The Rhetoric of Activist Shareholder Stewards

Law Working Paper N° 636/2022
March 2022

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ECGI Working Paper Series in Law

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The author is grateful to Brian Cheffins, Anna Christie, Paul Davies, Luca Enriques, Stavros Gadinis, Suren Gomtsyan, Dorothy Lund, Dan Puchniak, Georg Ringe, Bernard Sharfman, Kristin van Zwieten, the participants to the 2020 Stanford Junior International Faculty Forum, especially Lawrence M. Friedman, Colleen Honisberg and Mavis Maclean, and the participants to the Columbia Re–thinking Stewardship Conference (2020), especially Jeffrey Gordon and Mariana Pargendler for feedback on earlier drafts of this Article. The author would like to thank the King's Undergraduate Research fellowship (KURF) programme for funding the research assistance for this Article. Any errors remain my own.

Abstract

The corporate governance role of institutional investors has long been stressed and culminated in recent emphasis on shareholder stewardship, the new buzzword in corporate circles. Today, it is becoming widely accepted that institutional shareholders not only have rights that can be used actively to monitor and engage with investee companies to improve corporate governance and performance but also responsibilities to their clients, their beneficiaries, their investee companies and society to meet sustainability goals. This Article advances the thesis that the model of shareholder stewardship as originally aspired and expected by the first generation UK Stewardship Code (2010/12) is mainly about firm-specific, micro-level stewardship, rather than the market-level-style of stewardship associated with large passive asset managers, such as index funds, or the indirect-style of stewardship mostly exercised by asset owners. The main argument advanced in this Article is that while the ideal, firm-specific shareholder steward was never there in the first place, and already is largely vanishing, a special breed of activist investors with long-term horizons and dedicated, firm-specific monitoring capacities have the abilities and incentives to undertake the model of shareholder stewardship aspired by the first generation UK Stewardship Code. The question then arises as the extent to which these so called "activist shareholder stewards" can play the role of "stewardship arbitrageurs" or "stewardship intermediaries" and advance an "enlightened" form of firm-specific shareholder stewardship and accountability to serve "shared value". To empirically address this question, this Article applies natural language processing (NLP) to explore the rhetoric of activist signatories to the first generation UK Stewardship Code, as revealed by their disclosure statements. The results show that there is a differentiated understanding of shareholder stewardship among the activist signatories to the UK Stewardship Code, but there is a small but potentially important breed of "enlightened" activist stewards that are ready to take on—and succeed at—micro-level shareholder stewardship. The findings have important implications for institutional investors and policymakers alike.

Keywords: stewardship, ESG, shareholder activism, institutional investors, natural language processing, structural topic modeling, empirical legal studies

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Draft – March 2022

18 NYU Journal of Law & Business (Forthcoming)

ABSTRACT

The corporate governance role of institutional investors has long been stressed and culminated in recent emphasis on shareholder stewardship, the new buzzword in corporate circles. Today, it is becoming widely accepted that institutional shareholders not only have rights that can be used actively to monitor and engage with investee companies to improve corporate governance and performance but also responsibilities to their clients, their beneficiaries, their investee companies and society to meet sustainability goals. This Article advances the thesis that the model of shareholder stewardship as originally aspired and expected by the first generation UK Stewardship Code (2010/12) is mainly about firm-specific, micro-level stewardship, rather than the market-level-style of stewardship associated with large passive asset managers, such as index funds, or the indirect-style of stewardship mostly exercised by asset owners. The main argument advanced in this Article is that while the ideal, firm-specific shareholder steward was never there in the first place, and already is largely vanishing, a special breed of activist investors with long-term horizons and dedicated, firm-specific monitoring capacities have the abilities and incentives to undertake the model of shareholder

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The author is grateful to Brian Cheffins, Anna Christie, Paul Davies, Luca Enriques, Stavros Gadinis, Suren Gomtsyan, Dorothy Lund, Dan Puchniak, Georg Ringe, Bernard Sharfman, Kristin van Zwieten, the participants to the 2020 Stanford Junior International Faculty Forum, especially Lawrence M. Friedman, Colleen Honisberg and Mavis Maclean, and the participants to the Columbia Re–thinking Stewardship Conference (2020), especially Jeffrey Gordon and Mariana Pargendler for feedback on earlier drafts of this Article.
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"So difficult it is to show the various meanings and imperfections of words when we have nothing else but words to do it with."
John Locke

I. INTRODUCTION

The global COVID-19 pandemic—and the response to it—has impacted businesses worldwide and has revealed a series of short-term, medium-term and long-term corporate governance risks.[1] Along with increasing calls for sustainability, social equality, biodiversity and climate risk management, "stewardship" has in recent years emerged as the new buzzword in investment management circles.[2] But the language used by investors to express stewardship practices varies significantly. For some, stewardship is about *shareholder engagement* with company management aimed at maximizing long-term value. It is regarded as almost synonymous with *voting*.[3] Others expand the long lamented notion of shareholder

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[1] *See*, *e.g.*, Lynn S. Paine, *Covid–19 is Rewriting the Rules of Corporate Governance*, HARV. BUS. REV., (Oct. 6, 2020), https://hbr.org/2020/10/covid–19–is–rewriting–the–rules–of–corporate–governance (noting that the Covid–19 environment "is characterized by an increasingly complex set of pressures and demands from various stakeholder groups, heightened expectations for societal engagement and corporate citizenship, and radical uncertainty about the future".

[2] For instance, in 2016, Blackrock, the largest US asset manager, published its first annual report on "stewardship" activities, including voting and engagement. Since then, Blackrock has repeatedly stressed its commitment to stewardship and has developed tailored global stewardship principles and market–level stewardship and voting guidelines. The latest addition to the abundant reports and press releases is: BLACKROCK, OUR 2021 STEWARDSHIP EXPECTATIONS (2020), https://www.blackrock.com/corporate/literature/publication/our–2021–stewardship–expectations.pdf. Since then, many other investors have followed suit and have created "stewardship and sustainability" teams to meet the investor demand for stewardship. *See e.g.*, Theo Andrew, *M&G creates new stewardship and sustainability team*, CITYWIRE (Nov. 26, 2020), https://citywire.co.uk/wealth–manager/news/mandg–creates–new–stewardship–and–sustainability–team/a1430981 (reporting that M&G, a British investment management, has created in November 2020 a new "stewardship and sustainability team" to meet ESG demand).

[3] *See, e.g.,* Barbara Novik, Michelle Edkins and Tom Clark, BlackRock Inc, *The Investment Stewardship Ecosystem*, HARV. L. SCH. F. ON CORP. GOVERNANCE (July 24, 2018), https://corpgov.law.harvard.edu/2018/07/24/the–investment–stewardship–ecosystem/#:~:text=Investment%20stewardship%20refers%20to%20engagement,for%20shareholders%20in%20the%20company.&text=Like%20asset%20owners%2C%20asset%20managers,of%20their%20investment%20stewardship%20activities ("Investment stewardship refers to engagement with public companies to promote corporate governance practices that are consistent with encouraging long–term value creation for shareholders in the company"). On the link between stewardship and voting, see, *e.g.*, BLACKROCK, https://www.blackrock.com/corporate/about–us/investment–stewardship (last visited July 30, 2021).

ownership to include *active ownership* and understand stewardship as an active exercise of ownership.[4] For others, stewardship is about "building *stronger portfolios*," both active and passive, collaboration between different specialists (including analysts, investment management and governance teams), analyzing companies through an ESG (environmental, social and governance) lens, setting priorities and only engaging when long-term sustainability is at stake.[5] For others it concerns active and passive strategies of *responsible investing* and ESG integration.[6] To another category, stewardship is not limited to engagement at the individual company level (micro-level stewardship) or at the level of industries, portfolios or whole markets (portfolio- or market-level stewardship). It includes engagement with governments, regulators, supranational organizations and other standard setters at the macro-level (macro-level stewardship).[7] Stewardship also means different things for different policymakers around the world: it

[4] *See*, *e.g.*, Sacha Saden, Legal & General Investment Management Ltd, *L&G Active Ownership Report*, HARV. L. SCH. F. ON CORP. GOVERNANCE (May 4, 2019), https://corpgov.law.harvard.edu/2019/05/04/lg–active–ownership–report/ (defining active ownership as "working to bring about real, positive change to create sustainable value for [the] clients").

[5] *See, e.g.*, J.P. MORGAN ASSET MANAGEMENT, BUILDING STRONGER PORTFOLIOS – INVESTMENT STEWARDSHIP: PROMOTING SUSTAINABILITY THROUGH INVESTMENT (2020), https://am.jpmorgan.com/content/dam/jpm–am–aem/global/en/institutional/communications/lux–communication/jpmorgan–promoting–sustainability–amoc.pdf, "At the heart of our approach lies a close collaboration between our portfolio managers, research analysts and investment stewardship specialists to engage with the companies in which we invest. We call this "investment–led stewardship" … For us, investment stewardship is not about adhering to one set of norms or limiting our scope to one collection of standards. Nor is it about arbitrarily extending the time horizon of our portfolios. Rather, we strive to understand how factors impacting sustainability are financially significant to companies over time, understanding that the regions, cultures, and organizations in which we invest differ greatly… Our investment–led, expert–driven stewardship process has been developed over our extensive history of active management").

[6] *See* Quinn Curtis, Jill Fisch & Adriana Z. Robertson, *Do ESG Mutual Funds Deliver on Their Promises?*, MICH. L. REV. (forthcoming 2021) (explaining that responsible or ESG investing is an umbrella term that refers to "investing informed by environmental social and governance criteria or considerations") and Max M. Schanzenbach & Robert H. Sitkoff, *Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee*, 72 STAN. L. REV. 381, 388 (2020) (defining responsible investing as "an investment strategy that emphasizes a firm's governance structure or the environmental or social impacts of the firm's products or practices"). For an understanding of stewardship as responsible investing, *see*, *e.g.*, FIDELITY INTERNATIONAL, https://www.fidelity.co.uk/responsible–investing/ (last visited July 30, 2021).

[7] See AVIANA INVESTORS, ESG DEFINITIONS GLOSSARY (2021) https://www.avivainvestors.com/en–se/capabilities/esg–definitions–glossary/ (defining macro stewardship as "engaging with governments, regulators and supranational organizations with the aim of seeking correction of market failures and mitigation of systemic risks to put markets on a more sustainable footing"). See also Edie Newsroom, *Aviva's Steve Waygood: Now is the time for finance firms to become climate macro–stewards*, EDIE (July 14, 2021) https://www.edie.net/news/7/Aviva–s–Steve–Waygood—Now–is–the–time–for–finance–firms–to–become–climate–macro–stewards/ (quoting Steve Waygood of Aviva Investors: "Many of my peers, at the point they find a market failure, will shrug their shoulders and give up, saying it is unfortunate that the current incentives in the system do not reward the right behaviour…. I think that's where the financial services industry is failing. It is clearly influential; we need to use that influence for macro–stewardship, not just micro–stewardship with individual companies").

encompasses shareholder engagement, voting with individual companies to improve their corporate governance standards, ESG investing and responsible risk management beyond equity more generally, and stewardship exercised by institutional investors and service providers (including proxy advisors and investment consultants) to stewardship by family owners.[8] The lack of a common "stewardship" language among practitioners and policymakers alike also reflects the differences in investment approaches to stewardship, owing in part to differences in individual business models and investment styles.[9]

One may speculate that this lack of a common stewardship language is one of the main challenges for the wider implementation of stewardship practices and their acceptance by the investment community.[10] Nevertheless, the notion of stewardship has never been more relevant to the investment community than it is today. This is because of the increasing consensus that institutional investors, who control the savings of millions of ordinary people, have a lot of influence. First, they have the muscle to ensure that the individual corporations whose shares and debt they own maintain high standards of governance, sustainability and accountability (micro-level stewardship). Second, they have the power to affect categories of industry sectors and the market as a whole (portfolio- or market-level stewardship). The focus of this Article is on micro-level stewardship.[11]

The corporate governance role that ought to be played by institutional investors at the micro-level has been in focus for many years, but recently the terms of the debate have rapidly changed.

At the outset, a quick snapshot of some of the key turning points in the debate is vital. From the moment institutional investors emerged as the most significant equity holders in the United States and the United Kingdom—and as they have increased in importance in many other countries—their ownership and corporate governance roles have dominated the literature on the subject.[12] This holds true for both the pre-1990 period and after the 2000s, when there was an explosion of

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[8] On these multiple faces of stewardship, *see* Dionysia Katelouzou & Dan Puchniak, *Global Shareholder Stewardship: Complexities, Challenges, and Possibilities* in: GLOBAL SHAREHOLDER STEWARDSHIP (Dionysia Katelouzou & Dan W. Puchniak eds., forthcoming 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3872579.

[9] S*ee, e.g.,* ROGER M. BARKER & IRIS HY CHIU, CORPORATE GOVERNANCE AND INVESTMENT MANAGEMENT: THE PROMISES AND LIMITATIONS OF THE NEW FINANCIAL ECONOMY (2017) (examining how the internal business models and incentives of pension funds, mutual funds, hedge funds, private equity funds and sovereign wealth funds affect their corporate governance roles).

[10] S*ee, e.g.,* Didier Cossin & Ong Boon Hwee, INSPIRING STEWARDSHIP (Wiley 2016), https://www.wiley.com/en–gr/Inspiring+Stewardship–p–9781119270805.

[11] For the different levels of stewardship, see DIONYSIA KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP (CUP forthcoming).

[12] For the most recent ownership data, *see* ORGANIZATION FOR ECONOMIC CO–OPERATION & DEVELOPMENT, OWNERS OF THE WORLD'S LISTED COMPANIES, OECD CAPITAL MARKET SERIES (2019), https://www.oecd.org/corporate/Owners–of–the–Worlds–Listed–Companies.htm (providing data that 41% of global market capitalization is held by institutional investors).

interest in the subject.[13] Different types of institutional investors (such as pension funds, hedge funds and more recently, index funds) have been discussed from different theoretical, normative and empirical perspectives. However, most of the previous literature has focused on the questions of passivity, time horizons and financial performance, engagement, and shareholder activism.[14] The newest addition to this voluminous body of research on the corporate governance role of institutional investors is the changing practices of large, diversified investors for whom the modern portfolio theory (MPT) is not suitable.[15] Another change is the ideological transformation of shareholder monitoring as it has moved towards an "enlightened" standard that serves long-term, sustainable value.[16]

This Article focuses on the language of *shareholder stewardship*, a term used to refer to stewardship within equity and the way *activist investors* understand and express their stewardship role as *shareholders* of companies.[17] Two important observations are needed. First, shareholder stewardship is a form of monitoring, voting, and engagement by institutional investors that they can exercise at both the micro- and market-levels in such a way that both their investee companies and the ultimate providers of capital prosper in the long-term.[18] At the micro-level the main aim of shareholder stewardship is to transform rationally "apathetic" institutional investors into long-term engaged shareholders to minimize excessive risk-taking and short-termism and improve long-term performance at the

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[13] For a literature review, see KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 11.

[14] *See infra* Part II.

[15] Further on MPT *see* Harry Markowitz, *Portfolio Selection*, J. FIN. 77 (1952); Harry Markowitz, *The Utility of Wealth*, 60(2) J. POL. ECON. 151 (1952), *operationalized in* HARRY MARKOWITZ, PORTFOLIO SELECTION: EFFECT DIVERSIFICATION OF INVESTMENTS (2nd ed. 1991). NOBEL PRIZE LECTURE, FOUNDATIONS OF PORTFOLIO THEORY (1990), available at https://www.nobelprize.org/prizes/economic–sciences/1990/markowitz/lecture/. On how MPT is now changing to account for systematic risk, see Jeffrey N. Gordon, *Systematic Stewardship* (ECGI Working Paper No. 06, 2003), https://ecgi.global/sites/default/files/gordon_systematic_stewardship_draft_1.0._101820.pdf, 30–31 (arguing that investors can now "achieve diversification at the portfolio level rather than at the firm level, meaning that the investor can most efficiently eliminate uncompensated idiosyncratic risk by holding a portfolio of firms with a narrow focus rather than holding shares in firms that themselves operate in diverse business segments in the name of diversification").

[16] The term "shareholder stewardship" is borrowed from KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 11 which provides a comprehensive analysis of the broader concept of investor stewardship and its corporate governance as well as investment management aspects.

[17] It is notable that stewardship is currently encompassing investment in other assets, such as fixed income, property and infrastructure. For the differences between shareholder stewardship, which is the focus of this Article, and investment stewardship, see KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 16.

[18] Here one needs to note that in the United Kingdom and the United States the interests of the companies are equated to the long–term of shareholders. But this position is highly debated. For a recent account of this literature, see Dorothy S. Lund, *Enlightened Shareholder Value, Stakeholderism, and the Quest for Managerial Accountability* (Nov. 5, 2020), https://ssrn.com/abstract=3725725.

individual company level. But this is where the second observation comes in. From an investment-management perspective, the development and promotion of what can be termed "micro-level shareholder stewardship" is premised on the assumption that engagement and monitoring of individual companies aligns with the internal business models of institutional investors.[19] However, this assumption does not always hold; the model of micro-level shareholder stewardship is, by definition, more suited to an investment strategy that entails *firm-specific monitoring* of operational and governance decisions and management oversight on a cost effective basis.[20]

Notably, most institutional investors have neither the ability nor the incentives to engage in firm-specific shareholder stewardship despite the consensus among policymakers on the importance of such an oversight approach.[21] This Article shows that there is a breed of investors with undiversified portfolios and firm-specific expertise for whom the model of micro-level shareholder stewardship aspired to by the first generation UK Stewardship Code ("UK Code 2010/12") can be compatible with their business models and can be used as a strategy to unlock investment value. These *activist funds*—including hedge funds and other types of activists (referred to together in this Article as "activist funds")—can be prime candidates of that shareholder stewardship model with one significant proviso: that the activist funds' incentives need to be well aligned with the stewardship goals.[22] This triggers the question of whether the form of contemporary shareholder activism (increasingly associated with ESG demands) and firm-specific stewardship carried out by activist funds, which, at times, is regarded with some skepticism, can be legitimized if it conforms to the standards set up by stewardship codes in the UK and elsewhere.[23] In other words, can we expect activist funds to act in their firm-specific relationships as stewards rather than as "principals," the role traditionally ascribed to them by the agency theory? And how far do the stewardship perceptions of the activist funds themselves cohere with the policy narratives and prescriptions associated with stewardship?

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[19] *See, e.g.*, FINANCIAL REPORTING COUNCIL, CONSULTATION ON A STEWARDSHIP CODE FOR INSTITUTIONAL, at 11 & 21 (Jan. 19, 2010), https://www.frc.org.uk/consultation–list/2010/consultation–on–a–stewardship–code–for–institution (setting the objective that "a stewardship code should be adopted as the standard which institutional investors practicing, active engagement, and their agents should aspire to follow, and against which they should report" and to "ensure that engagement is closely linked to the investment process within the investment firm").

[20] *See infra* Part II.C.

[21] *See infra* Part II.C.

[22] *See infra* Part II.C.

[23] For the diffusion of stewardship codes around the world, see Dionysia Katelouzou & Mathias Siems, *The Global Diffusion of Stewardship Codes* in: GLOBAL SHAREHOLDER STEWARDSHIP (Dionysia Katelouzou and Dan W. Puchniak eds., forthcoming 2022), also available https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3616798.

In this Article, I contribute to these questions on both theoretical and empirical grounds. The Article provides an analytical framework for understanding the model of shareholder stewardship and its compatibility with firm-specific activist engagements. The analysis refutes the agency-theory-grounded understanding of shareholder activism; it demonstrates that the model of shareholder stewardship signals a departure from the dominant assumptions of the economic analysis of shareholder monitoring under which the accountability parameters in investment management are a completely private, contractual, and apolitical matter revolving around institutional investors, their asset managers, and their beneficiaries. The UK Code 2010/12—like most other stewardship codes around the world[24]—is addressed to *all* asset managers and asset owners with equity holdings in UK listed companies.[25] Though it has largely ignored activist funds, this Article highlights that the model of micro-level shareholder stewardship aspired by the UK Code 2010/12 is by definition more suited to an undiversified investment strategy that entails firm-specific monitoring of operational and governance decisions and management oversight on a cost effective basis. It may, therefore, be surprising that the current corporate governance debate focuses on the stewardship role of the "Big Three"—Blackrock, Vanguard and State Street—or the "Big Four," which also includes Fidelity.[26] The Big Three or the Big Four have reasonable incentives to monitor portfolio- and market-level or "systematic" governance, but they lack firm-specific monitoring capacities.[27] This Article argues that "enlightened" activist funds are better placed to undertake firm-specific shareholder stewardship and act as "stewardship arbitrageurs" or "stewardship intermediaries" at the micro-level.

To test this claim and examine the degree to which the activist funds' perceptions of stewardship responsibilities cohere to those of the policy understanding, I provide the first comprehensive evidence from the UK—the birthplace of the stewardship movement—on the *stewardship rhetoric* of activist funds as revealed in their stewardship disclosures. I focus on the 50 signatories to the UK Code 2010/12 with an "activist orientation" and apply natural language processing (NLP) techniques to explore their understanding of shareholder

[24] The only exception here is the Singapore Stewardship Principles for Family Businesses which is addressed to non–institutional controlling shareholders. See Dan W. Puchniak & Samantha S. Tang, *Singapore's Embrace of Shareholder Stewardship: A Puzzling Success,* in GLOBAL SHAREHOLDER STEWARDSHIP 2 (Dionysia Katelouzou & Dan W. Puchniak eds., forthcoming).
[25] See *infra* Part II.B.
[26] Leo E. Strine, Jr., *Fiduciary Blind Spot: The Failure of Institutional Investors to Prevent the Illegitimate Use of Working Americans' Savings for Corporate Political Spending*, 97 WASH. UNIV. L. REV. 1007, 1016 (2020) (introducing the term "Big Four" to refer to the so-called Big Three index fund managers, that is Blackrock, Vanguard and State Street, together with Fidelity. "Although Fidelity is more known for its actively managed funds … [it] is increasingly competing with the Big Three in the index space").
[27] Gordon, *supra* note 155.

stewardship. The final corpus consists of 73,207 total words (tokens), and there are five main findings of this systematic analysis.

