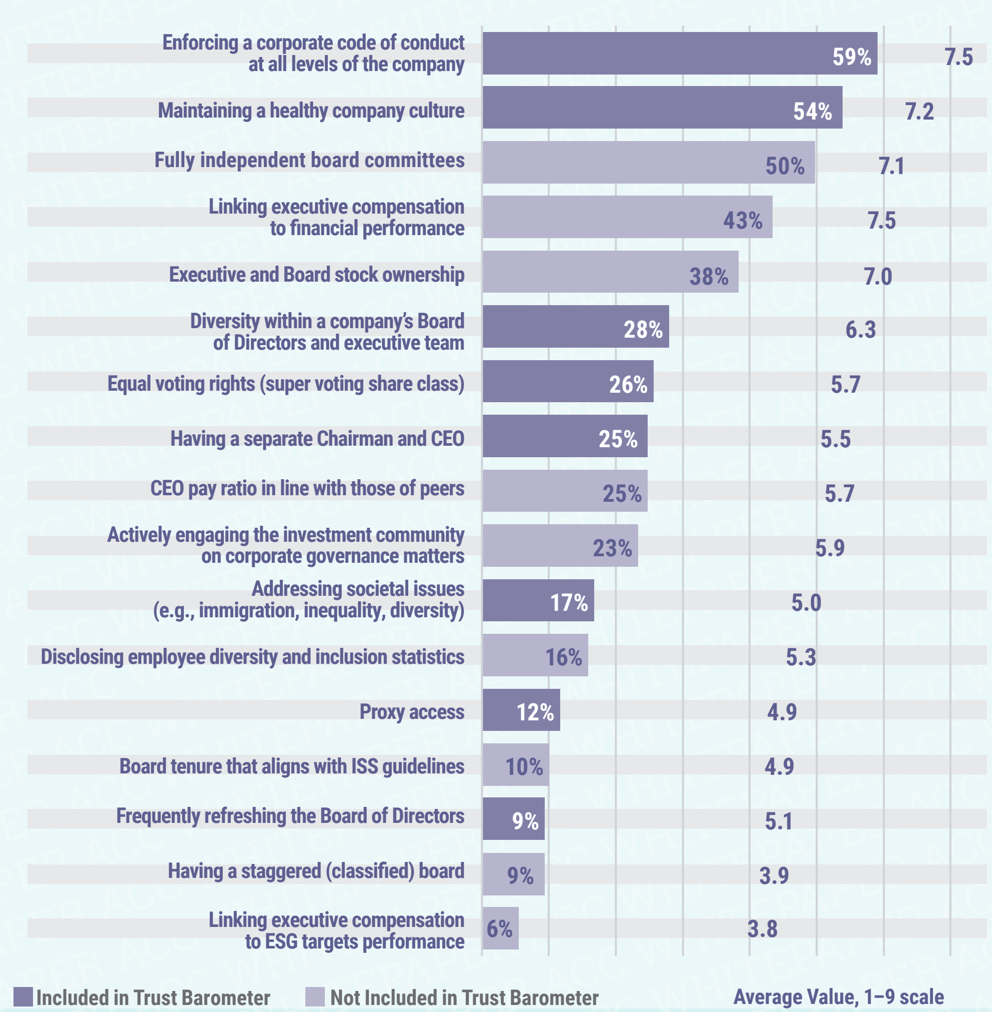
Q5: *How much do each of the following corporate governance practices positively impact your trust in a company that are/may consider investing in or recommending? For each one, please indicate the level of impact using a 9-point scale where 1 means "no positive impact on trust" and 9 means "a great deal of positive impact on trust."*

WHAT IMPACTS TRUST?

CLOs expand on their beliefs in an expansion of the previous question reported. From their positions on the inside, CLOs speculate on what corporate practices they believed would increase investors' trust in the company. After the highest-scoring two—"enforcing a corporate code of conduct at all levels" and "maintaining a healthy company culture"—the rest are all at 50 percent or below. In other words, they don't believe these choices are what would induce trust, aren't sure what would do it, aren't sure they know investors' minds, or something else.

At the bottom of the list—with fewer than 10 percent of CLOs making these choices—are "frequently refreshing the board of directors," "having a staggered (classified) board," and "linking executive compensation to ESG targets performance." Investors were not asked about these last two. Would CLOs' speculation have been as far off about them as well?