First, activist signatories to the UK Code 2010/12 understand stewardship to include aspects of both corporate governance and investment management.[28] Shareholder stewardship at the micro-level is understood as engagement and voting. But activist stewards are also concerned that shareholder stewardship cannot be internalized—and more fundamentally cannot be effectively exercised—if the investors' own business models, incentives, and abilities as well as regulatory constraints (including fiduciary duties) are not taken into account. Second, the notion of responsibility, which is an inherent element of what can be termed "enlightened" shareholder stewardship, is much more embedded in the statements of friendly rather than confrontational activist stewards and those activists who are signatories to the UN Principles of Responsible Investing ("PRI"). Third, non-UK activist stewards place a greater emphasis on proxy voting and the impact of ESG factors on risk management. Fourth, large activist stewards tend to place more emphasis on the governance of stewardship inside their organizations, which may be attributed to their greater resources and larger in-house teams. Fifth, and finally, the application of structural topic modeling disentangles a more latent role of the FRC's tiering in the textual information provided by stewardship disclosure statements and reveals that the variety of stewardship topics within a statement can be better explained by variables other than tiering.[29]

This Article makes several contributions to the literature. First, it contributes to and extends the growing literature on investor stewardship, which is mainly focused on the stewardship role of index funds—especially in the United States. The focus on *activist stewards* builds on and extends the work of Gilson and Gordon, who argued that in the United States activist hedge funds can provide a form of "market-based stewardship" leveraging institutional governance rights as "governance intermediaries" and corporate monitors and, thereby, substitute for top-down or self-regulatory stewardship codes and principles.[30] This Article differentiates from the earlier contribution of Gilson and Gordon in two respects. First, it does not look at activist stewards as substitutes of stewardship regulation but as prime candidates for implementing the regulatory-emanated model of firm-specific shareholder stewardship. Second, even though I share the earlier skepticism on the undesirability of promoting the monitoring roles of short-term oriented activists, I elaborate that a special breed of enlightened, long-term and less confrontational activist funds can play the role of "stewardship arbitrageurs"

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[28] *See infra* Part II.
[29] *See infra* Part III.
[30] Ronald J. Gilson & Jeffrey N. Gordon, *The Agency Costs of Agency Capitalism: Activist Investors and the Reevaluation of Governance Rights*, 113 COLUM. L. REV. 863 (2013).

or "stewardship intermediaries" for other investor–stewards with active or passive investment models. Such enlightened activist stewards are still the minority in the field, but they are no longer negligible as recent experience in climate change activism shows.[31] Both the analytical framework and the empirical evidence provided by this Article point to the ability of enlightened, activist, firm-specific monitoring to streamline shareholder stewardship, provided that the right incentives exist.

Second, this Article contributes to the shareholder activism literature, which is significantly polarized.[32] On the one hand, those who favor the governance role of activist investors have suggested that hedge fund-style activists have the potential to "arbitrage" the value of governance rights owned by other "reticent" institutional investors and therefore provide a form of market-based stewardship.[33] But, on the other hand, opponents of hedge fund activism have identified a number of negative externalities generated by hedge fund-style activists, including short-termism, conflicts of interests, and wealth transfers from debtholders and employees.[34] This "dark side" of hedge fund activism has become a matter of concern for policymakers, executives, non-activist shareholders and other stakeholders alike, who point to the potential vulnerability of public corporations to yield to short-term pressures in view of the increasing influence of activist hedge funds and the likely negative impact on corporate wealth in general.[35] While the debate is still ongoing and heated, this Article points to two recent trends—coalition building between activist and non-activist investors and ESG activism—that could streamline the micro-level stewardship ability of enlightened activist stewards in the near future.

Third, this Article contributes to the recently emerged literature on stewardship codes and assesses the effectiveness of the UK Code 2010/12. Previous

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[31] Billy Nauman, Patrick Temple–West & Kristen Talman, *Exxon shareholder victory charts new course for ESG advocates*, FIN. TIM. (May 28, 2021).

[32] *See, e.g.,* Jennifer G. Hill, *Good Activist/Bad Activist: The Rise of International Stewardship Codes*, 41 SEATTLE UNIV. L. REV. 497 (elaborating the competing narratives concerning the role of activist shareholders in corporate governance).

[33] Gilson & Gordon, *The Agency Costs of Agency Capitalism*, *supra* note 30. *See also* Ronald J. Gilson & Jeffrey N. Gordon, *The Rise of Agency capitalism and the Role of Shareholder Activists in Making it Work*, 31 J. OF APPLIED CORP. FIN. 8 (2019).

[34] *See* Alon Brav, Wei Jiang & Hyonseob Kim, *The real effects of hedge fund activism: productivity, asset allocation and labor outcomes*, 28 REV FIN. STUD. 2723 (2015); Felix Zhiyu Feng, Qiping Xu & Caroline Zhu, *Caught in the Crossfire: How the Threat of Hedge Fund Activism Affects Creditors* (Sep 12, 2020), *available* at: https://ssrn.com/abstract=2716929; Anup Agrawal & Yuree Lim, *The Dark Side of Hedge Fund Activism: Evidence from Employee Pension Plans* (Jul 2017), https://site.stanford.edu/sites/g/files/sbiybj8706/f/4134–s2v2dark_activism.pdf. *But see* Pat Akey & Ian Appel, *Environmental Externalities of Activism* (Nov. 18, 2019), https://ssrn.com/abstract=3508808 (finding that activist hedge fund campaigns are associated with reduced toxic emissions for targets). *See, also*, J.B. Heaton, *The Unfulfilled Promise of Hedge Fund Activism*, 13 VA. L. & BUS. REV. 317 (arguing that "hedge fund activism has mostly disappointed").

[35] Dionysia Katelouzou, *Myths and Realities of Hedge Fund Activism: Some Empirical Evidence,* 7 VA. L. & BUS. REV. 459 (2013).

literature has criticized the first generation UK Code for being an "elusive quest" on various grounds, including the "passive" nature of institutional shareholders' investment practices and the lack of incentives and capacities on the part of mainstream institutional shareholders (such as pension funds, mutual funds, large asset managers) to engage in stewardship.[36] But almost no study to date takes into consideration sufficient empirical data.[37] As a result, the debate often revolves around abstract principles and politics rather than a more detailed examination of the stewardship perceptions of institutional investors themselves. This study makes the first step to fill this gap and uses the UK Code 2010/12 as a regulatory experiment to unpack the rhetoric of activist stewards.[38]

Fourth, to the best of my knowledge, this is the first study that systematically examines the *rhetoric* of shareholder stewardship applying NLP to the disclosure statements to the UK Code 2010/12. For policymakers, this study's empirical evidence shows that the FRC's assessment (tiering) exercise has only a limited impact on the stewardship topics revealed by the disclosure statements. This Article's policy recommendation is that the FRC (and other stewardship standard-setters around the world) should reconsider ways to assess stewardship reporting especially in view of the revised UK Stewardship Code 2020 (UK Code 2020 hereinafter) which moves reporting away from policy statements to stewardship activities and outcomes.[39] As this Article was going to press, the FRC announced that they will not tier the signatories to the revised UK Code 2020.[40] This decision is in line with the findings of this Article that tiering did not adequately differentiate between the signatories' statements to the UK Code 2010/12. Another key finding for the FRC is that overseas investors understand stewardship differently than domestic investors. This suggests that the FRC should focus on how to transform overseas investors—who are currently dominating UK public equity[41]— into active, "enlightened" stewards. There is also evidence that

[36] Brian R. Cheffins, *The Stewardship Code's Achilles Heel* 73 MODERN L. REV. 1004 (2010); Simon CY Wong, *Why Stewardship is Proving Elusive for Institutional Investors?*, BUTTERWORTHS J. OF INT'L BANKING & FIN. L. 406 (2010).

[37] For an exception but with a limited scope, *see* Anna Tilba & Arad Reisberg *Fiduciary Duty under the Microscope: Stewardship and the Spectrum of Pension Fund Engagement*, 82 MODERN L. REV. 456 (2019) (using data from interviews to unveil how UK pension fund trustees' interpretations of their fiduciary duties may shape their stewardship role).

[38] A fully fledged empirical analysis of all the 295 signatories to the UK Code 2010/12 is included in KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 16.

[39] FINANCIAL REPORTING COUNCIL, UK STEWARDSHIP CODE 2020, *available* at https://www.frc.org.uk/investors/uk–stewardship–code.

[40] FINANCIAL REPORTING COUNCIL, FRC encouraged by investors embracing the spirit of the UK Stewardship Code (Mar. 10 2022), https://www.frc.org.uk/news/march-2022-(1)/frc-encouraged-by-investors-embracing-the-spirit-o (last visited Mar. 14, 2022).

[41] According to official data overseas investors owned a record high of 56.3% of UK quoted shares at the end of 2020: OFFICE FOR NATIONAL STATISTICS, OWNERSHIP OF UK QUOTED SHARES: 2020 (Mar. 3, 2022) [hereinafter ONS 2020], https://www.ons.gov.uk/economy/investmentspensionsandtrusts/bulletins/ownershipofukquotedshares/2020 (last visited Mar. 14, 2022).

friendlier activist stewards and those signed to the PRI have expressed their commitment to an "enlightened" notion of stewardship and thereby have set the bar higher than others. Nevertheless, it is apparent that the often-tenuous compatibility between the model of shareholder stewardship as is envisaged by the UK Code 2010/12 and the investors' business models is a concern expressed in stewardship statements. This is especially true of larger asset managers who adopt a defensive activist style.

In overall, the textual findings of this Article have important implications for the ongoing efforts to improve stewardship reporting and practices, including the recent shift of policy focus in the UK from a mere emphasis on policy statements to the reporting of stewardship activities and outcomes on an annual basis.[42] More fundamentally, such an empirical study must complement ongoing engagement with the significant normative challenges addressed by shareholder engagement, shareholder activism, and shareholder stewardship more generally. In light of the significant rise of institutional investors and securities intermediation and the policy impetus to rely on institutional shareholders to constrain managerial power and more recently to "save the planet" via shareholder empowerment and stewardship, the competing positions in the old debate on shareholder empowerment and the current debate on index fund stewardship are now even more accentuated.[43] This Article contributes to this long-standing debate in corporate governance over the proper role of shareholders in modern companies and informs its policy handling.

Finally, to the best of my knowledge, no other study has attempted to examine stewardship narratives and study the text of disclosure statements operationalizing NLP and structural topic modeling. While qualitative and statistical content analysis has been used to address corporate reports in the accounting literature,[44] the use of automated content analysis is still in its infancy in the legal literature.[45] In addition, NLP and topical structural modeling (a technique developed within the field of computer science) has yet to be applied in

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[42] For an empirical analysis of the statements to the UK Code 2020, see KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 11.

[43] For the "old" debate on shareholder empowerment, see Lucien A. Bebchuk, *The Myth of Shareholder Franchise*, 93 VAND. L. REV. 675 (2007); Martin Lipton & William Savitt, *The Many Myths of Lucian Bebchuk*, 93 VA. L. REV. 733 (2007). For the current debate on stewardship by large asset managers, *see* text accompanying note 17 and George Serafeim, *Investors as Stewards of the Commons*, 30 J APPL. CORP. FIN. 8 (2018); Suren Gomtsian, *Voting Engagement by Large Institutional Investors*, 45 J CORP. L. (2020).

[44] For literature reviews, *see* Feng Li, *Textual Analysis of Corporate Disclosures: A Survey of the Literature*, 29 J. ACCOUNT. LITERATURE 143 (2010); Tim Loughran & Bill McDonald, *Textual analysis in accounting and finance: A survey*, 54 J. ACCOUNT. RESEARCH 1187 (2016); Mahmood El-Haj et al., *In search of meaning: Lessons, resources and next steps for computational analysis of financial discourse*, 46 J. BUS. FIN. ACCOUNT. 265.

[45] For an application of automated content analysis in the study of stewardship codes, *see* Katelouzou & Siems, *supra* note 23.

legal studies. From a methodological perspective, this Article offers a significant contribution to the widening and deepening literature on empirical legal methodologies.[46]

The rest of this Article proceeds as follows. Part II sets out the terms of the debate in which this study intervenes. By doing so it sets out the theorization of the model of firm-specific, micro-level shareholder stewardship and traces its development from narrow agency-theory-inspired shareholder monitoring to the so called investor paradigm under which institutional investors should commit to the fiduciary duties they owe to the end investors, but also to accountability to a wider set of interests associated with other stakeholders and the *public* as a whole serving "shared value." It then focuses on the policy attempts to promote micro-level shareholder stewardship in the UK and explains the milieux, content and scope of the UK Code 2010/12. The final section of Part II highlights a special breed of activist funds—those engaging in an "enlightened" way and for the long-term and discusses whether this style of micro-level shareholder stewardship associated with such funds can meet the policy assumptions from a theoretical point of view. Part III is empirical in nature. It first describes the corpus and the methodology. It then assesses the stewardship rhetoric of the activist signatories to the UK Code 2010/12 with the unsupervised method of structural topic modeling, which aims at freely exploring the cognitive context of the statements. Part IV draws implications from the findings of this study for policymakers and activist stewards alike. It also offers overarching policy recommendations along with directions for future research. To advance the road from *instrumental* to *enlightened* shareholder stewardship, a movement already endorsed and ratified by the revised UK Code 2020, enlightened activist stewards are prime candidates to play the role of *stewardship arbitrageurs* or *stewardship intermediaries* and mediate between boards and shareholders on the one hand and between the various participants of the investment chain on the other in the promotion of a stewardship ethos. Two recent trends—coalition building and monitoring environmental and social practices—can streamline the stewardship role of activist investors at the micro-level. An important caveat, however, is that while this Article covers ground both conceptually and empirically, future research needs to focus on whether these activist stewards "walk the stewardship talk" so that the stewardship rhetoric unveiled by this study matches the reality. Part VI summarizes and concludes.

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[46] *See*, *e.g.*, contributions in THE OXFORD HANDBOOK OF EMPIRICAL LEGAL RESEARCH, eds. Peter Cane and Herbert Kritzer (2010), and in EMPIRICAL LEGAL RESEARCH IN ACTION: REFLECTIONS ON METHODS AND APPLICATIONS, eds. Willem H. Van Boom, Pieter Desmet & Peter Mascini (2018). *See* also Lee Epstein & Andrew D. Martin LEE EPSTEIN AND ANDREW D. MARTIN, AN INTRODUCTION TO EMPIRICAL LEGAL RESEARCH (2014).

II. THE MODEL OF MICRO-LEVEL SHAREHOLDER STEWARDSHIP

A. *From Shareholder Activism to Shareholder Stewardship: Old Ideas for New Purposes*

The discussion on the role of shareholders in corporate governance is as old as the corporate form itself.[47] From Adam Smith to Frank Knight, and from the seminal work of Adolf Berle and Gardiner Means to the highly salient neoclassical writings of Harold Demsetz, Eugene Fama and Michael Jensen, the separation of ownership and control and the monitoring (in)abilities of shareholders created much debate among scholars and legislators.[48] While Berle and Means' *The Modern Corporation* is not without contradiction when it comes to the question of the corporate governance role of the shareholders–"owners," the "nexus of contracts" theory of the firm delegitimized the monitoring role of shareholders as owners of individual companies.[49] Despite this downgrade of shareholder ownership, the risk-bearing capacity of shareholders reasserted shareholder monitoring in the 1990s. There are many reasons that shareholders may have never made full use of the monitoring role that agency-inspired theorists in the 1990s and 2000s attributed to them.[50] These include regulatory barriers, misaligned or inadequate incentives, the "free riding" problem, and insufficient resources and expertise.[51] But the rise in the equity holdings of institutional investors and the parallel lull in takeovers created promising conditions for shareholder monitoring and engagement on the part of institutional investors at the close of the twentieth century.[52] Legal academics and policymakers alike did

[47] For a thorough analysis, *see* KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 161.
[48] *Id.*
[49] The literature here is voluminous. *See*, *e.g.*, William W. Bratton Jr., The Nexus of Contracts Corporation: A Critical Appraisal, 74 CORNELL L. REV. 407 (1989); William W. Bratton & Michael L. Wachter, *Shareholder Primacy's Corporatist Origins: Adolf Berle and the Modern Corporation*, 34 J. CORP. L. 99 (2008); Charles R.T. O'Kelley, *Coase, Knight, and the Nexus–of–Contracts Theory of the Firm: A Reflection on Reification, Reality, and the Corporation as Entrepreneur Surrogate*, 35 SEATTLE UNIV. L. REV. 1247 (2012).
[50] It is notable that early agency theorists in the 1970s and 1980s did not attribute a monitoring role to shareholders. They assumed monitoring would not occur and that shareholders were protected through market forces, including the market for corporate control. See KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 16.
[51] For the United States, s*ee*, *e.g.*, Bernard Black, *Agents Watching Agents: The Promise of Institutional Investor Voice*, UCLA L. REV. 39 (1992), 811–93; John C. Coffee Jr., *Liquidity Versus Control: The Institutional Investor as Corporate Monitor*, 99 COLUM. L. REV. 1277–1368 (1991). For the United Kingdom, see e.g. Brian R Cheffins, CORPORATE OWNERSHIP AND CONTROL: BRITISH BUSINESS TRANSFORMED (2008), 370-381.
[52] On the decline of hostile takeovers in the 1990s see Michael Jensen, *The Eclipse of the Public Corporation*, *HARV. BUS. REV.*, 61 (1989). On the relationship between takeovers and shareholder activism, see John Pound, The Rise of the Political Model of Corporate Governance and Corporate Control, 68 NYU L. REV. 1003 (1993) (viewing shareholder activism as a "political model" of corporate governance in place of a "transactions- and market-based" one).

not remain idle. Since the 1990s, they turned their attention to the ability, skills, and capacities of institutional investors to engage in the active monitoring of portfolio company performance.[53] For many, the growth of institutional investors' assets in public equity was thought to enhance the skills and incentives of the reconcentrated institutional shareholders, especially pension funds, to reduce the agency problems arising from the familiar Berle–Means separation of ownership and control.[54] Indeed, with increasing equity holdings, some institutional investors, such as the California Public Employees Retirement Scheme (CalPERS), have transformed from passive holders to engaged owners.[55] However, such engagement with investee companies mainly occurred on an ad hoc basis, and most traditional institutional funds have remained passive and negligible in their corporate governance roles.[56]

For a while it seemed that engaged institutional share ownership was too much to hope for, but the corporate governance potential of institutional investors has resurfaced in the years following the 2008–09 global financial crisis (GFC). This time the debate had a significant twist. In the decades preceding the GFC, shareholder value maximization had risen to become a firm's definite performance measure,[57] corresponding to the broader "financialization" of the firm and the economy.[58] Against the contractarian ("nexus of contracts") logic of shareholders' deprivation of any direct interference with the company's management and the

[53] *See*, *e.g.*, Bernard Black, *Agents Watching Agents: The Promise of Institutional Investor Voice*, UCLA L. REV. 39 (1992), 811–93; John C. Coffee Jr., *Liquidity Versus Control: The Institutional Investor as Corporate Monitor*, 99 COLUM. L. REV. 1277–1368 (1991); Ronald J. Gilson and Reinier Kraakman, *Reinventing the Outside Director: An Agenda for Institutional Investors*, 43 STAN. L. REV. 863–906 (1991); Edward B Rock, *The Logic and (Uncertain) Significance of Institutional Shareholder Activism*, 79 GEO. L. J. 445 (1991).
[54] ADOLF B. BERLE & GARDINER C. MEANS, THE MODERN CORPORATION & PRIVATE PROPERTY (2009 ed., 1932.), at 112–6.
[55] Michael P. Smith, *Shareholder Activism by Institutional Investors: Evidence from CalPERS*, 51 J. FIN. 227 (1996); Sanford M. Jacoby, *Convergence by Design: The Case of CalPERS in Japan*, 55 AMER. J. COMP. L. 239, 243–54 (2007); BRIAN R CHEFFINS, THE PUBLIC COMPANY TRANSFORMED (2019), at 246–7.
[56] For the United States, *see* Roberta Romano, *Public Pension Fund Activism in Corporate Governance Reconsidered*, 93 COLUM. L. REV. 795 (1993); Bernard S Black, *Shareholder Activism and Corporate Governance in the United States* in: THE NEW PALGRAVE DICTIONARY OF ECONOMICS AND THE LAW (P Newman ed., 1998), 459; Stephen J. Choi & Jill E. Fisch, *On Beyond CalPERS: Survey Evidence on the Developing Role of Public Pension Funds in Corporate Governance*, 61 VANDERBILT L. REV. 315–54 (2008). For the United Kingdom, *see* Bernard S Black & John C Coffee, *Hail Britannia: Institutional Investor Behavior under Limited Regulation*, 92 MICHIGAN L. REV. 1997 (1994); BRIAN R CHEFFINS, CORPORATE OWNERSHIP AND CONTROL: BRITISH BUSINESS TRANSFORMED (2008) (illustrating the "hands–off" approach of the UK institutional investors especially up to 1990).
[57] *See*, *e.g.*, William Lazonick & Mary O'Sullivan, *Maximizing shareholder value: a new ideology for corporate governance*, 29 ECON. & SOC. 13 (2000). For a recent critical approach see Brian R. Cheffins, *Stop Blaming Milton Friedman!* (Univ. of Cambridge Faculty of Law Research Paper No. 9, 2020), at 21–37, https://ssrn.com/abstract=3552950.
[58] *See*, *e.g.*, Gerald A. Epstein, FINANCIALIZATION AND THE WORLD ECONOMY (2005); Paddy Ireland, *The Financialization of Corporate Governance*, 60 N.I.L.Q. 1 (2009).

alleged adequacy of market forces to align shareholders' and managers' interests, shareholder activism was endorsed in the pre-GFC decades as a value enhancing corporate governance mechanism.[59] This marked a shift from post-war "managerial capitalism"[60] to what has been called "investor,"[61] "fiduciary,"[62] "shareholder"[63] or, more recently, "agency capitalism."[64] A series of sweeping policy reforms on both sides of the Atlantic supported this shift, aiming to strengthen the "legal status" of shareholders.[65] Such reforms—based on the positive "image" of shareholders (especially institutional ones) as "owners/principals" with rights that can constraint managerial discretion[66]—echo the broader idea that shareholder empowerment is a positive corporate governance mechanism.[67]

But this positive depiction of shareholder power and engagement was severely challenged following the onset of the GFC. Before the GFC, the

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[59] On this contractarian assumption about the market's prophylactic powers see, for instance, the famous Disney litigation in the United States where Chancellor Chandler asserted that: '[t]he redress for failures that arises from faithful management must come from the markets'. In re The Walt Disney Company Derivative Litigation, 907 A.2d 693 (Del.Ch., 2005). On the erosion of the contractarian paradigm and the rise of institutional shareholder activism, *see* Dionysia Katelouzou, *Reflections on the Nature of the Public Corporation in an Era of Shareholder Activism and Shareholder Stewardship*: in UNDERSTANDING THE COMPANY: CORPORATE GOVERNANCE AND THEORY (Barnali Choudhury and Martin Petrin eds., 2017), 117–44.