POSITIVE IMPACT ON TRUST



CLO Survey

Q4.3: *How much do you believe each of the following corporate behavioral practices positively impacts the level of trust investors have in your company? For each one, please indicate the level of impact using a 9-point scale where 1 means "no positive impact on trust" and 9 means "a great deal of positive impact on trust." Values 8 and 9 on the 1–9 scale reported.*

Q4.6: *How much do you believe each of the following corporate governance practices positively impact investors' trust in your company? For each one, please indicate the level of impact using a 9-point scale where 1 means "no positive impact on trust" and 9 means "a great deal of positive impact on trust." Values 8 and 9 on the 1–9 scale reported.*

MEASURING A COMPANY'S CULTURE

Both CLOs and major investors agree, for the most part, that maintaining a healthy company culture can positively affect the level of trust that investors have in the company. But the two groups differ on the best methods by which to evaluate that culture.

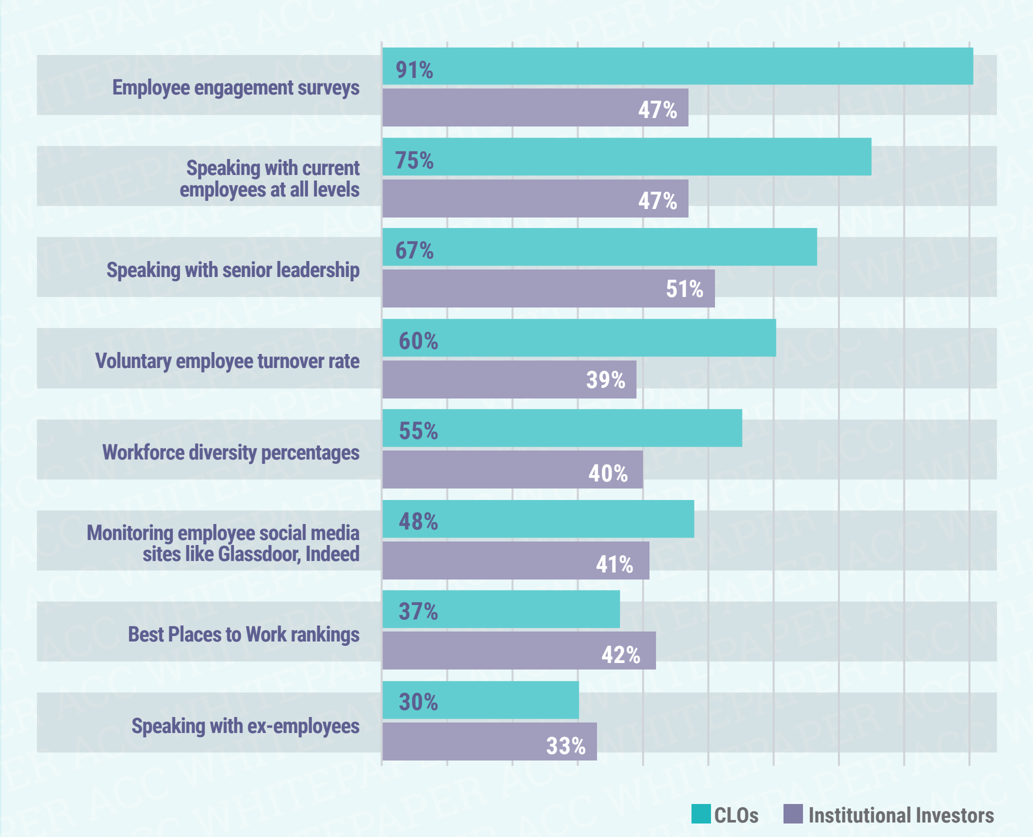
CLOs and the investors who cite a healthy culture align the most on speaking to ex-employees. Unfortunately, that method is also the last choice of both groups—at 30 percent and 33 percent, respectively.

Investors most prefer speaking with senior leadership. At 51 percent, this choice is the only one that breaks the 50-percent barrier among investors, who show little consensus on evaluation techniques. By contrast, two-thirds (67 percent) of CLOs make the same choice.

The top choice of CLOs (91 percent) is employee engagement surveys. Of investors, 47 percent say the same—a difference of 44 percentage points, or nearly half.

Who's right? We don't know if there's a "right" answer, but CLOs may be closer to the human resources office (or at least to the chief human resources officer) and know what tools are considered reliable—or, shall we say, trustworthy. Another idea: Why not use more than one of these methods? Triangulated results may be even more trustworthy.

METHODS USED TO EVALUATE CORPORATE CULTURE



CLO Survey

Q4.4: *What metrics or methods does your company use to evaluate corporate culture and the success of your company's human capital management practices?*

Investor Trust Barometer

Q4*: *You just said that maintaining a healthy company culture has a significant positive impact on your trust in a company. What metrics or methods do you use to evaluate corporate culture and the success of the company's human capital management practices?*

**Only asked to those who indicated that "a healthy company culture has a significant positive impact on trust."*

LOOMING EMPLOYEE ACTIVISM?

2020 has seen plenty of social activism in statehouses, at polling places, in stockholder meetings (even if virtual), and on the streets. Employee activism, then, should come as no surprise. Have publicly traded companies been prepared?

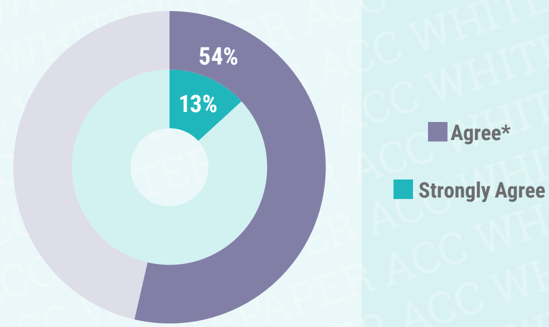
In 2019, investors were asked generally whether “most companies” were prepared for employee activism. Almost eight in 10 say yes, though only 23 percent say so strongly.

In 2020, CLOs responded to a more specific version of the question: Was *their own* company prepared for employee activism? In this case, 54 percent say yes; 13 percent say it strongly.

It’s possible that the phrasing difference affected the outcome. Without knowing that, though, it appears that institutional investors are more pessimistic about corporate preparation. Perhaps CLOs have an inside track on employee activism that investors, being outsiders, cannot share. Or perhaps CLOs, being C-suiters, wear rose-colored glasses about the rank and file. But on this question, there has to be some advantage to a position within the company. We lean toward the first theory.

“MY ORGANIZATION IS NOT PREPARED FOR EMPLOYEE ACTIVISM”

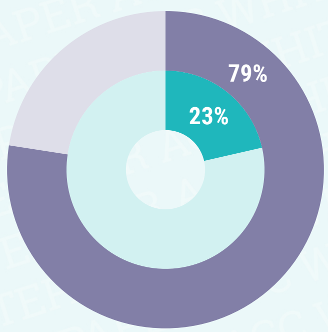
CLOs



Q4.1: *Please indicate the extent to which you disagree or agree with the following statement.*

“MOST COMPANIES ARE NOT PREPARED FOR EMPLOYEE ACTIVISM”

Institutional Investors



Q10: *Please indicate the extent to which you disagree or agree with the following statement.*

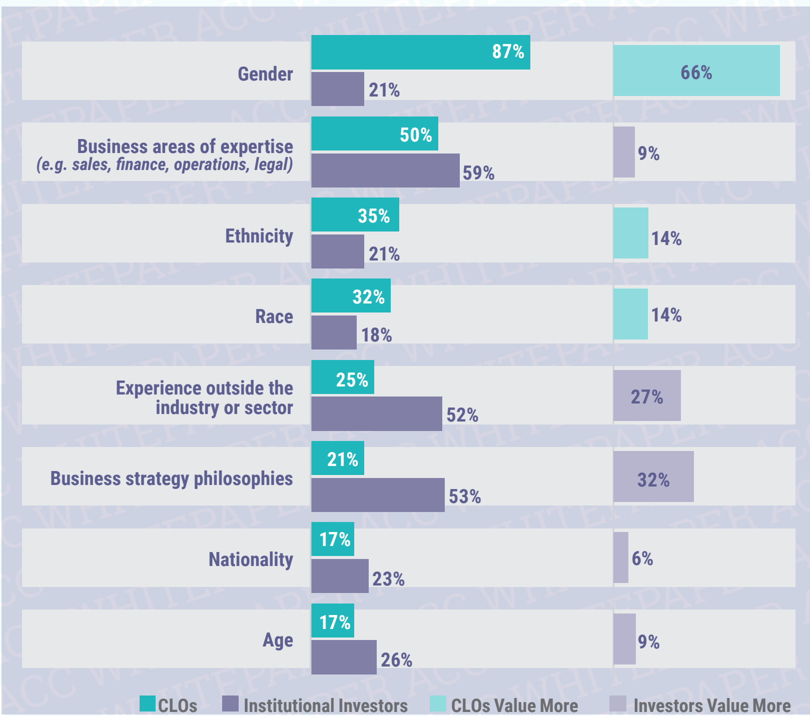
Agree includes “somewhat agree” and “strongly agree.”