[60] ALFRED D. CHANDLER JR, THE VISIBLE HAND: THE MANAGERIAL REVOLUTION IN AMERICAN BUSINESS (1977); ALFRED D. CHANDLER JR, SCALE AND SCOPE: THE DYNAMICS OF INDUSTRIAL CAPITALISM (1990). For the growing importance of corporate governance during this period see Brian R. Cheffins, *Corporate Governance since the Managerial Capitalism Era*, 89 BUS. HIST. REV. 717 (2015).

[61] MICHAEL USEEM, INVESTOR CAPITALISM: HOW MONEY MANAGERS ARE REWRITING THE RULES OF CORPORATE AMERICA (1999).

[62] JAMES P. HAWLEY AND ANDREW T. WILLIAMS, THE RISE OF FIDUCIARY CAPITALISM: HOW INSTITUTIONAL INVESTORS CAN MAKE CORPORATE AMERICA MORE DEMOCRATIC (2000).

[63] GERALD F. DAVIS, MANAGED BY THE MARKETS: HOW FINANCE RE–SHAPED AMERICA (2009).

[64] Gilson & Gordon, *The Agency Costs of Agency Capitalism*, *supra* note 30; Ronald J. Gilson & Jeffrey N. Gordon, *Agency Capitalism: Further Implications of Equity Intermediation* in: RESEARCH HANDBOOK ON SHAREHOLDER POWER (Jennifer G. Hill and Randall S. Thomas., eds) (2015), 32.

[65] A characteristic example is the widespread adoption of say–on–pay laws, that is reforms to give shareholders voting rights on executive compensation policies. See Randall Thomas & Christoph Van der Elst, *Say on Pay Around the World*, 92 WASH. UNIV. L. REV. 653 (2015) (providing an overview of say on pay laws in the United States, the United Kingdom, Australia, Belgium, France, Germany, Sweden and the Netherlands). For empirical evidence see Ricardo Correa and Ugur Lel, *Say on pay laws, executive compensation, pay slice, and firm valuation around the world*, 122 J. FIN. ECON. 500 (2016) (suggesting that say on pay laws are associated with CEO pay decreases and increases in the sensitivity of CEO pay to firm performance).

[66] Jennifer G. Hill, *Images of the shareholder – shareholder power and shareholder powerlessness* in RESEARCH HANDBOOK ON SHAREHOLDER POWER (Jennifer G Hill & Randall S. Thomas eds., 2015), 53–73.

[67] For early pleas for shareholders to become engaged preceding the shareholder value maximization movement of the 1990s, *see*, *e.g.*, Frank D. Emerson and Franklin C. Latcham, SHAREHOLDER DEMOCRACY: A BROADER OUTLOOK FOR CORPORATIONS (1954). See also Harwell Wells, *A Long View of Shareholder Power: from the Antebellum Corporation to the Twenty–First Century*, 67 FLORIDA L. REV. 1033 (2015) (for a historical account of shareholder power in the United States over the last two centuries).

"shareholder capitalism" movement had taken shape during the takeover wave of the late 1980s in the United States and spread widely in the 1990s around the world (especially in the West).[68] It had provided normative policy and moral support to value-maximizing shareholder activism.[69] Since the GFC, some have called it into question for falling short as means of providing both economic value and societal benefits.[70] Calls for accountability of corporations and their investors for the economic, social and environmental impact of their activities are mounting.[71] The need to recast the old "shareholder value" dogma is even more pronounced now as the COVID-19 pandemic has exposed the unsustainability of current business practices.[72] It had resulted in increasing calls for "stakeholder capitalism" and a refocus of the business corporation's attention to non-shareholder constituencies.[73] Earlier critics blamed excessive investor short-termism or myopia and pointed to the ability of institutional investors (especially activist hedge funds) to influence companies for their own benefit.[74] More recently, amidst a broader debate over the corporate purpose, climate change action and

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[68] It is noteworthy that most countries in Asia, including India and China, have not embraced shareholder capitalism. *See, e.g.*, Curtis J. Milhaupt, *Chinese Corporate Capitalism in Comparative Context* (Colum. L. & Econ. Working Paper No. 522, 2015), https://ssrn.com/abstract=2673797. Also, Japan – has always embraced stakeholder capitalism and only recently has shifted towards a more shareholder approach (against the general trend towards a stakeholder approach). *See, e.g.,* Steven K. Vogel, *Japan's Ambivalent Pursuit of Shareholder Capitalism*, 47 POL. & SOC. 117 (2019).

[69] *See, e.g.*, JOHN BUCHANAN, DOMINIC H CHAI AND SIMON DEAKIN, HEDGE FUND ACTIVISM IN JAPAN: THE LIMITS OF SHAREHOLDER PRIMACY (2012), 41-59, 73-3, 295 and 321 (taking Japan as a case of point to examine hedge fund activism as an investment strategy that draws on the logic of shareholder primacy in Japan and concluding that "[t]he experience of hedge fund in Japan suggests that there are always limit to shareholder primacy as the driver of corporate governance ideas and practices").

[70] *See, e.g.,* Gerald F Davis, MANAGED BY THE MARKETS: HOW FINANCE RESHAPED AMERICA (2009). 64 (identifying "a large gap between the theory of shareholder capitalism as an arm's–length meritocracy… and how the system operates in practice"). For a recent masterful attempt to reimagine capitalism as a system which is in harmony with environmental realities, social justice and equality, and democratic institutions, *see* REBECCA HENDERSON, REIMAGINING CAPITALISM IN A WORLD OF FIRE (2020).

[71] Such calls have been framed within the competing and complementary concepts of corporate social responsibility (CSR), business ethics, corporate citizenship, stakeholder management and sustainability. The literature here is voluminous but for a succinct analysis of the development of these interrelated terms, *see* Archie B. Carroll, *Corporate social responsibility: The centerpiece of competing and complementary frameworks*, 44 ORGANIZATIONAL DYNAMICS 87 (2015).

[72] *See, e.g.,* Lynn S Paine, *Covid-19 is Rewriting the Rules of Corporate Governance*, HARV. BUS. REV. Online (Oct. 6, 2020), https://hbr.org/2020/10/covid-19-is-rewriting-the-rules-of-corporate-governance (last accessed Mar. 14, 2022).

[73] *See, e.g.*, *The world after covid–19 – By invitation: Mark Carney on how the economy must yield to human values*, ECONOMIST (Apr. 18, 2020), https://www.economist.com/by–invitation/2020/04/16/mark–carney–on–how–the–economy–must–yield–to–human–values.

[74] Iman Anabtawi & Lynn Stout, *Fiduciary Duties for Activist Shareholders*, 60 STAN. L. REV. 1255 (2008); Lynne Dallas, *Short–Termism, the Financial Crisis and Corporate Governance* 37 J. OF CORP. L. 265 (2012); Alan Dignam, *The Future of Shareholder Democracy in the Shadow of the Financial Crisis*, 36 SEATTLE UNIV. L. REV. 640 (2013); Leo E. Strine, Jr., *Can We Do Better By Ordinary Investors? A Pragmatic Reaction to the Dueling Ideological Mythologists of Corporate Law*, 114 COLUM. L. REV. 449 (2014).

sustainable finance have redefined the debate about the corporate governance role of institutional investors at the micro-, market-, and macro-levels.[75] At the same time, there is a broad agreement that companies cannot restore the public trust unless the dysfunctionality of shareholders' accountability is also addressed.[76] While the GFC exposed institutional shareholders' passivity and—for some—short-term risk aversion,[77] the COVID-19 pandemic heightened awareness of systemic and social risks and gave greater impetus and justification to sustainable investing and management, a trend already underway for at least two decades.[78]

An integral part of this business concern for society is tied to actions taken from the investment community to promote long-term interests and serve a range of constituents broader than the investors' clients and beneficiaries as public

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[75] Barbara Nock, A Fundamental Reshaping of Finance (Jan. 16, 2020) HARV. L. SCH. F. ON CORP. GOVERNANCE (Jan. 16, 2020), https://corpgov.law.harvard.edu/2020/01/16/a–fundamental–reshaping–of–finance/. The debate over the corporate purpose has intensified recently on both sides of the Atlantic with proposals from the Business Roundtable, the US association of corporate chief executive officers, and the British Academy. *See*, *Statement on the Purpose of a Corporation*, BUSINESS ROUNDTABLE (Aug. 19, 2019), https://opportunity.businessroundtable.org/wp–content/uploads/2019/12/BRT–Statement–on–the–Purpose–of–a–Corporation–with–Signatures.pdf, and *Principles for Purposeful Business: How to deliver the framework for the Future of the Corporation*, BRITISH ACADEMY (Nov. 2019), https://www.thebritishacademy.ac.uk/documents/224/future–of–the–corporation–principles–purposeful–business.pdf. The academic debate over the corporate purpose has been also intensified. *See, e.g.*, Leo E. Strine, Jr., *Toward Fair and Sustainable Capitalism: A Comprehensive Proposal to Help American Workers, Restore Fair Gainsharing between Employees and Shareholders, and Increase American Competitiveness by Reorienting Our Corporate Governance System Toward Sustainable Long–Term Growth and Encouraging Investments in America's Future* (Univ. Penn., Inst. For Law & Econ. Res. Paper No. 19–39, 2019) https://ssrn.com/abstract=3461924; Lucian A Bebchuk & Roberti Tallarita, *The Illusory Promise of Stakeholder Governance*, CORNELL L. REV. (forthcoming 2020) (warning against the rise and growing acceptance of stakeholderism); and the contributions to the Elizabeth Pollman & Robert Thompson, RESEARCH HANDBOOK ON CORPORATE PURPOSE AND PERSONHOOD (Elizabeth Pollman & Robert Thompson eds., 2021 forthcoming).

[76] *See, e.g*. Leo E. Strine Jr., *Can we Do Better by Ordinary Investors; A Pragmatic Reaction to the Dueling Ideological Mythologists of Corporate Law*, 114 COLUM. L. REV. 449, 474 (2014) (contending that "all fiduciaries within the accountability system for productive corporations should themselves be accountable for acting with fidelity to the best interests of the end-user investors whose money is ultimately at stake").

[77] *See, e.g.*, ORGANIZATION FOR ECONOMIC CO–OPERATION & DEVELOPMENT, CORPORATE GOVERNANCE & THE FINANCIAL CRISIS: CONCLUSIONS & EMERGING GLOBAL PRACTICES TO ENHANCE IMPLEMENTATION OF THE PRINCIPLES (Feb. 24, 2010), http://www.oecd.org/dataoecd/53/62/44679170.pdf, at 24 ("shareholders have tended to be reactive rather than proactive and seldom challenge boards in sufficient number to make any difference … in some instances shareholders have been equally concerned with short–termism as have managers and traders, neglecting the effect of excessive risk taking"); HOUSE OF COMMONS, TREASURY COMMITTEE, BANKING CRISIS: REFORMING CORPORATE GOVERNANCE AND PAY IN THE CITY (May 15, 2009), at 64 ("Institutional investors have failed in one of their core tasks, namely the effective scrutiny and monitoring the decisions of boards and executive management in the banking sector, and hold them accountable for their performance").

[78] *See, e.g.,* Kosmas Papadopoulos, Rodolfo Araujo, and Simon Toms, *ESG Drivers and the COVID–19 Catalyst*, HARV. L. SCH. F. ON CORP. GOVERNANCE (2020), https://corpgov.law.harvard.edu/2020/12/27/esg–drivers–and–the–covid–19–catalyst/.

equity holders. Such calls for institutional investors to take action as vigilant market participants and address sustainability find expression through the policy model of shareholder stewardship, which shares many common features with the so called "investor paradigm" for corporate law and corporate governance.[79] Under the shareholder stewardship model, institutional investors, who control the savings of millions of working families and invest them in public equity, should assume *responsibility* for their equity holdings. Shareholder stewardship deals with the corporate governance role of institutional investors and looks *outwards* to the relationships between the investors and their investee companies. This is a corporate governance conception of stewardship which has been the originating and facilitating ground for the development of stewardship practices and policies around the world.[80] In addition, there is an *investment management* dimension of stewardship that looks *inwards* to the governance of stewardship within an organization and the relationships between institutional investors as investment intermediaries and their ultimate beneficiaries/clients.[81] Here, stewardship is about risk management and responsible allocation and management of capital to generate value for the end investors. This is the type of stewardship that many passive managers exercise today, often without any firm-specific focus on financial underperformance or poor corporate governance practices.[82] While the corporate governance and investment management sides of investor stewardship are frequently intertwined, as often are firm-specific (micro-level) stewardship and portfolio- or market-level stewardship,[83] the focus of this Article is on *firm-specific (micro-level)* shareholder stewardship. That is the way in which investors'

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[79] This term was first elaborated in Katelouzou, *Reflections on the Nature of the Public Corporation, supra* note 599.

[80] For the diffusion of stewardship codes around the world *see* Katelouzou & Siems, *supra* note 23.

[81] On the corporate governance and investment management dimensions of shareholder stewardship, see further KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 16.

[82] *See, e.g.*, Lucian Bebchuk & Scott Hirst, *Index Funds and the Future of Corporate Governance: Theory, Evidence and Policy*, 119 COLUM. L. REV. 2020 (2019) (highlighting the incentives of index fund managers to "underinvest in stewardship" and to be "excessively deferential"). *See also* Jill Fisch, Assaf Hamdani & Steven Davidoff Solomon, *The New Titans of Wall Street: A Theoretical Framework for Passive Investors*, 168 U. PA. L. REV. 17, 37 (2019) (highlighting that "a passive investor can identify governance "best practices" that are likely to reduce the risk of underperformance with little firm–specific information, and the investment in identifying a governance improvement can be deployed across a broad range of portfolio companies") and Charles M. Nathan, *Institutional Investor Engagement: One Size Does Not Fit All, The Conference Bd.* (July 18, 2018), https://www.conference–board.org/blog/postdetail.cfm?post=6826 [https://perma.cc/3KLK–SQ9B] (explaining that the investor stewardship teams of major passive investors and large actively managed investors "are principally focused on big picture environmental, social, and governance (ESG) issues [and] lack the skill–sets and manpower necessary to deal in depth with company specific issues of strategy design and implementation, capital allocation, M&A opportunities, and operational and financial performance").

[83] *See, e.g.,* Fisch, Hamdani & Solomon, *supra* note 8282 (highlighting the synergies between passive and active funds through their sponsors).

stewardship was originally perceived in the UK, stewardship's birthplace, and policymakers have since globally promoted it.[84]

Micro-level shareholder stewardship implies a willingness to take an integrated, active approach to monitoring individual investee companies and a preference to use voting rights as a stick instead of the market carrot.[85] This has important implications for fund governance itself. To serve the micro-level shareholder stewardship model, institutional investors should act as "shareowners" rather than as shareholders and exercise stewardship *prudently* committing as shareowners of individual companies to the fiduciary duties they owe to the end investors. For asset managers this implies that active monitoring of investee companies, engaging in dialogue and exercising shareholder rights ought to secure good firm-level corporate governance but also serve the interests of their clients. For asset owners, such as pension funds, the model of micro-level shareholder stewardship prescribes that they ought to monitor not only their asset managers but also their investee companies from which they operate at a considerable distance due to financial intermediation. Furthermore, the policy aspiration is that in exercising shareholder stewardship institutional investors should take into account a wider set of interests associated with other stakeholders and the *public* as a whole.

There are, however, at least three inherent tensions in this model. The first one is associated with flaws in institutional investors' own investment management models and the incompatibility of investment diversification with firm-specific monitoring and stewardship. Gordon, for instance, explains that large institutional investors only have incentives to pursue systematic, market-wide stewardship focusing on maximizing risk-adjusted rather than firm-specific returns.[86] Others praise this as so called "beta activism," in that it targets systematic risk across the market, such as climate change or board diversity, rather than idiosyncratic risk.[87] Another tension is between investors' interpretations of fiduciary duty and the exercise of stewardship. A key stumbling block for stewardship has been the resistance of trustees of pension trusts to the shareholder stewardship model on the grounds that it entails considerations of broader benefits to third parties that extend beyond the financial interests of pension fund members and could therefore breach the fiduciary duty of loyalty to

[84] *See infra* Part II.B.
[85] For the seminal voice-exit framework, see ALFRED O. HIRSCHMAN, EXIT, VOICE AND LOYALTY: RESPONSES TO DECLINE IN FIRMS, ORGANIZATIONS AND STATES (1970).
[86] *See, e.g.,* Gordon, *supra* note 155.
[87] Jon Lukomnik & James P. Hawley, MOVING BEYOND MODERN PORTFOLIO THEORY: INVESTING THAT MATTERS (1st ed., 2021).

act solely for the interests of the beneficiaries.[88] The third tension is between the risk-mitigating role accorded to institutional shareholders under the shareholder stewardship model and the broad recognition that shareholders favor risk-taking more than other corporate constituencies do.[89] While both concerns still remain—at least in part—the micro-level shareholder stewardship model marks a significant departure from the dominant economic assumptions, under which the accountability parameters in investment management are a completely private, contractual and apolitical matter revolving around efficient, market-based arrangements between institutional investors, their asset managers, and their beneficiaries.[90]

The essential thesis and animating purpose of the shareholder stewardship model is shared by the corresponding "new paradigm" famously embraced in the US context. The "new paradigm" was put forward by Martin Lipton in the World Economic Forum in 2006 with the aim to steer institutional investors to meaningful and long-term behavior and essentially preempt a new wave of state-driven regulation of the relationship between public corporations and their major institutional investors.[91] Both the US investor paradigm and the shareholder stewardship model as this has been embraced by the UK Code 2010/12 and other stewardship codes around the world recognize the value of and encourage shareholder dialogue and engagement that serve long-term interests. But when it comes to their normative implications there is an important difference between the two. The shareholder stewardship model does not share the same ideological

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[88] On the UK, see Tilba & Reisberg, *supra* note 377 (providing qualitative evidence that the interpretation of fiduciary duty varies significantly among pension trustees and this has an impact on the way pension funds exercise shareholder stewardship). On the US, see Max M Schanzenbach & Robert H Sitkoff, Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee, 72 STAN, L. REV. 381 (2020) (arguing that only "risk-return" ESG investing, that is ESG investing aimed at improving risk-adjusted returns rather than collateral benefits to third parties can be permissible for a trustee).

[89] On this tension, *see* CHRISTOPH M. BRUNER, CORPORATE GOVERNANCE IN THE COMMON–LAW WORLD: THE POLITICAL FOUNDATIONS OF SHAREHOLDER POWER (2013), 271 (using the example of section 956 of the Dodd–Frank Act which imposes limits on incentive–based pay in certain large financial firms to showcase the need of financial regulation to balance risk and reward).

[90] For a critical view of the broader public interest inherent in the notion of stewardship, see Dionysia Katelouzou, *Shareholder Stewardship: A Case of (Re)Embedding the Institutional Investors and the Corporation* in: CAMBRIDGE HANDBOOK OF CORPORATE LAW, CORPORATE GOVERNANCE AND SUSTAINABILITY*, (*Beate Sjåfjell & Christopher M. Bruner eds., 2019), 581–595.

[91] Martin Lipton, THE NEW PARADIGM: A ROADMAP FOR AN IMPLICIT CORPORATE GOVERNANCE PARTNERSHIP: BETWEEN CORPORATIONS AND INVESTORS TO ACHIEVE SUSTAINABLE LONG–TERM INVESTMENT AND GROWTH, INT'L BUS. COUNCIL OF THE WORLD ECON. FORUM (2016), https://www.wlrk.com/webdocs/wlrknew/AttorneyPubs/WLRK.25960.16.pdf; Martin Lipton, Wachtell, Lipton, Rosen & Katz, *Embracing the New Paradigm,* HARV L. SCH. F. ON CORP. GOVERNANCE (Jan. 16, 2020), https://corpgov.law.harvard.edu/2020/01/16/embracing–the–new–paradigm/. The stewardship debate in the United States is now focusing on the role of large institutional shareholders, especially index funds, in providing this stewardship commitment. *See* text accompanying note 82.

stance as the US investor paradigm towards state-driven regulation.[92] Rather under the shareholder stewardship model legislative or regulatory actions are needed to a greater or lesser extent; the private sector alone cannot solve all the corporate governance and investment management tensions surrounding shareholder stewardship. As is explained elsewhere, the development of stewardship codes around the world from private, quasi-public and public actors, and the embodiment of stewardship principles into voluntary and mandatory disclosure obligations and fiduciary duties in the UK and abroad, is a testament to the growing recognition that shareholder stewardship cannot succeed without a slate of supporting policy reforms—through legislation, regulation, soft stewardship codes or stewardship recommendations incorporated in corporate governance codes, stock exchange listing rules, or international initiatives.[93] In addition, regulatory and private best practice initiatives by international organizations and NGOs complement and extend investors' responsibilities to a broad area of ESG issues.[94] This multifaceted and complex "regulatory nexus" is an important feature of the shareholder stewardship model.[95] Contrastingly, a similar emphasis on the need for supporting hard- or soft-law rules is not found in the US new paradigm.[96]

It is important to stress that despite the apparent differences between the two sides of the Atlantic in the regulatory stance with respect to how best to promote shareholder stewardship and long-termism (stewardship codes in the UK versus market-driven approaches in the US), both sides face an irreversible transformation of the economic-grounded shareholder monitoring. As is explained elsewhere, even though early agency theorists saw little scope for shareholder monitoring at the micro-level, later contractarians—including Frank Easterbrook and Daniel Fischel—viewed shareholder monitoring in the form of voting as a kind of gap-filler when market arrangements are not efficient.[97] Singling out

[92] Martin Lipton, Wachtell, Lipton, Rosen & Katz, *It's Time to Adopt the New Paradigm,* HARV L. SCH. F. ON CORP. GOVERNANCE (Feb. 11, 2019), https://corpgov.law.harvard.edu/2019/02/11/its-time-to-adopt-the-new-paradigm/ ("No legislation or regulation is necessary to implement The New Paradigm. Corporations, asset managers, and institutional investors can unilaterally announce their acceptance of and adherence to the principles of The New Paradigm").

[93] KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 161.

[94] An example of self–regulation which is specifically addressed by some signatory statements to the UK Stewardship Code is the United Nations Principles for Responsible Investment (PRI) which extends investors' responsibilities to a broad area of environmental, social and governance (ESG) issues. *See* UNPRI, https://www.unpri.org/pri/what–are–the–principles–for–responsible–investment (last visited July 24, 2021).

[95] KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 16.

[96] This aversion to regulation in the context of stewardship appears to be consistent with the rather enabling character of Delaware corporate law (especially before the Dodd-Frank Act) and the greater recourse to private ordering by investors in the US. *See e.g.* Jennifer G. Hill, *The Trajectory of American Corporate Governance: Shareholder Empowerment and Private Ordering Combat*, 2019 U. ILL. L. REV. 507 (2019) (highlighting "the growing use by institutional investors of private ordering as a "self-help" mechanism to gain stronger participatory rights").