INTERNATIONAL RESULTS

Unsurprisingly, global CLO responses differ from U.S. CLO responses to these questions. Institutional investor responses remain the same (investor results were not broken out by nation).

Looking at diversity among boards of directors and executive teams, CLOs still rank gender as the most important type in building trust—for a difference of 66 percentage points over the investors. But in second place is "business area of expertise" at 50 percent. And while investors still rank the other two business-oriented factors ("experience outside the industry or sector" and "business strategy philosophies") as far more important than the CLOs do, CLOs globally cite these factors more than twice as often as their U.S. counterparts.

IMPORTANT TYPES OF DIVERSITY TO BUILD TRUST

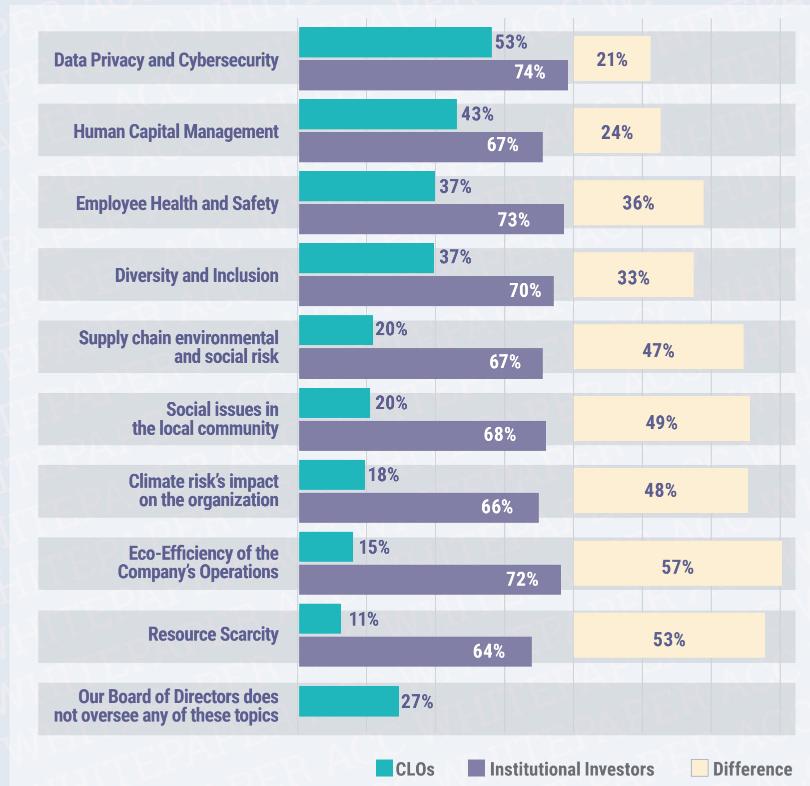


CLO Survey – **Q5:** *What types of diversity do you consider to be the most important when it comes to trust building?*

Investor Trust Barometer – **Q6:** *You just said that diversity within a company's Board of Directors and executive team has a significant positive impact on your trust in a company. What are the top 3 types of diversity you consider to be the most important when it comes to trust building?*

Worldwide as well as in the U.S., CLOs report the same top two ESG topics that their boards oversee: data privacy and cybersecurity, followed by human capital management. After that, global CLOs are far more likely to respond "diversity and inclusion" and "employee health and safety" (37 percent each) than in the U.S. (30 and 26 percent, respectively). However, the bottom three topics remain in the same order for both groups.