[97] KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 16.

shareholders as residual claimants and principals may not have been automatically translatable to increased shareholder monitoring, but with the growing shareholder-focused reorientation of corporate governance following the "Deal Decade," shareholder governance found its ideological backing.[98]

However, this endorsement of shareholder governance based on the principal–agent model and the shareholder value maximization ideology has generated criticism on various grounds. Among others, some have asserted that the economic-grounded account of shareholder monitoring does not reflect the business reality: "[t]he principal–agent model bears no relationship to the way large companies are actually run."[99] But whereas "[t]he attempt to bring reality in line with the model is one possible road to reform: another is to adjust the model to reality."[100] What I term as "enlightened" shareholder stewardship is a possible way forward.[101] The changes in what is socially acceptable for businesses and institutional investors and the growing demands for placing the creation of "shared value"[102] rather than shareholder value as the driving interest in corporate governance theory, regulation and practice call for a reimagination of the "old" notions of shareholder activism, shareholder engagement and shareholder monitoring. "Enlightened" shareholder stewardship understands shareholder engagement and monitoring beyond the private contours of the agency-theory-inspired shareholder monitoring and toward the advancement of long-term value and wider public interests.[103] The UK Code 2010/12—as we will show in the next section—pioneered this change.

B. *The Development of Micro-Level Shareholder Stewardship through the Example of the First Generation UK Stewardship Code: What is it and Who is it for?*

Early traces of the micro-level shareholder stewardship model exist in the 1991 statement "The Responsibilities of Institutional Shareholders in the UK" of the now-dissolved Institutional Shareholders' Committee (ISC)—a private body composed of four prominent UK investor associations—which culminated in the 2009 ISC "Code on the Responsibilities of Institutional Investors" and one year

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[98] *Id.*
[99] John Kay & Aubrey Silberston, *Corporate Governance*, NATIONAL INST. ECON. REV. 84 (1995).
[100] *Id.*
[101] *See* KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 16. For the earlier and contemporaneous debate on the development of the enlightened shareholder value as the standard for directors' accountability, *see* Lund, *supra* note 18.
[102] Michael Porter & Mark Kramer, *Shared Value Creation*, 1/2 HARV. BUS. REV. 62 (2011).
[103] While enlightened shareholder stewardship can be exercised at various levels (micro-, market- and macro-levels), the focus of this Article is limited to micro–level stewardship. On market- and macro-level shareholder stewardship, see KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 16.

later the first UK Stewardship Code.[104] The UK Financial Reporting Council (FRC) took oversight of the ISC Code following Sir David Walker's recommendation in the 2009 review on corporate governance in financial institutions. In July 2010, it introduced the first UK Stewardship Code.[105] Due to its origins, the UK Code 2010 accords with market perceptions of the appropriate role for institutional investors and reflects the long history of the deference of UK policymakers to "market-invoking" regulation, especially in the financial services sector.[106] The UK Code 2010, accords faithfully to the spirit of the previous ISC Code, focused on shareholder stewardship as the proper basis of better engagement between all the actors in the investment chain (including asset managers and asset owners) on the one hand, and the boards of investee companies, on the other. The first sentence of the UK Code 2010 defines the aim of stewardship as enhancing "the quality of engagement between institutional investors and companies to help improve long-term returns to shareholders and the efficient exercise of governance responsibilities."[107]

The UK Code 2010 included seven high level principles dealing with public disclosure of stewardship policies (Principle 1), conflicts of interest (Principle 2), monitoring of investee companies (Principle 3), escalation of monitoring activities (Principle 4), collective action (Principle 5), voting policy and reporting of voting activity (Principle 6), and periodic reporting on stewardship and voting activities (Principle 7). These seven principles mainly aimed at promoting greater

[104] In its consultation preceding the introduction of the UK Stewardship Code, the UK Financial Reporting Council recognized the ISC 2009 Code as a "good starting code" for the UK Code and included it in Appendix B. *See* FINANCIAL REPORTING COUNCIL, CONSULTATION ON A STEWARDSHIP CODE FOR INSTITUTIONAL INVESTORS (2020), https://ecgi.global/sites/default/files//codes/documents/frc_stewardship_code_consultation_jan2010.pdf. For a comprehensive analysis of the history of the UK Stewardship Code, *see* KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 161.

[105] WALKER REVIEW, A REVIEW OF CORPORATE GOVERNANCE IN UK BANKS AND OTHER FINANCIAL INDUSTRY ENTITIES – FINAL RECOMMENDATION (2009), https://webarchive.nationalarchives.gov.uk/+/http:/www.hm–treasury.gov.uk/d/walker_review_261109.pdf, Recommendation 17 ("The Code on the Responsibilities of Institutional Investors, prepared by the Institutional Shareholders' Committee, should be ratified by the FRC and become the Stewardship Code"). FINANCIAL REPORTING COUNCIL, THE UK STEWARDSHIP CODE (2010), https://www.frc.org.uk/getattachment/e223e152–5515–4cdc–a951–da33e093eb28/UK–Stewardship–Code–July–2010.pdf [hereinafter, UK Code 2010].

[106] But this market–invoking, principles–based corporate governance regulation is not the norm everywhere, such as in the United States. *See e.g.* Jonas V. Anderson, *Regulating Corporations the American Way: Why Exhaustive Rules and Just Deserts are the Mainstay of U.S. Corporate Governance*, 57 DUKE L.J. 1081 (2008) (suggesting that "given the longstanding and singularly American predilection for rules–based regulation and litigation, any large–scale transplant of soft principles into U.S. corporate governance is a practical impossibility". See also Dionysia Katelouzou & Peer Zumbansen, *The Transnationalization of Corporate Governance: Law, Institutional Arrangements and Corporate Purpose*, AZ. J. INT'L & COMP. L. (2021) (arguing that private ordering in corporate governance must be seen in the context of the fundamental transformation of the political economy brought about by the last twenty or more years of globalization).

[107] UK CODE 2010, *supra* note 105, at 1.

shareholder engagement and monitoring on governance risks. Even though the UK Code 2010 also dealt with the need for greater transparency of internal investment management policies and business models, the overriding goal was to meet the perceived need for more and effective institutional shareholders' engagement with investee companies in an agency theory fashion.[108] The Preface of the UK Code 2010 defines "engagement" in a broad fashion that includes "purposeful dialogue on strategy, performance and the management of risk, as well as on issues that are the immediate subject of votes at general meetings."[109] Embracing the earlier Cadbury Review's espousal of the 1991 ISC statement,[110] the FRC stressed the strong links between the UK Stewardship Code and the UK Corporate Governance Code for listed companies.[111] The two codes were seen as complementing each other to "lend greater substance to the concept of 'comply or explain' as applied by listed companies," and thereby advancing good corporate governance standards.[112]

The UK Code 2010 did not last long. Following the Kay Review's emphasis on the investment management fallacies of shareholder stewardship and the need to promote a stewardship culture across the equity investment chain,[113] the FRC revised the UK Stewardship Code in 2012.[114] The drafters revamped the 2010 Preface and enlarged it with new sections relating to the content, application and enforcement of the stewardship principles.[115] The 2012 version brought about a more expansive form of shareholder stewardship, focusing on engagement with investee companies on a much wider set of issues, including corporate governance, culture, risk and strategic issues, but also on the institutional investor's activities and responsibilities within the investment chain.[116] The UK Code 2012 does not

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108 Katelouzou, *Shareholder Stewardship, supra* note 9090.

109 UK CODE 2010, *supra* note 105.

110 REPORT OF THE COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE, COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE, 3.4, 4.59, 6.1, 6.6, 6.10, 6.11 (1992), http://www.ecgi.org/codes/documents/cadbury.pdf [hereinafter, Cadbury Report].

111 FINANCIAL REPORTING COUNCIL, THE UK CORPORATE GOVERNANCE CODE (2018), https://www.frc.org.uk/document–library/corporate–governance/2018/uk–corporate–governance–code–2018.

112 UK CODE 2010, *supra* note 105, at 1.

113 KAY REVIEW, THE KAY REVIEW OF UK EQUITY MARKETS AND LONG–TERM DECISION MAKING – FINAL REPORT (2012), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/253454/bis–12–917–kay–review–of–equity–markets–final–report.pdf. For a comprehensive analysis, see KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 16.

114 FINANCIAL REPORTING COUNCIL, THE UK STEWARDSHIP CODE (2012), https://www.frc.org.uk/getattachment/d67933f9–ca38–4233–b603–3d24b2f62c5f/UK–Stewardship–Code–(September–2012).pdf [hereinafter, UK CODE 2012].

115 See, for instance, UK CODE 2012 *supra* note 114, 2-4 for the new sections on the application of the code and its comply or explain nature.

116 UK CODE 2012, *supra* note 114, 1 ("For investors, stewardship is more than just voting. Activities may include monitoring and engaging with companies on matters such as strategy,

simply view stewardship as a means to promote institutional shareholder engagement; it pushes stewardship as a tool to "improve the functioning of the market for investment mandates."[117] The 2012 version brings a focus on the "investment management" side of stewardship, that is, the governance of stewardship within an organization and the relationship between the institutional investor—an investment intermediary—and their ultimate beneficiaries/clients.[118] But essentially, the 2012 version still includes the same seven principles as the UK Code 2010, and despite not being mute on the importance of addressing the flaws of the investors' own governance models, it retains its emphasis on the corporate governance side of stewardship. The two versions are therefore closely related, and I use the term "the first generation" UK Code or UK Code 2010/12 to refer to both of them.[119]

Overall, the main aim of the first generation UK Code was to transform rationally "apathetic" institutional investors into long-term engaged shareholders to minimize excessive risk taking and short-termism at individual companies. The first generation UK Code, likened to an "Engagement Code,"[120] contemplates the importance of shareholder engagement that goes beyond the box ticking exercise of governance mandates and financial metrics. The 2012 version encourages institutions to engage with corporate management and boards in a constructive way across a range of issues "such as strategy, performance, risk, capital structure, and corporate governance, including culture and remuneration."[121] Engagement is about "purposeful" and "active" dialogue, the constructive exercise of voting rights with a commitment to long term returns.[122] Engaging involves listening as well as speaking—and specifically listening to explanations as to why a company chooses not to follow the UK Corporate Governance Code.[123] The UK Code 2010/12 recommends relationships, not merely exercising rights (including voting), but it does not preclude escalation "as a method of protecting and enhancing shareholder value."[124] Such escalation activities include holding meetings with the incumbents

performance, risk, capital structure, and corporate governance, including culture and remuneration. Engagement is purposeful dialogue with companies on these matters as well as on issues that are the immediate subject of votes at general meetings").

117 UK CODE 2012, *supra* note 114, at 2.

118 On the investment management side of stewardship, *see* KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 16.

119 This term is introduced by KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 16. *See*, also Paul Davies, *The UK Stewardship Code 2010–2020: From Saving the Company to Saving the Planet* in: GLOBAL SHAREHOLDER STEWARDSHIP (Dionysia Katelouzou & Dan W. Puchniak eds., forthcoming 2022), also available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3553493 (referring to the 2010 and 2012 versions together as the "first version" of the UK Stewardship Code).

120 Davies, *The UK Stewardship Code 2010–2020, supra* note 119.

121 UK CODE 2012, *supra* note 114, at 1.

122 UK CODE 2012, *supra* note 114, at 5.

123 UK CODE 2012, *supra* note 114, at 1 and 7

124 UK CODE 2012, *supra* note 114, Principle 4.

(management, chairman or directors), making public statements or actively exercising shareholder rights such as submitting shareholder resolutions at general meetings or requisitioning general meetings.[125]

The first generation UK Code's promotion of institutional shareholder monitoring is rooted in the long-observed, economically-grounded conception of the shareholder–management relationship. The UK Code 2010/12 is ostensibly premised upon the idea that shareholder monitoring can overcome the agency problems between institutional shareholders and corporate directors.[126] It emphasizes the complementary capabilities and "shared" responsibility of directors and institutional shareholders to uphold the dubious comply-or-explain system.[127] However, at the same time, the 2012 version extended the ambit of shareholder monitoring and assigned a sort of "implicit social legitimacy"[128] to institutional investors' engagement and oversight. The UK Code 2012 states in its first paragraph that "effective stewardship benefits companies, investors and the economy *as a whole*."[129] There is, therefore, a strong sense of accountability and responsibility towards all corporate constituents in the UK Code 2010/12, traces of which have affected UK corporate governance thinking since the Cadbury Report.[130] Importantly, what the first generation UK Code contributed to this thinking is a pertinent formalization of the corporate governance role of shareholders akin to the role of board directors as envisaged by the UK Corporate Governance Code.[131] The latest 2020 version of the UK Stewardship Code

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[125] UK CODE 2012, *supra* note 114, at 8-9.

[126] *See, also,* Iris H–Y Chiu, *Turning Institutional Investors into 'Stewards': Exploring the Meaning and Objectives in 'Stewardship*,*'* 66 CURRENT LEGAL PROBLEMS 1 (2013).

[127] UK CODE 2012, *supra* note 114, at 1 ("In publicly listed companies responsibility for stewardship is shared. The primary responsibility rests with the board of the company, which oversees the actions of its management. Investors in the company also play an important role in holding the board to account for the fulfillment of its responsibilities… [t]he code assists institutional investors better to exercise their stewardship responsibilities, which in turn gives force to the 'comply or explain' system"). On the effectiveness of the comply–or–explain system see *generally* Marc Moore, "*Whispering Sweet Nothings": The Limitations of Informal Conformance in UK Corporate Governance*, 9 J. CORP. L. STUD. 95 (2009).

[128] *See* WALKER REVIEW, *supra* note105, 5.7: "The potentially highly influential position of significant holders of stock in listed companies is a major ingredient in the market–based capitalist system which needs to earn and to be accorded an at least *implicit social legitimacy*. As counterpart to the obligation of the board to the [institutional] shareholders, this implicit legitimacy can be acquired by at least the larger fund manager through assumption of a reciprocal obligation involving attentiveness to the performance of investee companies over a long as well as a short–term horizon. On this view, those who have significant rights of ownership and enjoy the very material advantage of limited liability should see these as complemented by *a duty of stewardship*".

[129] UK CODE 2012, *supra* note 114, at 2 (own emphasis).

[130] CADBURY REPORT, *supra* note110, paras. 7.4 and 7.5 ("The way forward is through clear definitions of responsibility and an acceptance by all involved that the highest standards of efficiency and integrity are expected of them…This will involve a sharper sense of accountability and responsibility all round – accountability on the part of all shareholders to the companies they own, and accountability by professional officers and advisers to those who rely on their judgment").

[131] On the evolution of this logic in the UK, see KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 16.

introduced a significant overhaul to how stewardship is understood.[132] The new twelve principles of the revised UK Code 2020 contain a much broader concept of stewardship that embraces not only active engagement and monitoring of equity (shareholder stewardship) but also stewardship of other assets, prudent investment decision making and material ESG issues (which can all be termed as "investment stewardship").[133] At the same time, stewardship is moving beyond the micro-level towards the market-level in recognition that asset owners and asset managers can act as "guardians of market integrity" and work with other stakeholders, including regulators, associations and not-for-profits, in identifying market-wide and systemic risks.[134] The UK Code 2020—called the "second generation" UK Stewardship Code—marks an ambitious shift from micro- to market-stewardship or, to put it in the words of Paul Davies, "from saving the company to saving the planet,"[135] and is an attempt to align diversified investment strategies with the stewardship ideal—a problem at the heart of the first generation UK Code as we will show below.[136] The changes the UK Code 2020 brought about have been analyzed elsewhere and will not be repeated here.[137] What deserves our attention, however, and is critical for the empirical analysis that follows, is the study of shareholder stewardship expectations that the first generation UK code introduced and the 2020 version carried on.

As explained above, shareholder stewardship is espoused by the first generation UK Code as a means to improve the governance and performance of investee companies through effective shareholder engagement.[138] While the first generation UK Code focused on the micro-level, it viewed the exercise of shareholder stewardship at individual companies as a means to assist the efficient operation of the markets and strengthen the credibility of the market economy as a whole.[139] As such micro-level shareholder stewardship is not solely aimed at increasing shareholder value at the individual company level. Rather its aims are to promote long-term health of the broader economy. Shareholder stewardship is

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[132] FINANCIAL REPORTING COUNCIL, THE UK STEWARDSHIP CODE, (2020), https://www.frc.org.uk/getattachment/5aae591d–d9d3–4cf4–814a–d14e156a1d87/Stewardship–Code_Dec–19–Final–Corrected.pdf [hereinafter, UK CODE 2020].

[133] For an analysis of the two aspects of stewardship embraced in the UK Code 2020, see KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 16.

[134] UK CODE 2020, *supra* note 132, at 5 and 11 (Principle 4).

[135] Davies, *The UK Stewardship Code 2010–2020, supra* note 119.

[136] *See infra* Part II.C.

[137] A comprehensive analysis of the latest revision of the UK stewardship code remains outside the scope of this paper. On the 2020 version, *see* Davies, *The UK Stewardship Code 2010–2020, supra* note 119, and KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 16.

[138] See text accompanying notes 120-125 above.

[139] *See*, *e.g.*, the opening statement of the UK CODE 2012, *supra* note 114, 1: "effective stewardship benefits companies, investors and the economy as a whole".

ultimately about building "trust"[140] between shareholders and management on the one hand and between asset managers, asset owners and their beneficiaries on the other. This is why stewardship under the UK Code 2010/12 is not about shareholder empowerment and the provision of more rights to institutional investors to engage and monitor,[141] but has a sense of shareholder responsibilities and *duties* towards the long-term interests of their investee companies and their own end-investors and was designed as a means to promote responsible shareholder conduct.[142] A skeptic, however, may say that the FRC doubled its bet with the adoption of the UK Code 2010/12 quickly sponsoring stewardship as a means to address the widespread post-GFC criticism that institutional investors failed in their role to call boards to account.[143] A stronger critic may counter that the solution to the problems of poor corporate governance, excessive risk taking, and short-termism cannot be confined to shareholder engagement and power and that other stakeholders must be mobilized.[144] While these tensions remain largely unresolved,[145] one thing is clear: the first generation UK Code formalized the idea—albeit for some in a contradictory way[146]—that shareholder engagement and monitoring by institutional investors encompasses more than the private contours of the agency-theory-inspired shareholder monitoring but also the advancement of long-term value and wider public interests. But, as I will show below, this is not an understanding shared equally by all investors signed up to the first generation UK Code.

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[140] On the role of trust in the financial markets, *see generally* COLIN MAYER, FIRM COMMITMENT: WHY THE CORPORATION IS FAILING US AND HOW TO RESTORE TRUST IN IT (2013).

[141] *Cf.* the way the shareholder empowerment debate has been developed in the United States. On this *see, e.g.,* Lucian A. Bebchuk, *The Case for Increasing Shareholder Power*, 118 HARV. L. REV., 833, 908–913 (2005); Bebchuk, *The Myth of Shareholder Franchise*, *supra* note 43; Leo E. Strine, Jr., *The Dangers of Denial: The Need for a Clear–Eyed Understanding of the Power and Accountability Structure Established by the Delaware General Corporation Law*, 50 WAKE FOREST L. REV. 761, 768 (2015).

[142] Iris H–Y Chiu & Dionysia Katelouzou, *From Shareholder Stewardship to Shareholder Duties: is the Time Ripe?* in: SHAREHOLDERS' DUTIES 131 (Hanne S. Birkmose ed., 2017) (asserting that the Principles of the UK Stewardship Code can evolve into concrete institutional shareholder duties).

[143] Lady Hogg, the then FRC chairman, stated in 2010: "If we don't protect shareholder rights the ultimate danger is the drying–up of equity capital and to prevent these rights being overridden by international regulators, shareholders need to be able to demonstrate they're used responsibly and effectively". *See* Kate Burgess & Miles Johnson, *FRC offers blueprint for investor engagement*, FIN. TIM. (July 1, 2010), https://www.ft.com/content/6d49e824–8544–11df–9c2f–00144feabdc0.

[144] *See, e.g.*, Janet Williamson, *The emperor's new clothes – enlightened shareholder value and the UK Stewardship Code* in EUROPEAN COMPANY LAW AND THE SUSTAINABLE COMPANY: A STAKEHOLDER APPROACH VOL. II, (Sigurt Vitols & Johannes Heuschmid eds., 2012) 253, 260 (questioning the convergence between the interests of institutional shareholders and other stakeholders).

[145] See further Katelouzou, *Shareholder Stewardship, supra* note 90.

[146] *See, e.g.*, Beate Sjåfjell, *Achieving Corporate Sustainability: What is the Role of the Shareholder?* in: SHAREHOLDERS' DUTIES IN EUROPE (Hanne Birkmose ed., pp. 377–404, 2017), also available at https://ssrn.com/abstract=2828573.

Turning now to its scope, the UK Code 2010/12 is principally addressed to "institutional investors" with equity holdings in UK companies.[147] Institutional investors include "asset owners," defined in the UK Code 2012 as "pension funds, insurance companies, investment trusts and other collective investment vehicles," and "asset managers," defined as those with "day-to-day responsibility for managing investments on behalf of the asset owners and are in a position to influence companies' long term performance through stewardship."[148] While the first generation UK Code recognizes that asset managers are better positioned to exercise shareholder stewardship, the responsibility for stewardship, according to the Code, does not rest with asset managers alone but extends to asset owners themselves who "set the tone for stewardship"[149] and "should seek to hold their managers to account for their stewardship activities."[150] Through valorizing asset owners, the first generation UK Code seeks "behavioral changes" from asset managers and, by extension, investee companies.[151] The degree to which asset managers are guided by their institutional clients depends, however, on the workings of the so called "market for stewardship" or market for investment mandates.[152] The assumption is that asset owners will demand stewardship to generate long-term returns for their beneficiaries, and asset managers will supply it for reputational and financial incentives.[153] An efficient market for stewardship should better equip assets owners to evaluate asset managers and enable asset managers to meet asset owners' requirements.[154] Even though respect to different business models is hailed, the first generation UK Code provides that institutional investors "cannot delegate their responsibility for stewardship" and "remain responsible for ensuring those activities are carried out in a manner consistent with their own approach to stewardship" when they "outsource to external service providers some of the activities associated with stewardship."[155] Consequently, the UK Code 2010/12 is also directed, by extension, to service providers such as proxy advisors and investment consultants.[156]

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[147] UK CODE 2012, *supra* note 114, at 2.
[148] UK CODE 2012, *supra* note 114, at 1. Note that retail investors (asset owners) who invest in asset managers are not under any onus under the UK Code.
[149] UK CODE 2012, *supra* note 114, at 2.
[150] UK CODE 2012, *supra* note 114, at 3. But *see* Tilba & Reisberg, *supra* note 377 (highlighting the limits the interpretations of fiduciary duties pose on pension funds' approaches to stewardship). For a similar discussion in the United States, *see* Bernard S. Sharfman, *The Conflict between Blackrock's Shareholder Activism and ERISA's Fiduciary Duties*, CASE W. RES. L. REV. (Sep. 13, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3691957.
[151] UK CODE 2012, *supra* note 114, at 1.
[152] *See* Dionysia Katelouzou & Eva Micheler, *The Market for Stewardship and the Role of the Government*, in: GLOBAL SHAREHOLDER STEWARDSHIP (Dionysia Katelouzou & Dan W. Puchniak eds., forthcoming 2021), also available https://ssrn.com/abstract=3704258.
[153] *Id*.
[154] UK CODE 2012, *supra* note 114114, at 2–3.
[155] UK CODE 2012, *supra* note 114, at 2.
[156] UK CODE 2012, *supra* note 114114, at 2.