BOARD OVERSIGHT AND INVESTOR ENGAGEMENT



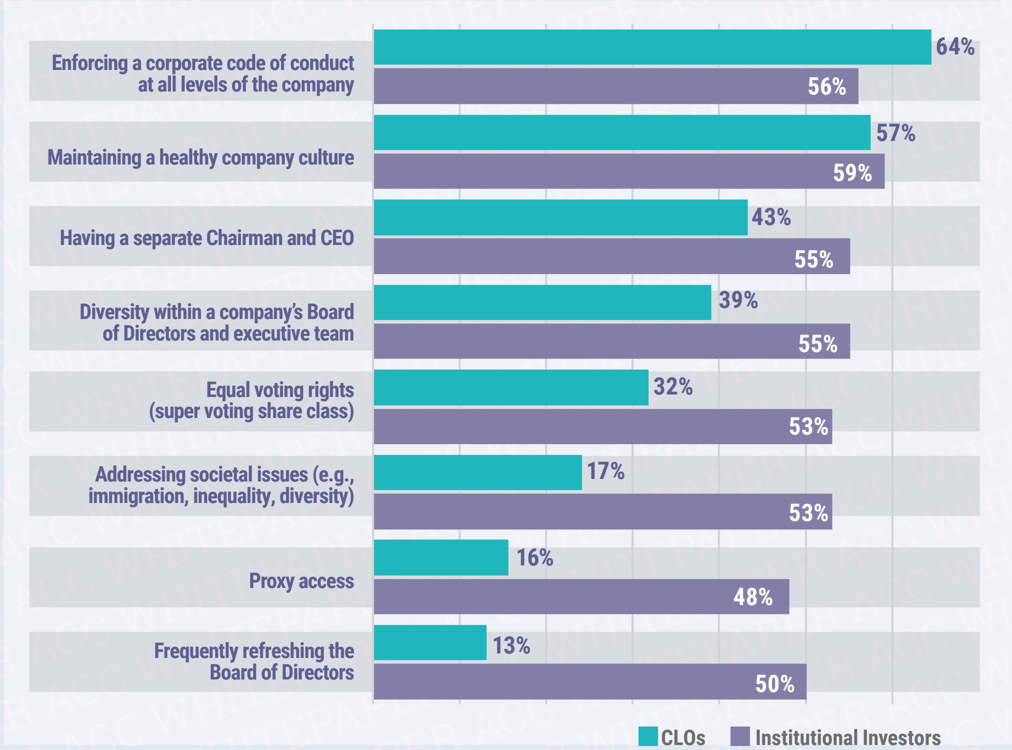
CLO Survey – **Q4.2:** *Which of the following ESG topics does your Board of Directors oversee?*

Investor Trust Barometer – **Q26:** *Do you plan to engage with the Boards of the companies you invest in on any of these ESG topics within the next six months.*

INTERNATIONAL RESULTS

CLOs globally, more than their U.S. peers, tend to believe that those ESG practices affect investors' level of trust in the company. For every practice cited, CLOs worldwide choose it more often than U.S. CLOs do. Likewise with the expanded number of questions on corporate practices affecting trust: Both sets of CLOs put "enforcing a corporate code of conduct" at the top (globally 64%, U.S. 59%), and overall the corporate practices score higher with CLOs worldwide than in the U.S.

POSITIVE IMPACT ON TRUST



CLO Survey

Q4.3: *How much do you believe each of the following corporate behavioral practices positively impacts the level of trust investors have in your company? For each one, please indicate the level of impact using a 9-point scale where 1 means "no positive impact on trust" and 9 means "a great deal of positive impact on trust." Values 8 and 9 on the 1–9 scale reported.*

Q4.6: *How much do you believe each of the following corporate governance practices positively impact investors' trust in your company? For each one, please indicate the level of impact using a 9-point scale where 1 means "no positive impact on trust" and 9 means "a great deal of positive impact on trust." Values 8 and 9 on the 1–9 scale reported.*