The targets of the first generation UK Code have no formal obligation to obey the stewardship prescriptions, and the UK Code 2010/12 similarly to the UK Corporate Governance Code—and the earlier Cadbury Code—adopts the "comply-or-explain" approach.[157] Institutional investors can choose whether or not to sign up to the UK Code 2010/12, and if they do (in which case they are signatories), they should disclose information about their stewardship policy and compliance record and explain areas of non-compliance.[158] But for asset managers authorized by the Financial Conduct Authority (FCA)—the UK financial services regulator—there is a duty to disclose the extent to which they comply with the UK Code and their deviations from the Code where appropriate.[159] In other words, FCA-authorized asset managers may have no formal obligation to obey the Code, but have to disclose information about their stewardship policies and explain when they depart from the Code's principles.[160] Such a duty does not exist for the other targets of the UK Code (UK-based asset owners and service providers). Nor have overseas institutional investors investing in UK public equity—despite currently dominating UK share registers[161]—been obligated to report if and how they apply the UK Code. However, in an attempt to encourage overseas investors to follow the UK Code 2010/12 without adding a considerable disclosure burden, the 2012 version advises overseas investors who follow other national or international stewardship codes that disclosures made in respect of those standards can also be used to demonstrate the extent to which they have complied with the UK Code.[162]

Figure 1 demonstrates that over the first five years after the introduction of the UK Code in 2010 the number of signatories had increased to a record high of 321 signatories in 2015. Since then, there has been a drop in the number of

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[157] UK CODE 2012, *supra* note 114, at 2. It is noteworthy that the 2020 version of the UK Code has elevated the compliance level in two important ways: (i) it follows the apply–and–explain approach and (ii) disclosure of stewardship outcomes and practices rather than policy statements.

[158] On the effectiveness of the comply–or–explain principle, s*ee, among others*, John Parkinson & Gavin Kelly, *The Combined Code of Corporate Governance*, 70 POL. Q. 101 (1999); Sridhar Arcot, Valentina Bruno & Antoine Faure–Grimaud, *Corporate governance in the UK: Is the company or explain working*? 30 INT'L REV. L. & ECON. 193 (2010) (empirically examining the compliance levels to the UK Combined Code of Corporate Governance and finding that while most companies comply with the code, those that do not comply only provide poor explanations); Virginia Harper Ho, *Comply or Explain and the Future of Nonfinancial Reporting*, 21 LEWIS & CLARK L. REV. 317 (2017) (supporting the incorporation of the comply–or–explain approach to ESG reporting in the United States).

[159] UK CODE 2012, *supra* note 114, page 4, para 4. FINANCIAL CONDUCT AUTHORITY, COBS 2.2.3R (2021), https://www.handbook.fca.org.uk/handbook/COBS/2/?view=chapter.

[160] *See* Dionysia Katelouzou & Peer Zumbansen, *The New Geographies of Corporate Governance,* 42 U. PA. J. INT'L L. 51, 130-147 (2020) (for a critical discussion of this level of coerciveness of the UK Code 2012 and of the limits of private regulation in ensuing effective stewardship and corporate governance practices).

[161] *See* ONS 2020, *supra* note 41 (reporting that the proportion of UK domiciled companies quoted shares owned by non–UK investors stood at 54.9% by the end of 2018). This limited focus of the UK Code made Cheffins to opine that the code is unlikely to foster investor–led governance. *See* Cheffins, *supra* note 366.

[162] UK CODE 2012, *supra* note 114, page 3, para 9.

signatories followed by another increase. The decrease is likely to be attributed to the two- (previously three-) tier reporting system introduced by the FRC in 2016.[163] The aim of the tier reporting system, which is akin to a reputational enforcement mechanism,[164] was threefold: to improve the quality of reporting against the UK Code 2010/12, to encourage greater transparency in the market, and to improve the functioning of the market for investment mandates.[165] The tiering exercise distinguished between signatories who report well and demonstrate their commitment to stewardship and those who must improve.[166] In November 2016, the results of the first public tiering exercise were officially announced.[167] The first tiering exercise led to some signatories (approximately 20) voluntarily withdrawing their stewardship statements.[168] From the remaining signatories, 28 asset managers were assessed as Tier 3.[169] The FRC gave Tier 3 asset managers a period of six months to improve their statements to the Tier 1 or Tier 2 standard or be removed from the list of signatories to the UK Code 2010/12.[170] In August 2017, the FRC announced the results of the second public tiering exercise.[171] This time 256 signatories remained to the UK Code 2010/12 (Figure 1). The FRC removed the Tier 3 category as some signatories improved their statements to the Tier 1 or Tier 2 standard, and the rest removed themselves from the list of signatories.[172]

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[163] Additional information is available: *FRC promotes improved reporting by signatories to the Stewardship Code*, FINANCIAL REPORTING COUNCIL (Dec. 14, 2015), https://www.frc.org.uk/News–and–Events/FRC–Press/Press/2015/December/FRC–promotes–improved–reporting–by–signatories–to.aspx. Other reasons behind this trend can be the little incentives of asset managers to improve the long–term value of investee companies and promote wider public interests due to fierce competition on the basis of relative performance creates. For a theoretical model of when mutual funds should vote on behalf of their investors, *see* Sean J. Griffith, *Opt–In Stewardship: Toward an Optimal Delegation of Mutual Fund Voting*, 98 TEXAS L. REV. 983 (2020).

[164] *See* Dionysia Katelouzou & Konstantinos Sergakis, *Enforcement of Shareholder Stewardship* in GLOBAL SHAREHOLDER STEWARDSHIP (Dionysia Katelouzou & Dan W. Puchniak eds., forthcoming 2022), *also available* at https://ssrn.com/abstract=3564266 (setting out an enforcement taxonomy of shareholder stewardship based on the nature of the norm enforcer, the nature of the enforcement mode and the temporal dimension of enforcement).

[165] Currently it remains unclear whether the FRC will continue its tiering system to assess the quality of the stewardship reports to the UK Code 2020.

[166] Further on the classification of the signatories to the UK Code 2010/12 into tiers, *see Tiering of 2012 Stewardship Code Signatories*, FINANCIAL REPORTING COUNCIL (Jan. 25, 2021), https://www.frc.org.uk/investors/uk–stewardship–code/uk–stewardship–code–statements.

[167] *Tiering of Signatories to the Stewardship Code*, FINANCIAL REPORTING COUNCIL (Nov. 14, 2016) https://www.frc.org.uk/news/november-2016/tiering-of-signatories-to-the-stewardship-code

[168] Data on file with the author.

[169] Data on file with the author.

[170] https://www.frc.org.uk/news/november-2016/tiering-of-signatories-to-the-stewardship-code

[171] FRC removes Tier 3 categorisation for Stewardship Code signatories, FINANCIAL REPORTING COUNCIL (Aug. 3, 2017) https://www.frc.org.uk/news/august-2017/frc-removes-tier-3-categorisation-for-stewardship

[172] *Id.*

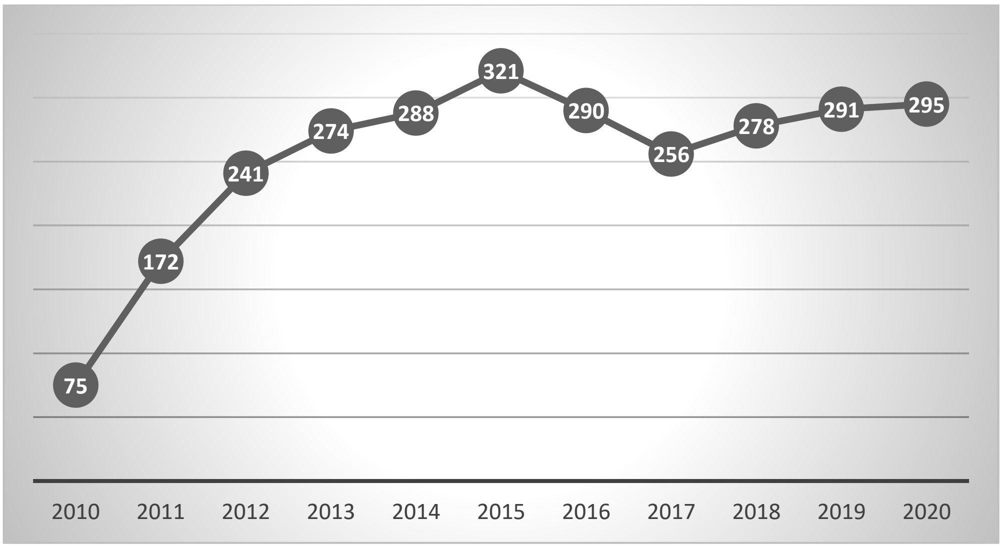

Figure 1: Number of Signatories to the UK Stewardship Code, 2010–2020[173]

The FRC's tiering exercise is a unique example of a membership and adherence sanction within an established stewardship network,[174] but it has—as we will see below—uncertain implications for shareholder stewardship rhetoric.[175] According to the FRC, approximately 80 signatories across all categories originally assessed as Tier 2 improved their statements to move into Tier 1, and the tiering exercise has resulted in more transparency and improved reporting against the principles of the UK Code 2010/12.[176] Also, the FRC claims that the decrease in the number of signatories is not a matter of concern. Dropping an institution from the UK Code 2010/12 is appropriate if stewardship is not relevant for an institution's business model, as it should not be using the UK Code 2010/12 as a reporting framework.[177]

Finally, it is evident from Figure 1 that since 2018 there has been a slight increase in the number of stewardship signatories, which as of 2020 amounted to 295, from which 178 are asset managers, and 105 are asset owners.[178] This trend is attributed mainly to an increasing number of asset managers being willing to adhere to the UK Code 2010/12 and act as long-term stewards on behalf of their

[173] Data on file with the author.
[174] Katelouzou & Sergakis, *Enforcement of Shareholder Stewardship*, *supra* note 16464.
[175] *See infra* Part III.C.
[176] FINANCIAL REPORTING COUNCIL, ANNUAL REPORT ON DEVELOPMENTS IN CORPORATE GOVERNANCE AND STEWARDSHIP 2016 (2017), https://www.frc.org.uk/getattachment/ca1d9909–7e32–4894–b2a7–b971b4406130/Developments–in–Corporate–Governance–and–Stewardship–2016.pdf.
[177] Signatories assessed as Tier 1 do not necessarily provide a "perfect" statement but provide a good overview of their approach to stewardship.
[178] The rest 12 signatories are service providers. Latest data were collected in May 2020.

clients,[179] and suggests that there is an increasing awareness and raising market expectations of signatories to the UK Code 2010/12, a trend expected to continue for the foreseeable future.[180] What is less clear, however, is the extent to which signatories, and more specifically the activist asset managers who are the focus of this study—irrespective of their internal business model—can truly internalize the model of firm-specific shareholder stewardship aspired to by the first generation UK Code.

C. *The Stewardship Ability of Activist Investors: The New Breed of Activist Shareholder Stewards*

The analysis so far theorized the model of micro-level shareholder stewardship and exemplified its policy development through the first generation UK Code. This is where a paradox comes to light: the UK Code 2010/12 is addressed to *all* asset managers and asset owners with equity holdings in UK listed companies, but the model of shareholder stewardship—as originally envisaged by the UK Code 2010/12 and carried on in the 2020 Code—is by definition more suited to an undiversified investment strategy that entails firm-specific monitoring of operational and governance decisions, firm-specific engagement, and management oversight on a cost effective basis. Take, for instance, UK pension funds—the archetype of so called "universal owners."[181] They now own just 1.8% of UK equities,[182] but even if they owned as much public equity as they did in the 1980s and 1990s, most pension trustees have little incentives to engage in firm-specific shareholder engagement and monitoring and tend to play an "indirect" form of stewardship through mandates to their fund managers.[183] From the four categories of "traditional" domestic institutional

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[179] As of October 2019, 169 asset managers were signatories to the UK Code 2010/12. Data on file with author.

[180] Following the introduction of the revised UK Code 2020 the FRC received and assessed applications for the list of signatories to the new Code two times: in April 2021 and in October 2021. The most updated signatory list to the UK Code 2020 was announced in March 2022 and is available: https://www.frc.org.uk/investors/uk-stewardship-code/uk-stewardship-code-signatories

[181] James Hawley & Andrew Williams, *The Emergence of Universal Owners: Some Implications of Institutional Equity Ownership*, 43 CHALLENGE, 43 (2000); James Hawley & Andrew Williams, *Universal Owners: Challenges and Opportunities*, 15 CORP. GOVERNANCE: AN INTR'L REV., 415 (2007); Roger Urwin, *Pension Funds as Universal Owners: Opportunity Beckons and Leadership Calls*, 4 ROTMAN INTR'L. J. OF PENSION MGMT., 26 (2011).

[182] For data *see* ONS 2020*, supra* note 41 (reporting a record low of 1.8% in the equity shares of UK pension funds, a further increase from the 2.4% in 2018). *See* also Mark Cobley, *UK pension funds continue to slash equity investments*, Financial News (May 21, 2019), https://www.fnlondon.com/articles/uk–pension–funds–continue–to–slash–equity–investments–20190521.

[183] There are notable exceptions, however, such as The Church Commissioners for England, a £8.7bn investment fund managed in an ethical and responsible way, has a long history of active engagement with companies. The latest example is: *Church Commissioners for England voice*

investors (pensions, insurance, unit trusts—or mutual funds—and investment trusts), only unit trusts—the British open-end mutual funds—are still significant players in UK-listed shares despite a recent fall in their ownership share.[184] Unit trusts together with other financial institutions, such as index funds and exchange traded funds which have an increasing presence in UK listed equity could, in theory have the financial incentives to perform the role of the shareholder steward.[185] However, despite the forceful scholarly debate on the stewardship role of the Big Three or the Big Four, it is becoming more and more clear that index funds do not monitor the fundamentals of their portfolio companies, have very few incentives to actively promote firm-specific governance improvements, and even if they were to do so their influence would be limited to their minority voting power.[186] Passive managers, therefore, can at best play a *systematic* (portfolio- or market-level) stewardship role.[187] This leaves us with active asset managers who are, however, unable to devote resources to engage with every company in their large portfolios. There are two instructive examples. First, when active asset managers *react* to corporate crises (such as excessive executive plans, acquisitions, poor succession plans or inappropriate capital increases) they align with the micro-level shareholder stewardship model. Second, when active asset managers address environmental and social issues engaging in ESG activism they align with the micro-level shareholder stewardship model.[188] But in the main while active asset managers invest resources in stock-picking underperforming companies, their ability to actively engage to improve performance at the individual firm-level is

support for activist campaign targeting ExxonMobil, CHURCH OF ENGLAND (2020), https://www.churchofengland.org/news–and–media/finance–news/church–commissioners–england–voice–support–activist–campaign–targeting (last visited July 30, 2021) (joining the activist investor campaign led by Engine No.1 and supported by CalSTRS urging ExxonMobil to develop an energy transition strategy and refresh its board). It is also worth–noting that some of the largest UK pension funds, such as Railpen, are moving from delegated stewardship to in–house stewardship and management. *See* RPMI RAILPEN (2021), https://www.rpmirailpen.co.uk/.

[184] ONS 2020, *supra* note 41 (reporting that unit trusts' proportions in the UK listed market has fallen sharply from a record high of 9.6% in 2018 to 7.4 per cent at the end of 2020).

[185] ONS 2020, *supra* note 41 (reporting that other financial institutions reached a record high of 12.8% in 2020). S*ee also* BARKER & CHIU, *supra* note 9 (examining how the internal business models and incentives of pension funds, mutual funds, hedge funds, private equity funds and sovereign wealth funds affect their corporate governance roles).

[186] *See, e.g.*, Dorothy Shapiro Lund *The Case Against Passive Shareholder Voting*, 43 J. CORP. L. 493 (2018); Fisch, Hamdani & Solomon, *supra* note 82; Bebchuk & Hirst, *supra* note82; Brian R. Cheffins, The Rise and Fall (?) of the Berle–Means Corporation, 42 SEATTLE U. L. REV. 445, 489–496 (2019). *But see* John C. Coates, *The Future of Corporate Governance Part I: The Problem of Twelve* (Harvard Public Law Working Paper No. 19–07, 2018) https://ssrn.com/abstract=3247337 (arguing that index funds have "unsurpassed power" to control the boards and management of their portfolio companies).

[187] Gordon, *supra* note 155.

[188] *See* Elroy Dimson, O˘guzhan Karakas & Xi Li, *Active Ownership*, 28 REV. FIN. STUD. 3225 (2015) (empirically analyzing ESG activism by a large active manager).

limited due to their business model and resources.[189] This is why the firm-specific stewardship abilities of active managers are mostly reactive and incidental.

A neglected but important candidate for shareholder stewardship is the activist investor. This is not the one associated with aggressive US activist hedge funds but the one related to a "softer" activist breed mostly found outside the US context.[190] This type of activism is associated with activist funds that proactively—but also sometimes reactively—engage with companies mostly behind the scenes and on a long-term investment horizon. Within Europe, the UK has the greatest concentration of activist funds and activist campaigns.[191] The appeal of UK firms to activist funds, especially those based in the US,[192] may be attributed, among other things, to the highly institutionalized ownership structure of UK public equity and the strong rights shareholders set forth in UK company law, including a mandatory say-on-pay.[193]

The UK may be known for its tradition of private, behind-the-scenes, shareholder engagement, but public hedge-fund-style activism is picking up and one can find both "friendly" and "confrontational" activist campaigns targeting UK companies.[194] Latest research by Activist Insight confirms that hedge fund activism in the UK hit record highs in recent years, with a total of 265 activist campaigns between 2016 and 2021.[195] Whereas not all of these public and sometimes more aggressive activist campaigns can fill the "stewardship bill," this Section makes the claim that activist funds can assume a stewardship role at the micro-level provided that the right incentives exist. I use the term "activist shareholder steward" to refer to this activist breed. Unlike passive investors who do not have firm-specific expertise and most actively-managed funds who attempt to exploit market pricing anomalies, activist shareholder stewards aim to generate

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[189] Marcel Kahan & Edward Rock, *Index Funds and Corporate Governance: Let Shareholders Be Shareholders,* 100 BOSTON UNIV. L. REV. 1771, 1805 (2020).
[190] For an early account of hedge fund activism outside the United States, *see* Katelouzou, *Myths and Realities of Hedge Fund Activism, supra* note 355.
[191] *See, e.g.*, Katelouzou, *Worldwide Hedge Fund Activism: Dimensions and Legal Determinants*, UNIV. PENN. J. OF BUS. L. (2015), 833. For more recent data, *see* ACTIVIST INSIGHT, ACTIVIST INVESTING IN EUROPE 2018 (2019) (reporting that shareholder activism in the United Kingdom hit record levels in 2018 and 2019)
[192] ACTIVIST INSIGHT, ACTIVIST INVESTING IN EUROPE 2018 (2019): "[t]he number of UK–based companies subjected to public demands by US–based activists has doubled from 2017–8".
[193] On the evolution of ownership in UK public equity, *see* ONS 2020, *supra* note 41. On the differences between the United Kingdom and the United States in terms of shareholder rights, *see, e.g.*, Jennifer G. Hill, *The Trajectory of American Corporate Governance: Shareholder Empowerment and Private Ordering Combat*, U. ILL. L. REV. 507 (2019) (attributing the friendlier UK regime to different organizational origins),
[194] *See*, further, Katelouzou, *Shareholder Stewardship, supra* note 90.
[195] ACTIVIST INSIGHT DATABASE (data on file with the author).

value through firm-specific information and expertise and through targeted activist interventions.[196]

The monitoring and engagement activities of activist shareholder stewards are part of the recent trend of a broadening base of activists, not only geographically but also in terms of investment styles and business models. Along with the globalization of hedge fund activism in recent years and the increase in local activists,[197] the style of activism originally associated with activist hedge funds has now become a widely accepted investment approach. A 2017 JP Morgan report highlighted that shareholder activism "is no longer the preserve of aggressive hedge funds but is now a tactic used by a host of traditional institutional shareholders."[198] With the widespread use of hedge-fund-style activism among investors with different investment approaches, the distinction between "defensive" and "offensive" activists, drawn by early literature on the subject, is more difficult to discern today.[199] There are still plenty of activist hedge funds who exclusively engage in the type of offensive activism identified by the earlier literature, in the sense that they normally do not have a preexisting stake in the target company and they quickly build one when they decide to adopt a hands on strategy. But in many cases activist funds might already have a small shareholding in a company before deciding to actively lobby for changes and, thus, hedge-fund-style activism is not always "ex ante."[200] Also, the term "offensive" activism implies a confrontational posture; many activists—especially outside the US—are not high-profile, aggressive, activist investors and they generally do not seek publicity.[201]

Even though the boundary lines between different activist styles are difficult to draw, the activist breed we focus on shares little with US hedge-fund-style

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[196] By way of illustration, an activist shareholder steward seeks to change corporate policies and structures, address governance factors (such as executive pay) and more recently social and environmental factors (board diversity, climate change) using formal shareholder rights or informal means of engagement (such as letter writing, public dialogue). See further KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 11.

[197] *See* Becht et al, *Returns to Hedge Fund Activism: An International Study* (ECGI Working Paper No. 402, 2014), https://ssrn.com/abstract=2376271 (reporting that domestic activism outperforms foreign activism).

[198] Ben Martin, *Activism 'is no longer the preserve of big hedge funds'*, DAILY TELEGRAPH (July 13, 2017), at 8. *See* also LAZARD'S SHAREHOLDER ADVISORY GROUP, 2018 REVIEW OF SHAREHOLDER ACTIVISM, at 6 (reporting that a record 40 "first timers" launched campaigns in 2018).

[199] Further on this distinction *see* Brian Cheffins & John Armour, *The Past, Present, and Future of Shareholder Activism by Hedge Funds*, 37 J. CORP. L. 51 (2011).

[200] Katelouzou, *Myths and Realities of Hedge Fund Activism, supra* note 355 (noting that occasionally they may have a small stake which they quickly increase when the decide to launch an activist campaign).

[201] For empirical evidence, *see* Katelouzou, *Myths and Realities of Hedge Fund Activism, supra* note 355.

activism other than a firm-specific focus.[202] At the risk of oversimplification, one could say that the investment approach of activist shareholder stewards involves taking substantial, but noncontrolling, equity positions in underperforming companies and agitating for changes in the companies' strategic, operational, financial or corporate governance arrangements that will realize improved returns. While activist funds mostly engage *proactively* for change for the purposes of unlocking value, they occasionally "engage for information" or in a *reactive*, defensive manner with a company in their portfolios where they are dissatisfied with performance or governance parameters. [203]

Activist objectives range widely, including: campaigns for financial capital or operational measures to be taken, such as share buybacks or distribution of dividends, sale of assets, sale of business or other restructuring;[204] governance improvements including more board independence and diversity and concerns over executive compensation;[205] facilitation of, or opposition to mergers and acquisitions;[206] seeking improvements in companies' environmental and social practices.[207] In terms of strategies, activist shareholder stewards mainly encompass "friendly" activities including the subtle pressure on the incumbents behind the scenes, writing letters, holding private meetings with the board/management to discuss informal (precatory) shareholder proposals, public

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[202] For a recent literature reviews of hedge fund activism, *see* Ruth V Aguilera, Ryan Federo & Yuliya Ponomareva, *Gone Global: The International Diffusion of Hedge Fund Activism* (2019), https://ssrn.com/abstract=3402966; Alon Brav, W. Jiang & Rongchen Li, *Governance by Persuasion: Hedge Fund Activism and the Market for Corporate Influence* (2021), ECGI Finance Working Paper No 797/2021, https://ssrn.com/abstract=3955116.

[203] Katelouzou, *Myths and Realities of Hedge Fund Activism, supra* note 355.

[204] For empirical evidence, *see, e.g.*, Katelouzou, *Myths and Realities of Hedge Fund Activism, supra* note 355, 491–5; William W. Bratton, Hedge Funds and Governance Targets, 95 GEO. L.J. 1375 (2007); Alon Brav, W.E.I. Jiang, F. Partnoy & R. Thomas, *Hedge Fund Activism, Corporate Governance, and Firm Performance*, 63 J. FIN. 1729–75, 1735–6 (2008).

[205] Beginning in 2017, Blackrock and State Street began a campaign promoting women on the boards of their portfolio firms. *See*, *e.g.*, Justin Baer & Joann S Lublin *State Street Pushed 400 Companies to Put Women on Boards. Most Shrugged*, WALL STR. J. (July 26, 2017), https://www.wsj.com/articles/state–street–pushed–400–companies–to–put–women–on–boards–most–shrugged–1501100453. *See* also Mary Brooke Bilings, April Klein & Yanting (Crystal) Shi, *Investors' Response to the #MeToo Movement: Does Corporate Culture Matter* (ECGI Finance Working Paper No 764, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3466326 (for empirical evidence on how investors' beliefs were shifted by the #MeToo movement in terms of the value of having women on boards).

[206] In recent years, there has been an increase in M&A activism. *See e.g.* LAZARD, 2019 REVIEW OF SHAREHOLDER ACTIVISM (2020), at 14 (reporting that 47% of the activist hedge fund campaigns launched in 2019 were M&A driven). ACTIVIST INSIGHT, ANNUAL REVIEW 2020 (2020), at 8 (expecting more activism against buysides or mergers of equals in 2020). *See* also Carol Ryan, *Activist Investors and the Art of the Deal; Hedge funds spend most of their cash on M&A campaigns in 2019', a trend that should continue this year*, WALL STR. J. ONLINE (Jan. 23, 2020) (reporting that 60% of the cash spent by activist hedge funds globally in 2019 went on M&As campaigns).

[207] *See infra* Part IV.2.B.

criticism and seeking board representation without public confrontation.[208] While the more confrontational strategies prevalent in the US context are not unknown, activist shareholder stewards rarely use them and do so only as a last resort.[209] For instance, whereas winning board representation through an actual or threatened proxy fight has been a key stated activist objective and a strategy in many US activist hedge fund campaigns,[210] the breed of activists we focus on tend to only promote short slate board representation.[211] For such activists a board seat is a means to create a more effective board and bring about the changes of the type sought by activism, including improved operating performance, higher corporate governance standards or ESG.[212]

From an investment management perspective, the business model of activist funds is compatible with firm-specific engagement and the micro-level shareholder stewardship model aspired to by the UK Code 2010/12.[213] Activists' firm-specific engagement is in accordance with Principles 3 and 4 of the UK Code 2010/12. As we have seen before, the UK Code 2010/12 views stewardship as something "more than just voting."[214] Shareholder stewardship includes both formal and informal monitoring and engagement on a wide range of issues from strategy, performance, risk and capital structure to corporate governance, leadership and corporate reporting.[215] While becoming an insider is neither precluded nor expected by the UK Code 2010/12, the Code requires that "an institutional investor who may be

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[208] For empirical data, *see* Katelouzou, *Myths and Realities of Hedge Fund Activism, supra* note 355.

[209] *See, e,g*, Marco Becht, Julian Franks, Colin Mayer & Stefano Rossi, *Returns to Shareholder Activism: Evidence from a Clinical Study of the Hermes UK Focus Fund*, 22 REV. FIN. STUD. 3093 (2008).

[210] For early data *see* April Klein & Emanuel Zur, *Entrepreneurial Shareholder Activism: Hedge Funds and Other Private Investors* 64 J. FIN. 187, 215 (2009) (studied activist hedge fund campaigns between 2003 and 2005 and finding that 40% of the campaigns involve an actual (12%) or threatened (28%) proxy contest). Lucian A. Bebchuk, Alon Brav & Wei Jiang, *The Long–Term Effects of Hedge Fund Activism*, 114 COLUM. L. REV. 1085 (2015) at 1743 (analyzing data to 2006 and finding that activist hedge funds launched a proxy fight to gain board representation in 13.2% of activist events). On the importance of proxy fights as a disciplinary mechanism, *see* generally Vyacheslav Fos & Margarita Tsoutsoura, *Shareholder democracy in play: career consequences of proxy contests*, 114 J. FIN. ECON. 316 (2013).

[211] *See* also Anna L Christie, *The new hedge fund activism: activist directors and the market for corporate quasi–control*, 19 J. CORP. L. STUD. 1 (2019) (arguing that the phenomenon of activist, minority board representation has created an active market for corporate quasi–control). But it is also likely that activists in the UK tend to not resort to full proxy fights because of the greater shareholder rights in the UK (including in the event of a takeover) which make managerial resistance much harder. On how shareholder rights affect a hedge fund activism campaign, *see* Katelouzou, *Worldwide Hedge Fund Activism*, *supra* note 191, 818-828.

[212] *See* Nickolay Gantchev *The Costs of Shareholder Activism: Evidence from a Sequential Decision Model*, 107 J. FIN. ECON. 610–631 (2013) and Katelouzou, *Myths and Realities of Hedge Fund Activism, supra* note 355 (both suggesting that board representation is a crucial step of an activist campaign, but not its ultimate objective).

[213] *See* above Part II.B.

[214] UK CODE 2012, *supra* note 114, at 1 and 7.

[215] UK CODE 2012, *supra* note 114, at 1 and 7.

willing to become an insider should indicate in its stewardship statement the willingness to do so, and the mechanism by which this could be done."[216] This implies that activists who have the propensity to join a company's boards to better their objectives, like Cevian Capital, one of the largest activist funds in Europe, are not excluded from the stewardship ambit of the UK Code 2010/12.[217] Principle 4 concerning forms of escalation further legitimates shareholder activism. Under Principle 4, "if companies do not respond constructively when institutional investors intervene, then institutional investors should consider whether to escalate their action."[218] Previous literature confirms that this escalation from softer to more confrontational strategies, such as public criticism, submitting resolutions, or requisitioning a general meeting, is the lynchpin of an activist campaign.[219] The UK Code 2010/12 also endorses coalition building and collaborative forms of activism, which, as we will point out later, underscore the stewardship ability of activist funds.[220]

A cautionary note is required here. Whereas firm-specific engagement and monitoring by activist funds can be compatible with the micro-level shareholder stewardship model aspired to by the UK Code 2010/12, the Code legitimizes firm-specific engagement and activism only when long-term value improvement is aimed for and achieved.[221] The investment style of activist funds can therefore fill the stewardship bill only if such activism is not used for the purposes of short-term value extraction. This turns out to be an empirical question, for which, as yet, there is no conclusive evidence.[222] Activist funds with a long-term focus can

[216] UK CODE 2012, *supra* note 114, at 7.
[217] *See, e.g.*, Jeb Wieczner, *Meet Europe's best activist investor*, FORTUNE (Aug. 27, 2015), https://fortune.com/2015/08/27/christer–gardell–activist–investor–europe/.
[218] UK CODE 2012, *supra* note 114, at 8.
[219] *See, e.g.*, Katelouzou, *Myths and Realities of Hedge Fund Activism, supra* note 35.
[220] UK CODE 2012, *supra* note 114, at 8–9. *See infra* Part IV.B.1.
[221] *See supra* Part II.B.
[222] For a review of the empirical literature in the US context, *see* A. Brav, W. Jiang & H. Kim, *Hedge Fund Activism: A Review*, 4 FOUNDATIONS & TRENDS FIN., 185 (2009) and John C. Coffee, Jr. & Darius Palia, *The Wolf at the Door: The Impact of Hedge Fund Activism on Corporate Governance*, 41 J. CORP. L. 545, 551 (2016). For the inconclusive evidence relating to the long–term effect of hedge fund activism, cf. Brav et al, *Hedge Fund Activism*, *supra* note 210 (finding improved operating performance of companies following activist interventions) and Martjin Cremers, Saura Masconale & Simone M. Sepe, *Activist Hedge Funds and the Corporation*, 94 WASH. UNIV. L. REV. 261 (2016) (finding that hedge fund activism is associated with excessive risk–taking but has no significant impact on managerial accountability); Martjin Cremers, Erasmo Giambona, Simone M Sepe & Ye Wang, *Hedge Fund Activism, Firm Valuation and Stock Returns* (2018), https://ssrn.com/abstract=2693231; and Mark R. DesJardine, Emilio Marti & Rodolphe Durand, *Why Activist Hedge Funds Target Socially Responsible Firms: The Reaction Costs of Signaling Corporate Social Responsibility,* 64 ACAD. OF MGMT. REV. (2021) (finding that activist hedge funds are more likely to target companies with higher corporate social responsibility (CSR) and put pressure on them to maximize value in the short–term). For empirical evidence outside the United States, *see e.g.*, Becht et al, *Returns to Hedge Fund Activism, supra* note 19797 (only studying the abnormal returns over the period of activist engagement). Some notable exceptions are Wolfgang

arguably perform the role "of protecting and enhancing shareholder value," which is an explicit aim of the UK Code 2010/12 and other stewardship codes worldwide.[223] There are some limitations in the conclusion that can be drawn from the existing empirical literature, which has mainly focused on the impact of hedge-fund-style activism on target firms' performance and thus has not considered the market-wide impact of activist shareholder stewards or their direct role in corporate governance.[224] In addition, many activists—especially outside the US—recognize "attention to shareholder value… as a public good,"[225] a view largely consistent with the model of shareholder stewardship and its underpinning commitment in the form of "psychological ownership."[226]

While reaching a conclusion about activist funds' net impact on corporate governance and social value is out of the scope of this Article, the arguments presented in this Section support the thesis that the business model of activist shareholder stewards is in alignment—at least from a theoretical perspective—with the firm-specific shareholder stewardship model of the UK Code 2010/12. As for their incentives, as long as activists aim at protecting and enhancing the long-term value of investee companies, they can fill the stewardship bill. Although this is not always guaranteed, I will highlight two trends (coalition-building and ESG activism) that have already moved activist funds in a long-term direction and can therefore streamline the activists' stewardship role.[227] But first, I will empirically test this thesis by examining how the activists themselves understand shareholder stewardship through an automated textual examination of the stewardship statements of activist asset managers to the UK Code 2010/12.

III. WHAT CAN WE LEARN FROM THE DISCLOSURE STATEMENTS OF ACTIVIST SHAREHOLDER STEWARDS?

Bessler, Wolfgang Drobetz & Julian Holler, *The returns to hedge fund activism in Germany*, 21 EUR. FIN. MGMT. 106 (2015) (providing evidence of long–term value creation for target companies in Germany) and John Buchanan, Dominic H. Chai & Simon Deakin, *Unexpected corporate outcomes from hedge fund activism in Japan*, 18 SOCIO–ECONOMIC REV. 31 (2020) (hedge fund activism had no effect on target firms in terms of managerial effectiveness, managerial decisions and labor management during a three–year period following the activist campaign).

[223] UK CODE 2012, *supra* note 114, Principle 4.

[224] Coffee & Palia, *supra* note 222.

[225] JOHN BUCHANAN, DOMINIC H. CHAI & SIMON DEAKIN, *HEDGE FUND ACTIVISM IN JAPAN: THE LIMITS OF SHAREHOLDER PRIMACY* (2014), at 295.

[226] Morela Hernandez, *Toward an Understanding of the Psychology of Stewardship*, 37 ACAD. OF MGMT. REV. 172 (2012); Terry McNulty & Donald Nordberg, *Ownership, Activism and Engagement: Institutional Investors as Active Owners*, 24 CORP. GOVERNANCE: AN INT'L REV. 346 (discussing psychological ownership in their analysis of active ownership and shareholder activism).

[227] *See infra* Part IV.B.

A. *Data Collection, Sample and Corpus*

My aim here is to empirically test whether the rhetoric of activist shareholder stewards as revealed by a systematic examination of their stewardship disclosure statements is in accordance with the theoretical claims of the previous part. The data collection comprised a four step procedure. The first step was to identify the activist investors that have signed the first generation UK Code. At the time of data collection, the list of the Code's signatories was available on the FRC's website.[228] The FRC divides the signatories into three groups: asset managers, asset owners, and service providers. To identify the asset managers signatories to the UK Code 2010/12 with an "activist orientation," I collected relevant data using a two step process. First, for each of the 177 asset managers signatories to the UK Code 2010/12 (as of April 2020), I ran in Activist Insight to identify which of the signatories employ shareholder activism as a strategy.[229] Second, I hand-gathered information from relevant media outlets from the Dow Jones Factiva database using the following search requests as inputs: "(name of the signatory)" "same [paragraph]" "activist" for each asset manager signatory to the UK Code.[230] The searches confirmed 50 signatories to the UK Code 2010/12 with an activist orientation.[231] These 50 investors meet the criteria of activist shareholder stewards, as elaborated above.[232]

The 50 activist signatories to the UK Code 2010/12 vary significantly across several dimensions. First, in terms of investment style, twelve are hedge funds, whereas the rests are fund managers or investment firms other than hedge funds.[233] In terms of activist style, 25 are "engagement focus activists."[234] These

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[228] Because the UK Code 2012 is now obsolete, the list is found in: FINANCIAL REPORTING COUNCIL, UK STEWARDSHIP CODE 2012 SIGNATORY LIST (SEP. 2021), https://www.frc.org.uk/getattachment/47022044-bb4b-44b0-a688-82cf3e08107c/2012-Code-Signatory-List.pdf (last visited Jan. 12, 2022).

[229] Activist Insight defines activism broadly as "The advocacy by minority shareholders that various strategic levers are pulled by a public company in a bid to create shareholder value, which is broadly achieved by improving underlying operational performance, exploring strategic alternatives, lifting governance standards, and returning capital to shareholders. Activism is sometimes described as either offensive or defensive in nature. Offensive activism represents the proactive and systematic targeting of underperforming companies as part of an established activist investment strategy. Defensive activism describes instead the reaction of existing shareholders to the underperformance of public companies. This form of activism is intended to improve the performance of existing portfolio companies."

[230] The term "activist" used in for the Factiva searches, is not a legal term of art, and some funds described as "activist" by the press would define themselves differently. Also, labelling a signatory as an activist one does not preclude that an asset manager can also take passive stakes. Previous literature confirms that a broader definitional approach to the concept of hedge fund activism is needed outside the United States where Schedule 13D filings are lacking. *See* Katelouzou, *Myths and Realities of Hedge Fund Activism, supra* note 355.

[231] *See infra* Appendix 1 for more details.

[232] *See supra* Part II.C.

[233] Data on file with the author.

[234] Data on file with the author.

are typically fund managers who resort to firm-specific shareholder engagement as an escalated stewardship activity with the objective to protect and enhance shareholder value. Engagement focus activists are typically—but not exclusively—mutual fund managers who often adopt or otherwise support ESG activism. In addition, engagement focus activists often submit public demands (especially shareholder proposals) as a mechanism to affect corporate decision making.[235] Also, some of the engagement focus activists in our sample have different types of funds in their portfolios, and not all of these adopt an activist approach.[236] But for all engagement focus activists in the sample, firm-specific monitoring and engagement is a key component of their business models, even if at times this takes place on the basis of internal prioritization or "warning" systems.[237] Echoing the well established dichotomy of defensive and offensive activists,[238] "engagement focus activists" are defensive in style in the sense that they do have a preexisting stake and react to poor performance or governance-related issues.

The rest of the activist signatories are fund managers and hedge funds who engage in activism either occasionally, partially, or primarily. From these, five are exclusively "offensive" in nature, in the sense that they only engage in activism proactively rather than reactively.[239] These offensive activist signatories systematically target underperforming companies aiming at enhancing shareholder value through shareholder activism. The portfolio of offensive activists is concentrated, typically consisting of about 50–60 holdings. All offensive activists are activist hedge funds.[240] As may be expected, the offensive activist sample does not include the typical activist hedge funds of the US market (because for them, the type of shareholder stewardship aspired to by the UK Code 2010/12 is of little relevance), but include key vocal UK players, such as Toscafund and RWC Partners.[241]

It is noteworthy that all together, these 50 activist stewards have launched 278 public demands between 2013 and 2021 (as of July 2021), 88 of which took

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[235] Data on file with the author.
[236] For instance, Aberdeen Standard Investments is a not the typical hedge–fund–style activist. They prefer to describe themselves as favoring "active" rather than "activist" engagement, but they complement their strategies with firm–specific engagement, which often takes place privately. *See* Marco Becht, Julian R. Franks & Hannes F. Wagner, *Corporate Governance Through Voice and Exit* (ECGI Finance Working Paper No. 633, 2019), https://ssrn.com/abstract=3456626.
[237] *id.* (finding that Aberdeen Standard Investments, part of Standard Life Aberdeen, engages more often with portfolio companies that are included in the "Governance Health Warning" list, that is companies flagged as posing a governance risk for fund performance).
[238] Cheffins & Armour, *supra* note **Error! Bookmark not defined.**99.
[239] Data on file with the author.
[240] Data on file with the author.
[241] RWC Partners acquired Hermes U.K. Focus Funds (HUKFF) in 2012. *See* Sam Jones, *Hermes offloads activist Focus unit*, FIN. TIM. (Sep. 18, 2012), https://www.ft.com/content/737db9fe–0185–11e2–81ba–00144feabdc0. On activist private engagements by Hermes U.K. Focus Funds (HUKFF) a fund managed by Hermes, *see* Becht et al., *Returns to Shareholder Activism, supra* note 209.

place in the UK.[242] The activist signatories to the UK Code 2010/12 also differ in terms of their approach and are friendly and confrontational in nature (see Appendix 1 for details). None of the signatories, however, adopt an entirely confrontational approach and they all tend to start with conciliatory tactics, such as informal communicating to the incumbents and/or other shareholders where appropriate.[243]

Most activist signatories are well established funds founded before 2000 (see Appendix 1 for details). The median year is 1985. Only 10 activist signatories were founded after 2000. Among them, Independent Franchise Partners, founded in 2009, is the newest activist in the sample. The market capitalization of activists ranges widely from 1.43 billion US dollars (USD) to 7,808.50 billion USD (see Appendix 1 for details). The average size is 565.19 billion USD, while the median is 87.65 billion USD. That the average size is much larger than the median is explained by the much broader range of the quartile of largest activist signatories compared to the smallest. If one looks at the size of activist signatories by activist style, then "engagement focus activists," as expected, are much larger than defensive and offensive activists.[244]

Sixteen out of the 50 activist signatories are non-UK investors (see Appendix 1 for details). This may at first be at odds with the ownership structure of UK public companies,[245] but is in alignment with the total proportion of foreign signatories to the UK Code 2010/12 (55 out of 177 asset managers signatories to the UK Code 2010/12 are foreign investors) and can be explained by the fact that only UK asset managers authorized by the Financial Conduct Authority (FCA) are required to follow the UK Code.[246]

In addition, the FRC has assessed 40 activists as Tier 1 signatories and the rest as Tier 2 signatories (see Appendix 1 for details). Finally, 40 activist signatories to the UK Code 2010/12 are also signatories to the Principles for Responsible Investment (PRI) supported by the United Nations.[247]

To examine the stewardship rhetoric of the 50 activist signatories, I gathered a textual dataset comprised of their policy statements to the UK Code 2010/12.[248]

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[242] Data on file with the author.
[243] Data on file with the author.
[244] The average and median size of "engagement focus activists" is 1,040.22 billion USD and 369.70 billion USD, respectively, while offensive activists have on average 10.81 billion USD assets under management (the median is 11.85 billion USD).
[245] ONS 2020, *supra* note 41.
[246] *See* text accompanying note 159.
[247] *See* Appendix 1 for details. Further information on the PRI signatories can be found here: PRI, ALL SIGNATORIES ARTICLES (2021), https://www.unpri.org/1018.type?cmd=GoToPage&val=19 (last visited July 30, 2021).
[248] At the time of data collection most statements were available on the FRC's website [https://www.frc.org.uk/investors/uk–stewardship–code/uk–stewardship–code–statements/asset–

To understand the textual information provided in the statements, I codified the written material of the stewardship statements and applied *natural language processing* (NLP) techniques. Initially, I collected all the words and converted the language to British English. The initial set of words was 168,424.[249] To allow for machine learning, I preprocessed this set of words following standard practice in textual analysis. First, I removed all stop words (such as *and*, *so*, *on*, *of*), and I decomposed all of the words into their roots,[250] applying Porter's stemming method.[251] Second, I transformed all of the remaining words to lower case so that, for instance, "Meeting" is not different from "meeting," and I removed all numbers. I erased all words shorter than two characters (e.g., *at*) and all punctuation marks. I conducted preprocessing through *quanteda*—a toolkit for NLP—within the R environment.[252]

The final *corpus* is comprised of 73,207 total tokens (that is, stemming abbreviations after pre-processing). Details on the number of tokens found in each disclosure statement are available in Appendix 1, while some of the most common tokens are in Appendix 2. In the absence of standardized reporting, the size of the statements varies notably, from 764 tokens in the case of Independent Franchise Partners LLP to 3,642 in the case of Aviva Investors (Appendix 1). The average size of statements is 1,743.02 tokens, while the median is 1,683 tokens. Table 1 presents descriptive statistics for the raw and preprocessed corpus.