Investor Trust Barometer

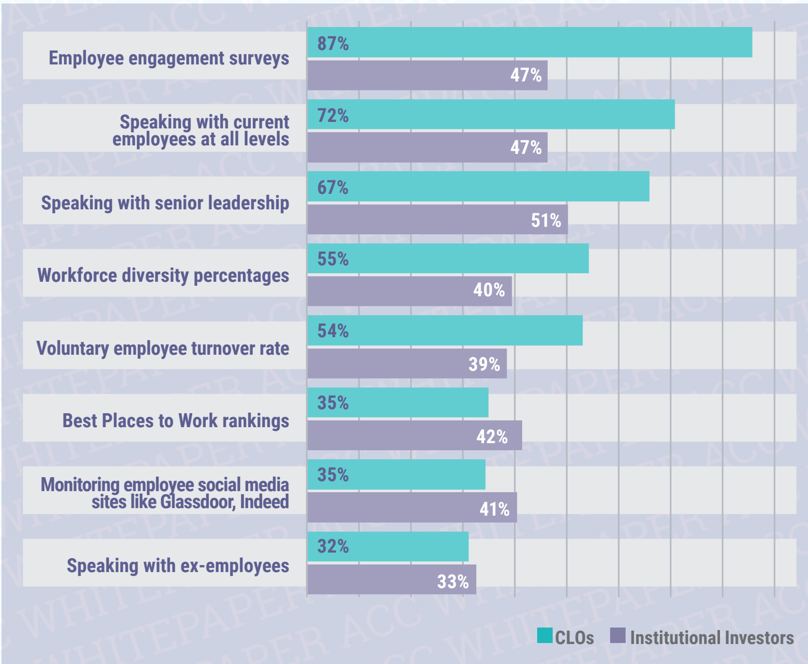
Q3: *How much do each of the following corporate behavioral practices positively impact your trust in a company that are/may consider investing in or recommending? For each one, please indicate the level of impact using a 9-point scale where 1 means "no positive impact on trust" and 9 means "a great deal of positive impact on trust." Top 2.*

Q5: *How much do each of the following corporate governance practices positively impact your trust in a company that are/may consider investing in or recommending? For each one, please indicate the level of impact using a 9-point scale where 1 means "no positive impact on trust" and 9 means "a great deal of positive impact on trust."*

INTERNATIONAL RESULTS

How best to evaluate corporate culture? CLOs in the U.S. and worldwide agree on the top three most-given responses: employee engagement surveys, speaking with employees, and speaking with senior leadership. Speaking with ex-employees brings up the bottom for both groups. For the most part, U.S. CLOs are a bit more enthusiastic about nearly all methods of engagement.

METHODS USED TO EVALUATE CORPORATE CULTURE



CLO Survey – **Q4.4:** *What metrics or methods does your company use to evaluate corporate culture and the success of your company's human capital management practices?*

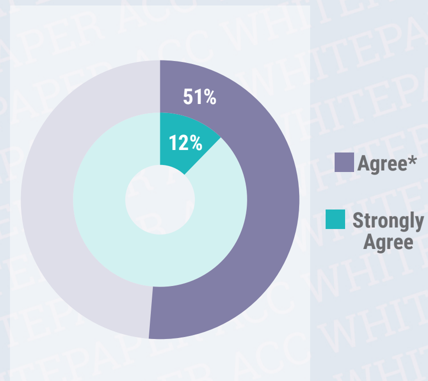
Investor Trust Barometer – **Q4*:** *You just said that maintaining a healthy company culture has a significant positive impact on your trust in a company. What metrics or methods do you use to evaluate corporate culture and the success of the company's human capital management practices?*

*Only asked to those who indicated that "a healthy company culture has a significant positive impact on trust."

Last, there is next to no notable difference between U.S. CLOs and their peers worldwide on the matter of confidence in their company's preparation for employee activism. Worldwide, CLOs agree slightly less (54% to 51%) that their own company is prepared.