Table 1: Descriptive statistics for the corpus of activist signatories' stewardship statements[253]

Documents	Sample	No. docs.	Mean	Median	Std. Dev.
Raw	168,307	50	3,366.14	3,032.50	1344.32
Pre-processed	73,207	50	1,743.02	1,683	725.41

B. *How do the Activist Signatories Understand Shareholder Stewardship? Some Descriptive Statistics*

managers], but for some signatories we had to dig through many sources, including the signatories' webpages and direct email communications in order to identify the most updated statements.

249 This was after removing any disclaimers, tables and figures, email addresses and websites included in the statements.

250 For instance, "disclosing" and "disclose" are collapsed to the same word "disclos" for frequency counting. *See*, further, Appendix 2.

251 M F Porter, *An algorithm for suffix stripping* 14 PROGRAM 130 (1980).

252 *See* generally Kenneth Benoit et al., *quanteda: An R package for the quantitative analysis of textual data*, 3 J. OF OPEN SOURCE SOFTWARE 30 (2018).

253 Data on file with the author.

The first analytic strategy to systematically examine how the activist signatories to the UK Code 2010/12 understand shareholder stewardship was to compute the relative frequency of unigrams (single-word tokens) in the signatories' statements. The relative frequency is the absolute frequency of occurrence divided by the total amount of tokens contained in each statement and computed per 1,000 words, a conventional way of standardizing results of documents of different sizes.[254] Figure 2 shows the calculated relative frequency of the top 30 unigrams in the corpus. From these frequently occurring words, initial ideas about the ways the activist signatories understand stewardship can emerge.

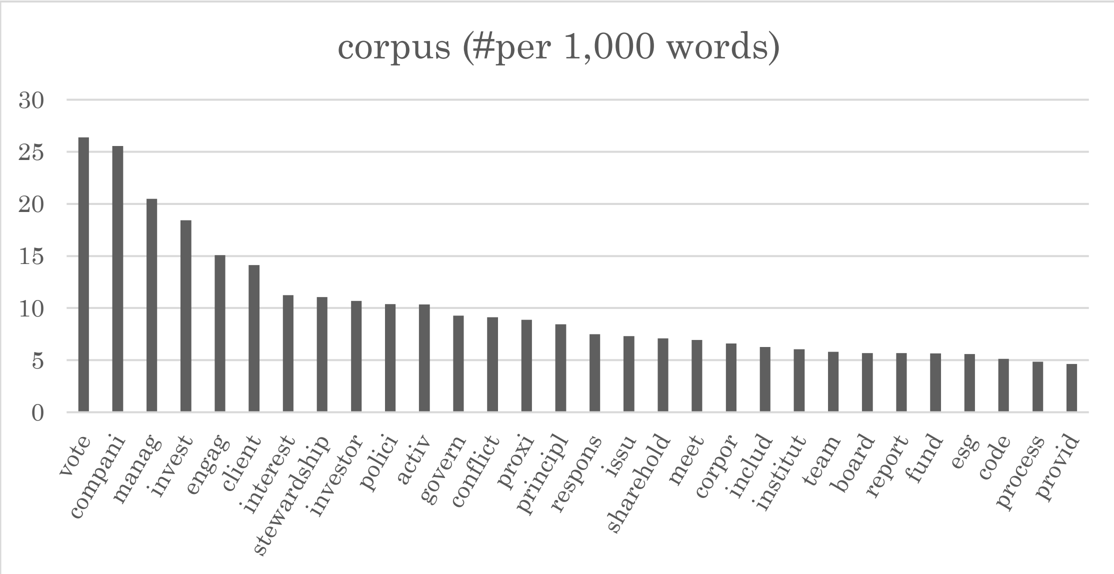

Figure 2: Most frequently occurring words in the corpus

As seen in Figure 2 "*vote*" is the most cited word (stems are listed in Appendix 2). This confirms that activist signatories perceive exercising voting rights and disclosing voting records as a key element of micro stewardship practices and oversight of managerial behavior.[255] But most asset managers rely on proxy voting firms to provide guidance on how they vote.[256] The study confirms this, as the word

[254] Frequency word lists have long been part of the standard methodology for analyzing corpora linguistics. For a review of the relevant literature, *see, e.g.*, Alistair Baron, Paul Rayson & Dawn Archer, *Word frequency and key word statistics in historical corpus linguistics*, 20 ANGLISTIK: INT'L. J. OF ENGLISH STUD. 41 (2009).
[255] *See* also UK CODE 2012, *supra* note 114, Principle 4.
[256] For the recent debate on proxy voting regulation, *see* Ike Brannon & Jared Whitley, *Corporate Governance Oversight and Proxy Advisory Firms*, 41 REG. 18 (2018); Keith Johnson, Cynthia Williams & Ruth Aguilera, *Proxy Voting reform: What is on the Agenda, What is not on the Agenda, and why it matters for Asset Owners*, 99 B.U.L. Rev. 1347 (2018); Andrew F. Tuch, *Proxy Advisor Influence in a Comparative Light*, 99 B.U.L. Rev. 1459 (2019). *But see* Audra, Boone, Stuart L. Gillan & Mitch Towner, *The Role of Proxy Advisors and Large Passive Funds in Shareholder*

"*prox"* is the 14th most frequently used word. This implies that the activist signatories perceive the proxy advisory firms as key counterparts in exercising shareholder voting and shareholder stewardship. *Engag*(ement), *meet,* and *board* are also common words in the signatories' statements. Thus, it is evident that activist signatories understand shareholder stewardship in a broad way as including not only voting but also informal forms of monitoring and engagement, such as meetings and dialogue with the board of directors. This confirms the earlier understanding of stewardship (especially in the US context) as including three components: monitoring, voting, and engagement.[257] Another important observation is that while the word active (*activ*) is often associated with "active portfolios" or "active investment" and "active participation" or "active engagement," it appears with the words "ownership" and "owner(s)" thirty-five times. For instance, Hermes Fund Manager states:

> our stewardship resources reflect our philosophy that *active ownership* requires an integrated and skilled approach and engagement should be carried out by individuals with the right skills and with credibility.[258]

The notion of active ownership is key to the way activist signatories understand shareholder stewardship at the micro-level and suggests that for some activist signatories shareholder stewardship is associated with some level of "psychological ownership." Katarina Sikavica and Amy Hillman refer to this as "share ownership," in the sense that increased firm-specific monitoring and stewardship ensures that the targeted firm is in alignment with the signatories' identities.[259] Active ownership, however, suggests a rather narrow understanding of stewardship as confined within equity. While such an understanding is consistent with the UK Code 2010/12, it is aging rapidly as a stewardship under the second generation UK Code expands beyond equity.[260]

Examining the unigram distribution also confirms that engagement as a means to achieve better corporate governance (*govern*) is a key component of shareholder stewardship. The frequencies of the words *client, conflict* and *interest* are indicative of the investment management side of stewardship and highlight that institutional investors have a clear understanding of managing other people's

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Voting: Lions or Lambs?, 2nd ANN. FIN. INSTITUTIONS, REG. AND CORP. GOVERNANCE CONF. (Feb. 20, 2020), https://ssrn.com/abstract=2831550 (suggesting that the Big Three are more influential in voting than ISS over time).

[257] Bebchuk & Hirst, *supra* note 82, 2045.

[258] Hermes Fund Managers 2017 (on file with the author) (emphasis added).

[259] Katarina Sikavica & Amy J. Hillman, *Combining Financial and Psychological Ownership Insights for a New Typology of Ownership* in: SHAREHOLDER EMPOWERMENT: A NEW ERA IN CORPORATE GOVERNANCE (Maria Goranova & Lori Verstegen Ryan eds., 2015) 36, 46–8.

[260] For a comprehensive analysis of how stewardship expands beyond ownership, see KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 16.

money in expressing their stewardship policies.[261] For instance, Aberdeen Standard Investments states:

> We believe that it is mutually beneficial for companies and long–term investors to have a relationship based on accountability, engagement and trust. Such a relationship helps to ensure that each has a good understanding of the other's views and expectations. It also enables us to exercise constructive influence as and when appropriate. We believe *this serves to enhance the long–term value of our clients' investments and to protect their interests when necessary*.[262]

The token *respons*(ibility/ible) is the 16th most frequent word. This indicates that signatories understand stewardship as a key element of their responsibilities not only towards their clients and beneficiaries but also to a wider range of constituents as public equity "owners." Characteristically, Hermes Fund Manager states that:

> … our *duty* extends beyond being *responsible investors* to acting as *responsible owners* of the companies and assets in which we have invested… We believe that effective and constructive dialogue with boards and management by investors should contribute to better management of companies and ultimately support their long-term success. This, in turn, should lead to wider benefits to society and for our clients' beneficiaries.[263]

And, Neuberger Berman Europe highlights that:

> "*responsibility* is the hallmark of quality" and, as such, focusing on environmental issues, employment issues, employment practices, diversity initiatives, community relations, supply chain and product integrity can be an important way to gain clarity on the nature of a given management team and corporate culture.[264]

ESG is the 27th most frequent unigram.[265] This is reflective of the growing percentage of investors considering ESG investing as priority investment themes.[266]

Finally, among the top 30 most frequent words are *issu*, *report*, and *inform,* which all reflect the emphasis of stewardship statements on publicly available

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[261] *See supra* Part II.A.
[262] *See, e.g.*, Aberdeen Standard Investments 2019 (on file with the author) (emphasis added).
[263] Hermes Fund Managers 2017 (on file with the author).
[264] Neuberger Berman Europe Ltd 2019 (on file with the author).
[265] On how often ESG is referred by the stewardship codes themselves, *see* Dionysia Katelouzou & Alice Klettner, *Sustainable Finance and Stewardship; Unlocking Stewardship's Sustainability Potential* in: GLOBAL SHAREHOLDER STEWARDSHIP (Dionysia Katelouzou & Dan W. Puchniak eds., forthcoming 2021), also available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3578447
[266] *See*, *e.g.*, Curtis, Fisch & Robertson, *supra* note 6 (providing an empirical overview of the rise of ESG mutual funds in the United States). *See* also *infra* Part IV below.

information through issuing policy statements and reporting to clients and beneficiaries on voting, engagement, and stewardship.

In addition to unigrams, I calculated the most frequently occurring bigrams (two word phrases). As seen in Table 2 proxy vote/-ing (*proxy vot*) is the most frequently occurring bigram and together with voting activity/-ies (*vote activ*) and voting policies (*vote polic*) confirm that voting at general meetings (*general meet*) is a key element of the way activist signatories understand firm-specific shareholder stewardship. Minimizing potential conflicts of interests (*conflict interest*) and serving the best interests of clients (*interest client* and *best interest*) are also core to the understanding of shareholder stewardship. The actors (*institut investor*, *asset manag*, *portfolio manag*, *fund manag, invest manag*, *invest team*) and targets (*investee compani*) of stewardship—unsurprisingly—appear frequently in the disclosure statements. Finally, responsible investment (*respons invest*) is the 7th most frequent bigram in the sample, a finding which confirms previous literature pointing to the potential of shareholder stewardship to operationalize responsible investing and suggests that activist signatories understand firm-specific shareholder stewardship as part of their responsibilities to their clients and end investors.[267]

Table 2: Most frequently occurring bigrams[268]

Bigram	**Frequency (absolute)**
proxy vot	567
conflict interest	507
institut investor	464
corpor govern	442
investe compani	371
principle institut	265
respons invest	223
vote activ	206
stewardship cod	204
interest client	202
best interest	197
asset manag	195
portfolio manag	187
fund manag	180
invest manag	179
engag compani	169
invest team	164
vote polici	164

[267] Katelouzou, *Shareholder Stewardship*, *supra* note 90.
[268] Data on file with the author.

stewardship activ	158
general meet	151

C. Topic Modeling

I adopted an *unsupervised* machine learning-based process to analyze the rhetoric (thematic content) of shareholder stewardship as it is revealed in the activist signatories' statements. Unsupervised machine learning methods use underlying features of the text without requiring researchers to condition on a predefined set of categories and enable the detection of themes (topics) in large collection of documents.[269] To conduct the analyses, I made use of an analysis technique named structural topic modeling. We implemented this technique via the *stm* software package for R programming language, which provides tools for machine-assisted reading of texts.[270] In structural topic modeling, topics are learned by the data themselves (hence, the term Machine Learning).[271] Topics are mixtures of words, where each word has a probability of belonging to a particular topic, and each document can encompass multiple topics.[272] Structural topic modeling has previously been applied in the political science literature,[273] and, more recently in criminology,[274] but to the best of my knowledge, it has never been applied in legal research.[275]

To allow machine learning, the textual data need to be preprocessed by the *stm* package. Structural topic modeling analyses "bags" or groups of words together (rather than individually) in order to capture how the meaning of words is related with the broader context in which they are used. But in this "bag of words" the order of words does not inform the analysis.[276] To build the corpus *stm* follows the standard routines in computational linguistics as above.[277] In addition,

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[269] *See* Justin Grimmer & Brandon M. Stewart, *Text as Data: The Promise and Pitfalls of Automatic Content Analysis Methods for Political Texts*, 21 POLITICAL ANALYSIS 267 (2013) (emphasizing the need to validate unsupervised methods).
[270] *See* Margaret E. Roberts, Brandon M. Stewart & Dustin Tingley, *stm: R Package for Structural Topic Models*, 10 J. OF STATISTICAL SOFTWARE 1 (2014).
[271] S Gerrish & D. M. Blei, *How they vote: Issue–adjusted models of legislative behaviour*, ADVANCES IN NEURAL INFO. PROCESSING SYS. 2573 (2012).
[272] Roberts, Stewart & Tingley, *supra* note 27070.
[273] *See* Margaret Roberts et al., *Structural topic models for open–ended survey responses*, AMER. J. OF POL. SCI. (2014).
[274] Scott M. Mourtgos & Ian T. Adams, *The Rhetoric of de–policing: Evaluating open–ended survey responses from police officers with machine learning–based structural topic modelling*, 64 J. OF CRIM. JUST. 61 (2019).
[275] For a list of other studies utilizing this model, *see* STM, http://www.structuraltopicmodel.com/ (last visited July 24, 2021).
[276] Justin Grimmer & Brandon M. Stewart, *Text as Data: the promise and pitfalls of automatic content analysis for political texts*, 21 POL. ANALYSIS 267, 272 (2013).
[277] *See supra* Part III.A.

words appearing in less than ten documents were dropped from the analysis; hence, a threshold of 10 was used within the *stm* package. Dropping these low frequency words, the corpus (generated by the *stm* package) has 20,970 tokens and 782 terms (unique tokens). Structural topic modeling was then performed to identify latent topics automatically inferred from the text.[278] It should be noted, however, that the structural topic model is a mixed (rather than single) membership model and thereby suffers from multi-modality with the estimated models likely to be sensitive and unstable.[279] To remedy this, I utilized a spectral learning algorithm for the initialization of the models.[280]

The next step is to define the number of topics (*K*)—a group of words that is associated with a theme—for the corpus. There is no "correct" answer to this, and researchers in social sciences argue that there are no statistical tests for a definitive answer to the optimal number of topics or quality of the chosen model.[281] However, if the chosen number of topics is too small, topics are potentially too general for specific analyses, whereas if the number of topics is too large, there is a likely problem of overfitting, "which causes a subdivision of one topic into multiple related topics, hindering their interpretation."[282] There are, however, some data-driven diagnostics tools to assist in determining the number of topics, including the held-out likelihood, residual analysis, and semantic coherence (that is, the most probable words in a topic frequently appearing together).[283] Based on the three observed diagnostics within the *stm* package I assessed a range of 2 to 20 topics, and we chose the five-topic model (*K*=5) as having the best goodness-of-fit.[284] Each signatory statement is then modelled as a mixture of five topics.

Figure 3 provides the expected proportion of the corpus that belongs to each of the five topics. Topic 1 is the most prevalent topic in the corpus, and Topic 5 is the least prevalent.

[278] Roberts, Stewart & Tingley, *supra* note 27070.
[279] *Id.*
[280] For the technical details, *see id.*
[281] *See, e.g.,* Paul DiMaggio, Manish Nag & David Blei, *Exploiting affinities between topic modelling and the sociological perspective on culture: Application to newspaper coverage of US government arts funding*, 41 POETICS 570, 582 (2012).
[282] *Id.*
[283] *See,* further, Roberts, Stewart & Tingley, *supra* note 27070.
[284] I also performed a manual examination of semantic coherence and the exclusivity of words to determine the number of topics with the best explicative power.

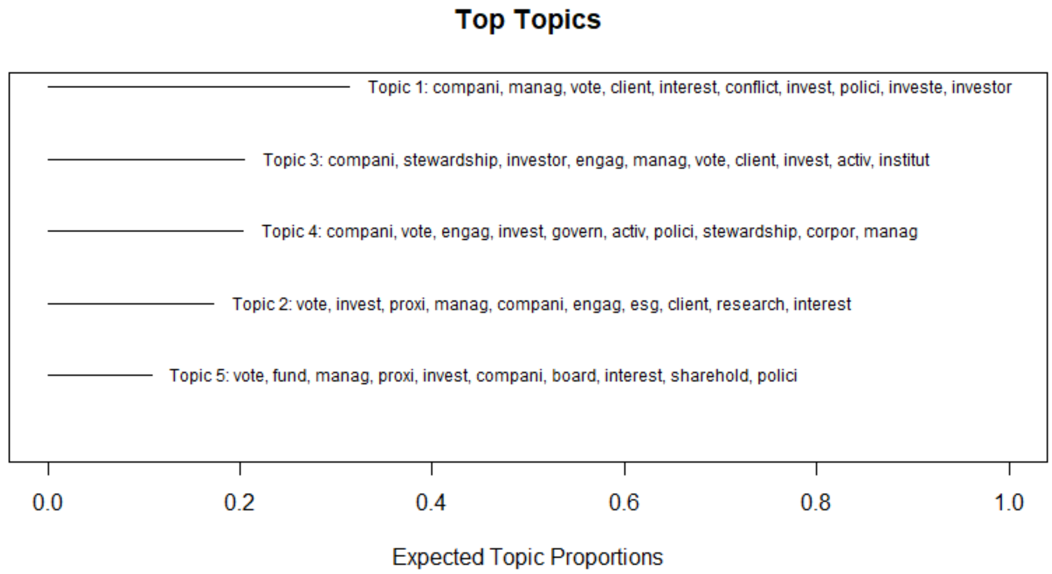

Figure 3: Estimated Topic Proportions in the Corpus

The *stm* package finds topics based on relational word occurrences, and it is up to the researcher to make meaning of each topic based on the coherence, frequency and exclusivity of the words. While the highest probability tokens for each topic are useful indicators (Figure 3), to better explore the topics I examined four different types of word profiles that *stm* generated for each of the five topics, as shown in Table 3. These include the highest probability words (which is a measure of semantic coherence), FREX words (that is, words exclusive to the topic), Lift words (that is, words appearing less frequently in other topics) and score words (that is, words weighted by dividing the log frequency of the word in the topic by the log frequency of the same word in other topics).[285]

Table 3: Topic Word (Tokens) Profiles

Topic 1 Top Words	Highest Prob: *compani, manag, vote, client, interest, conflict, invest*
	FREX: *investe, iss, conflict, firm, collect, maintain, alway*
	Lift: *growth, acquisit, hous, staff, announc, whilst, undertak*
	Score: *growth, conflict, nonexecut, investe, client, staff, interest*
Topic 2 Top Words	Highest Prob: *vote, invest, proxi, manag, compani, engag, esg*
	FREX: *esg, issuer, proxi, research, secur, analyst, global*
	Lift: *issuer, program, driven, affili, broad, file, secur*
	Score: *issuer, proxi, esg, global, program, item, research*
Topic 3 Top Words	Highest Prob: *compani, manag, investor, engag, stewardship, vote, client*
	FREX: *asset, institut, investor, global, guidanc, code, effect*

[285] For the technical details, *see* Roberts, Stewart & Tingley, *supra* note 27070.

	Lift: *want, beneficiari, departur, pension, frc, real, guidanc*
	Score: *want, frc, global, asset, departur, investor, institut*
Topic 4 Top Words	Highest Prob: *compani, vote, engag, invest, govern, activ, stewardship*
	FREX: *sustain, websit, unit, govern, engag, specialist, corpor*
	Lift: *oppos, unit, inhous, nation, three, climat, head*
	Score: *oppos, sustain, climat, engag, head, via, esg*
Topic 5 Top Words	Highest Prob: *vote, fund, manag, proxi, invest, compani, board*
	FREX: *fund, advisor, propos, offic, committe, plan, approv*
	Lift: *advisor, authoris, elect, chief, compens, approv, evalu*
	Score: *advisor, fund, compens, proxi, evalu, propos, authoris*

I manually examined each of the words (tokens) along with word clouts (supplied by the *stm* package). As expected, tokens, such as "*engag*," "*manag*," "*invest*," "*stewardship*" appear in more than one topic, as these are at the core of the rhetoric of shareholder stewardship. Similarly, the token "*vote*," which is the most frequent unigram in the corpus (Figure 2), is among the most frequent words of all five topics. There are key differences, however, in the frequency and exclusivity of words between the five topics (as revealed by Table 2) which suggests that the activist signatories to the UK Code 2010/12 express and understand stewardship differently.

Topic 1, the most common topic, is mostly associated with the two key aspects of shareholder stewardship analyzed above,[286] and is, therefore, labeled as "Orthodox Stewardship." The corporate governance aspect of shareholder stewardship relates to the role of investors–stewards as *monitors* and key participants in corporate governance. Tokens, such as "*nonexecut*" (non-executive directors), reveal the focus of these stewardship statements on standard corporate governance topics. Monitoring and engagement, especially via formal means, such as voting ("*vote*"), feature prominently in statements on this Topic. Collective and collaborative action ("*collect*") with other shareholders is also an aspect of the shared understanding of shareholder stewardship in Topic 1. In addition to the corporate governance understanding of shareholder stewardship, the visual examination of the words associated with Topic 1 reveals that conflicts of interest ("*conflict*" and "*interest*"), relationships with clients ("*client*") and proxy advisors such as the Institutional Shareholders Services ("*iss*"), and risk management ("*manag*") appear to be critical for the way stewardship is perceived by the signatories. This indicates that statements in Topic 1 understand that micro-level shareholder stewardship is not only about monitoring and engagement, but it has an investment management aspect which relates to the relationship between the investor–steward and its ultimate investors (clients or end beneficiaries) as well

[286] *See supra* Part II.A.

as other intermediated parties on the investment chain, such as asset managers, proxy advisors and investment consultants.