"MY ORGANIZATION IS NOT PREPARED FOR EMPLOYEE ACTIVISM"

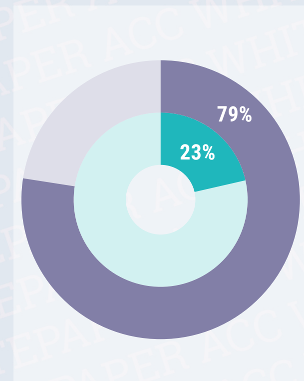
CLOs



Q4.1: *Please indicate the extent to which you disagree or agree with the following statement.*

"MOST COMPANIES ARE NOT PREPARED FOR EMPLOYEE ACTIVISM"

Institutional Investors



Q10: *Please indicate the extent to which you disagree or agree with the following statement.*

*Agree includes "somewhat agree" and "strongly agree."

MOVING FORWARD

Both institutional investors, from the outside, and CLOs, from the inside, want to find ways to increase public trust. They have common ground, which can lead to ways to achieve their common goals. Here are some ideas.

1. **INCREASE DIVERSITY AT THE TOP.**
   What kind of diversity? Investors look more to business approach; CLOs think more of demographics. No matter: Studies show that businesses strengthen when they hear from a variety of voices and tap a range of knowledge and experience. So let's build boards and hire into C-suites people who reflect both differing business expertise and philosophies *and* differences in gender, race, age, nationality, et cetera.

2. **ALERT BOARDS TO INVESTORS' INTERESTS.**
   According to the Trust Barometer, professional investors want to get boards' attention on certain ESG issues. According to CLOs, boards often don't oversee these issues. Two questions: Should they? And if not, should they at least know what investors are saying?

   These may not be legal issues, but to the extent CLOs have their ear to the ground outside, it behooves them to find the right person's ear inside and pass this information on—whether in a presentation (even by someone else) or by pointing out this very report you're reading. Senior management can decide which of several ways to go here.

3. **CONTINUE—AND PUBLICIZE—ESG PRACTICES.**
   Both CLOs and investors think ESG practices positively influence trust. In most cases, investors just believe it more. Still, with public attention to and appreciation of these practices growing, can it hurt to follow investors' lead? If corporations let the public know of their diversity and encourage business media to highlight their intricate ESG conventions, it might be a win all around.

4. **MEASURE YOUR CORPORATE CULTURE PROPERLY.**
   If human resources are a point of pride and corporate culture a company strength, you need to measure it to know what you have and back up any assertions about it. CLOs favor several methods far more than investors did. Two solutions here: First, huddle with the human resources department for expert advice on best practices rather than guessing. Second, if budget and time permit, use more than one method. You'll probably get stronger, more robust results.

5. **MIGHT EMPLOYEES ACT? PREPARE NOW.**
   Most investors think most companies are not ready for employee activism. More CLOs than not think their *own* company is not ready for employee activism. What no one asked is "What are you going to do about it?"

Here's another place where CLOs can give some thought to what to do—or to who else needs to do the thinking. Let them know that 79% of institutional investors think companies are not prepared. Ask whether they think your company is prepared. Ask what "prepared" would entail and what your company should be doing.

Overall, with any of these questions, follow up. Ask again in two months. When part of your job is to keep an eye on investor trust and the bottom line, it's worth jotting a note on your calendar to check in with the CEO, human resources, the board liaison, or a task force to keep the ball rolling—before a crisis forces the matter.

IT'S A MATTER OF TRUST.

PERSPECTIVES ON

TRUST IN BUSINESS

Chief Legal Officers & Institutional Investors

ABOUT US

Association of Corporate Counsel

The Association of Corporate Counsel (ACC) is a global legal association that promotes the common professional and business interests of in-house counsel who work for corporations, associations, and other organizations through information, education, networking opportunities, and advocacy initiatives. With more than 45,000 members employed by over 10,000 organizations in 85 countries, ACC connects its members to the people and resources necessary for both personal and professional growth.

Edelman

EDELMAN is a global communications firm that partners with businesses and organizations to evolve, promote and protect their brands and reputations. Our 6,000 people in more than 60 offices deliver communications strategies that give our clients the confidence to lead and act with certainty, earning the trust of their stakeholders. Our honors include the Cannes Lions Grand Prix for PR; Advertising Age's 2019 A-List; the Holmes Report's 2018 Global Digital Agency of the Year; and, five times, Glassdoor's Best Places to Work. Since our founding in 1952, we have remained an independent, family-run business. Edelman owns specialty companies Edelman Intelligence (research) and United Entertainment Group (entertainment, sports, lifestyle).