Topic 3, the second most common topic, labeled as "Monitoring & Engagement" focuses on shareholder engagement via formal ("*vote*") and informal means. Engagement also includes monitoring the departure ("*departur*") of issuers from the UK Corporate Governance Code or other codes, in accordance with Principle 3 of the UK Code 2010/12.[287] While micro-level shareholder stewardship is deployed as a means to maximize the value of the target company, it is important to note that statements in this topic still emphasize that it is an unwavering commitment to the asset managers' clients ("*client*") and the beneficiaries ("*beneficiari*") of pension ("*pension*") funds that drives any firm-level shareholder engagement and monitoring. This confirms that micro-level shareholder stewardship is expected to be exercised only to the degree that serves the interests of the activists' clients and therefore any firm-specific value creation should have a materially positive impact on the activist's portfolio value for shareholder stewardship to be undertaken.[288] This explains why micro-level shareholder stewardship cannot be a popular strategy for investors with large, diversified portfolios where any firm-specific value creation does not have any material impact on the total portfolio value.[289]

The third most common topic (as revealed by Figure 3) is Topic 4. Topic 4 emphasizes the notions of sustainability ("*sustain*") and active ownership ("*activ*"). Statements in Topic 4 focus on environmental themes, such as climate change (*climat*), and general ESG factors (*esg*). Topic 4 is also about transparency via the websites ("*websit*") and the importance of in-house research ("*inhous*"). Topic 4 links stewardship to the broader literature of responsible ownership and sustainable investing and is closer associated to the notion of "enlightened" ownership which involves some form of attachment to the investee company and the broader society.[290] Topic 4 is, therefore, labeled as "Sustainability & Active Ownership."

Next, Topic 2 (the fourth most common topic in the corpus) is closely associated to the use of proxy voting and proxy advisors ("*proxi*"). At the same time, statements in Topic 2 usually refer to the use of ESG research and ratings ("*esg*" and "*research*"). Topic 2 is, therefore, labeled as "Proxy Voting & ESG Research."

Finally, Topic 5, the least frequent topic in the corpus, is about how stewardship is managed inside an organization. Statements in Topic 5, labeled as

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[287] UK Code 2012, *supra* note 114, 7.
[288] See infra Part II.
[289] An exception would be when micro-level shareholder stewardship reduces negative externalities for other portfolio companies even though it does not materially improve their value. KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 16.
[290] *Id*.

"Governance of Stewardship," emphasize risk management structures ("*manag*"), the role of external advisors ("*advisor*") and internal committees ("*committe*"). Thematically there is also an emphasis on standard governance topics in statements of this topic, such as compensation ("*compens*").

To better understand the five topics, I estimated the signatory statements that are mostly associated with each topic.[291] The *Orthodox Stewardship* topic is associated with the statements of Odey Asset Management LLP, Slater Investments, Toscafund Asset Management, and Asset Value Investors.[292] The *Sustainability & Active Ownership* topic is associated with the statements of Robeco Institutional Asset Management, BNP Paribas Investment Partners and Skagen Funds. Robeco, for instance, start their statement stating that:

> Sustainability is a key pillar of Robeco's corporate strategy. We are convinced that companies with sustainable business practices have a competitive advantage and are more successful in the long-term. An active approach to the stewardship of the assets in which Robeco invests is an important part of our Sustainability Investing approach.[293]

The statement of Blackrock is also closely associated with this topic, but recent literature points to the fleeting emphasis on ESG factors by Blackrock, which is indicative of a difference between appearance and reality.[294]

The *Engagement & Monitoring* topic is associated with the statements of Investec Asset Management, Aviva Investors, BMO Global Asset Management and GAM Investments. For instance, Aviva Investors state that "[a]s a responsible investor, we seek to monitor the companies we commit capital to as part of our investment process" and highlight that as part of their monitoring activities, they "address departures from the UK Corporate Governance Code on a case-by-case basis."[295]

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[291] For the technical details, *see* Roberts, Stewart & Tingley, *supra* note 27070.

[292] *See, e.g.*, "Our voting actions and dialogue with investee companies will encourage sound business practices and strategy on the part of such companies and the responsible enhancement of shareholder value and always with the best interests of our investment management clients as a paramount consideration." (Toscafund Commitment to Principles of the U.K. Stewardship Code) (on file with author).

[293] Robeco Institutional Asset Management, Stewardship policy Robeco (on file with author).

[294] For critical views on the mismatch between Blackrock's disclosures and actual practices, *see* e.g. Jan Fichtner and EM Heemskerk, *The New Permanent Universal Owners: Index funds, patient capital, and the distinction between feeble and forceful stewardship*, 4 Econ. & Soc., 493 (2020); Giovanni Strampelli, *Can Blackrock Save the Planet? The Institutional Investors' role in Stakeholder Capitalism*, 11 HARV. BUS. L. REV. (forthcoming 2020), also available https://ssrn.com/abstract=3718255. *See* also Malcolm Rogge, *What BlackRock Inc. Gets Right in its Newly Minted Human Rights Engagement Policy*, HARV. L. SCH. F. ON CORP. GOVERNANCE (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3833467.

[295] Aviva Investors Stewardship and Responsible Investment Policy, Updated February 2019 (on file with author).

The *Proxy Voting & ESG Research* topic is highly associated with the statements of Wellington Management, Franklin Templeton, RBC Global Asset Management Inc., and Alliance Bernstein LP. For instance, Wellington Management states that:

> In order to assist analysts and portfolio managers in fulfilling our stewards hip responsibilities, we have a dedicated research team of ESG experts. Our ESG Research team, part of the central investment research function, researches and provides company- and sector-specific ESG analysis and engages directly with company management teams on ESG topics. The team analyzes and executes proxy voting for over 5,000 company meetings annually, and performs portfolio reviews with portfolio managers to identify holdings with the greatest ESG risks and opportunities… We vote proxies in the best interests of our clients as shareholders and in a manner that we believe maximizes the economic value of their holdings. Importantly, we do not automatically vote proxies either with management or in accordance with the recommendations of thir d party proxy providers…The ESG Research team examines each proxy proposal and recommends voting against proposals that we believe would have a negative effect on shareholder rights or the current or future market value of the company's securities. While the ESG Research team provides proxy voting recommendations, the portfolio manager for the client account has the authority to decide the final vote, ab sent a material conflict of interest.[296]

Finally, the *Governance of Stewardship* topic is closely associated with the statements of Polar Capital, Vanguard Asset Management, Skagen Funds and Arrowgrass Capital Partners LLP. For instance, Polar Capital emphasizes its collaborative work between various internal risk committees and the use of proxy advisors, while Vanguard explains in detail in its statement the workings of the "Proxy Oversight Committee" in overseeing "the integration of ESG in VGI [Vanguard] investment and engaged ownership practices."[297]

Looking at the signatory statements that are mostly associated with each topic not only allows a better understanding of stewardship rhetoric, but it also becomes clear that the topics are not exclusive and, in many cases, such as in the statement of Skagen Funds, more than one stewardship topics are found in the same disclosure statement.[298] This is an important finding because it shows that

[296] Wellington Management, UK Stewardship Code (2020) (on file with author)
[297] Vanguard Stewardship Policy (October 2016) (on file with author).
[298] *See* Skagen Funds' Compliance with the UK Stewardship Code stating that "SKAGEN aims to invest responsibly because companies that bring sustainability into their business strategy tend to outperform their counterparts over the long-term. Integrating environmental, social and

even though all activist stewards essentially produce a stewardship policy statement in response to the UK Code 2010/12, their understanding varies from more instrumental rhetoric which directly responds to the UK Code's principles (such as Topics 1 and 3) and to a more enlightened one (as expressed in Topic 4). Next, we must ask what explains the variation.

D. What Explains Variation in Stewardship Rhetoric?

One of the key advantages of structural topic modelling is that it incorporates metadata (covariates) into the topic modeling.[299] That is, rather than assuming topics are constant across all documents, researchers can examine differences between independent covariates. To understand what determines the rhetoric of stewardship, I used seven metadata covariates in the topic induction procedure (see Appendix 4 for details). One linear regression model was specified for each of the five topics (indexed by topic number *K*):

$$Topic\_Proportion_K \sim Constant_K \; + \; Activist_{style} + \; Activist_{approach} + Country + Year + Size + \; Tier + PRI + \; error_K$$

where $Activist_{style}$ is a binary variable indicating whether the activist signatory is offensive in style or not. $Activist_{approach}$ is a binary variable that equals one if the activist investor employs confrontational strategies and is otherwise zero. *Country* is a binary variable that equals one if the primary headquarter country of the activist signatory is the UK and zero if any other country. *Year* is a continuous variable indicating the year the asset manager was founded. *Size* is a continuous variable which is presented by the logarithm of the total assets under management. Finally, *Tier* and *PRI* are binary variables that indicate whether the activist signatory is in Tier 1 or Tier 2 and whether it is a signatory to the Principles of Responsible Investing.[300] Detailed information on the independent variables are available in Appendix 3.

I estimated various models with the seven variables as covariates so that topical prevalence and topical content can be allowed to be a function of document

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governance (ESG) assessment into our investment process allows us to make better-informed investment decisions and monitoring, and provides a more comprehensive view of risk and opportunities in the individual investment case…SKAGEN believes in the importance of being active and responsible owners…." and that "The responsibility for execution of corporate governance in SKAGEN's funds lies with the Board of directors. The daily execution is delegated to the portfolio managers of each fund and the activities are reported on at every Board meeting. The Board annually evaluates the execution of corporate governance…SKAGEN will as a fiduciary vote to secure the unit holder's interests at company annual general meetings and special meetings." (on file with author).

[299] Roberts, Stewart & Tingley, *supra* note 27070, 2 (providing examples of research that incorporates document metadata into the topic model).

[300] *See* text accompanying *supra* note 94.

metadata (here, $Activist_{style}$, $Activist_{approach}$, *Tier*, *PRI*, *Year*, *Size* and *Country*). Topical prevalence refers to how much of a document is related with a topic, hence, metadata (*i.e.* $Activist_{style}$, $Activist_{approach}$, *Tier*, *PRI*, *Year*, *Size* and *Country*) that explain topical prevalence are referred to as topical prevalence covariates. Topical content refers, on the other hand, to the words used within a topic, hence, metadata (i.e. $Activist_{style}$, $Activist_{approach}$, *Tier*, *PRI*, *Year*, *Size* and *Country*) that explain topical content are referred to as topical content covariates. The distinction between the two can be understood better through an example. If *Tier* is a significant topical prevalence covariate (in the statistical sense), then certain topics are more likely to be discussed in some statements and not in others. For instance, Tier 1 signatories may tend to discuss a topic more often than Tier 2 signatories. If *Tier* is a significant topical content covariate, then certain words within a specific topic (for instance, the term "*prox*" with the topic *Proxy Voting & ESG Research*) will be more associated with signatories from a specific tier (for instance, Tier 2).

The *stm* R package provides the user with the flexibility to include all, any or none of the seven metadata of interest ($Activist_{style}$, $Activist_{approach}$, *Tier*, *PRI*, *Year*, *Size* and *Country*) as topical prevalence covariates and a single or no topical content covariate.[301] An immediate effect of this restriction (a single topical content covariate) is that in order to examine the impact of a document metadata, seven models are required to run and as an effect the actual topics differ in content between the models. This is an expected behavior of structural topic modelling (i.e. different model specifications result in topics that differ in both content and numbering), but in unreported results the various model estimations with each of the content covariate candidates ($Activist_{style}$, $Activist_{approach}$, *Tier*, *PRI*, *Year*, *Size* and *Country*) were unstable and the results obtained were mixed (in the sense that the content differed significantly compared to the models where no content variable was used) and not straightforward to interpret. For that reason, I relied on the relative frequency analysis of words in the signatories' statements to identify certain words associated with signatories' statements, instead of specifying a new model with topical content covariates.[302]

Figures 4, 5, 6, 7, and 8 show the effects of the independent covariates on topic prevalence of individual signatory statements.

[301] Roberts, Stewart & Tingley, *supra* note 27070.
[302] *See supra* Part III.B.

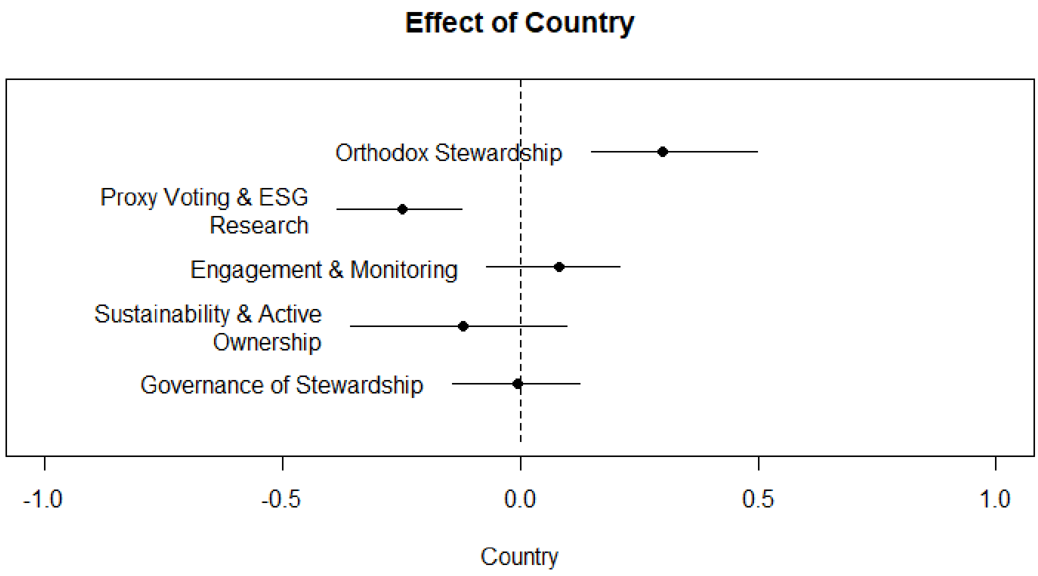

Figure 4: Effects of UK domicile on stewardship topics

When the signatories' domicile (the UK or not) is specified as the topical prevalence covariate, we see that the topic of *Proxy Voting & ESG Research* is strongly associated with non-UK signatories (at 0.1%). This may be explained by the emphasis of US signatories, such as Wellington Management, Franklin Templeton Investments and Alliance Bernstein LP on proxy voting and ESG research.[303] On the other hand, Figure 4 reveals that UK signatories refer more often to the orthodox understanding of shareholder stewardship as including both corporate governance and investment management elements.[304] The significant differences between UK and non-UK activist signatories in these two topics (*Proxy Voting & ESG Research* and *Orthodox Stewardship*) may be attributed to the fact that signing to the UK Code is not mandatory for overseas asset managers who are affected by different investment fund regulation and may follow other national or international stewardship codes in addition to the UK Code.[305]

[303] *See* text accompanying note 296 above.
[304] P–value = 0.017.
[305] This is recognized by the UK Code itself: *see* UK CODE 2012, *supra* note 114.

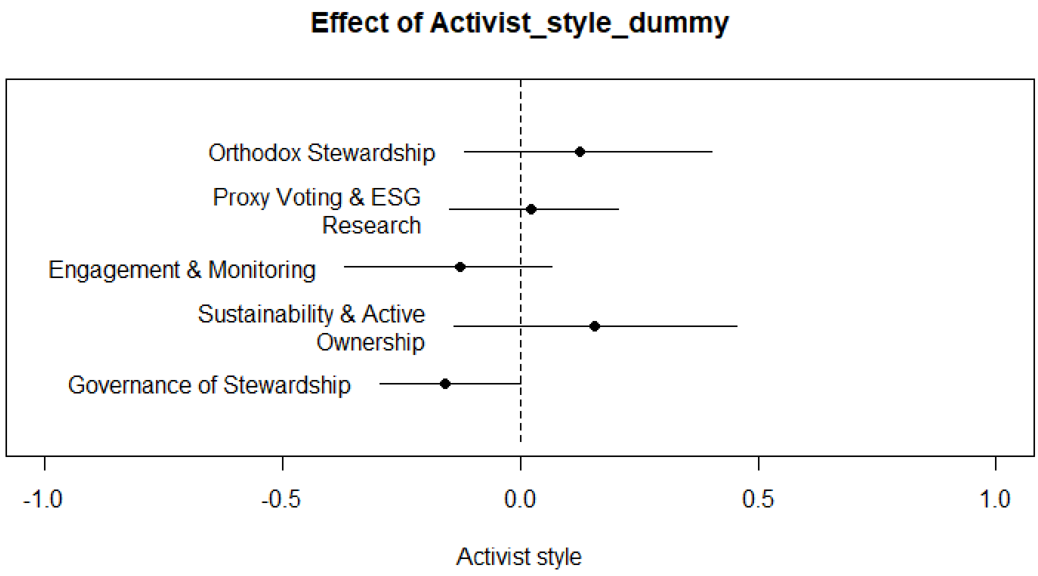

Figure 5: Effects of Activist style on stewardship topics

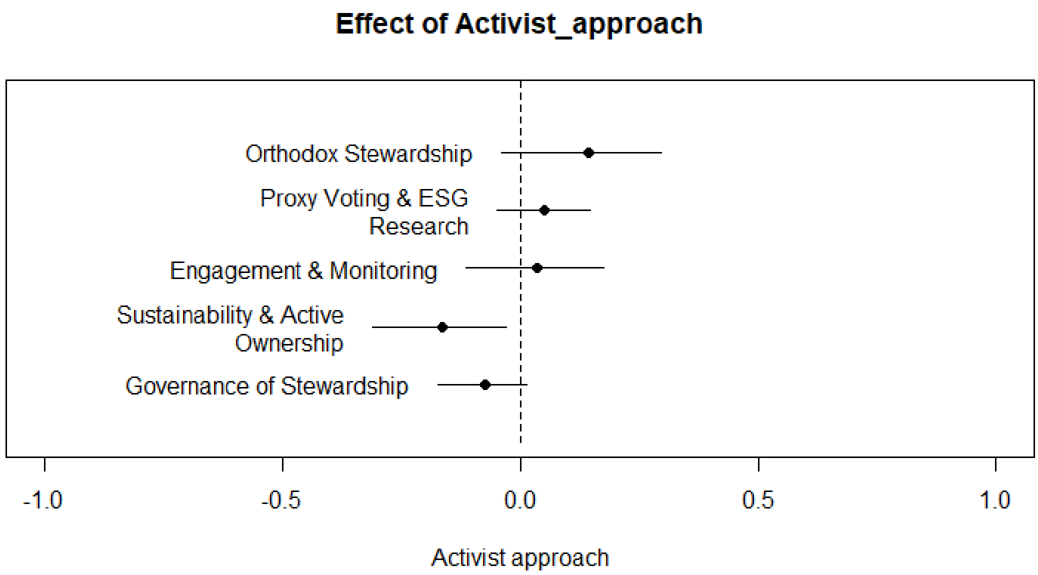

Figure 6: Effects of Activist Approach on stewardship topics

Figures 5 and 6 present the effects of the two variables associated with shareholder activism (*Activist Style* and *Activist Approach*) on the stewardship topics. Figure 5 shows that defensive rather than offensive activists tend to focus more on the *Governance of Stewardship*, but no significant differences are observed between offensive and defensive activists in terms of the other four topics. As for the impact of the *Activist Approach* on the rhetoric of shareholder stewardship, Figure 6 reveals that the activist signatories who adopt only friendly strategies tend to understand stewardship as part of sustainable investing and present themselves as responsible, active owners.[306] This has important implications for the future of stewardship, as we will discuss in the next part.

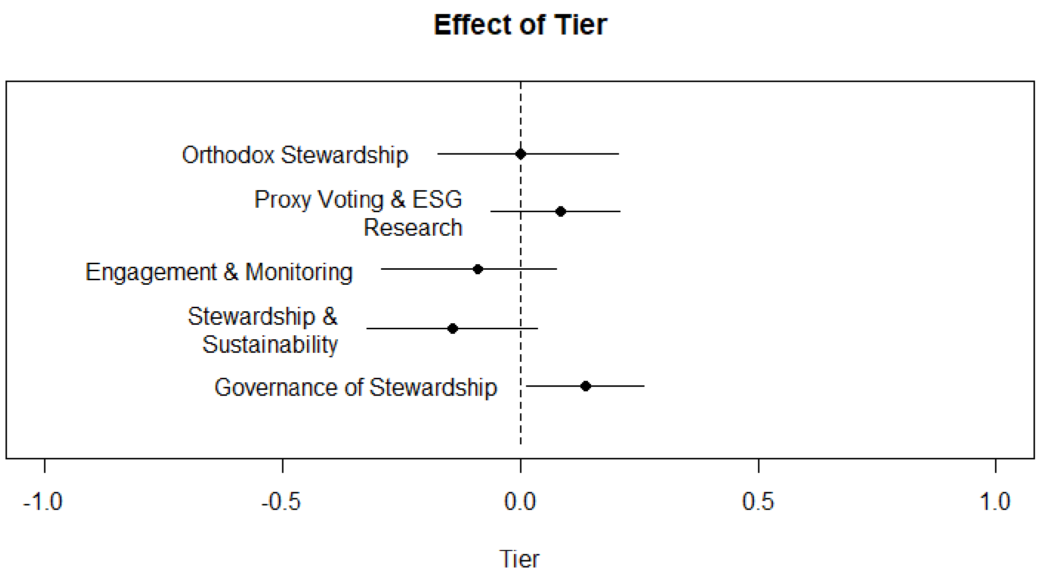

Figure 7: Effects of Tiering on stewardship topics

Figure 7 shows that Tier 1 statements tend to refer to the *Governance of Stewardship* topic more often than Tier 2 statements. But the p–value is 0.085. In addition, the hypothetical effect of tiering on the other four topics is no better than random. This does not imply that certain words within a topic are not likely to be discussed more or less in the statements of Tier 1 signatories than in Tier 2. Rather it is the expected proportion of each of the topics (other than the *Governance of Stewardship* topic) that cannot be associated with tiering. In other words, both Tier 1 and Tier 2 statements refer to the stewardship topics mostly in a similar proportion.

[306] P–value = 0.055.

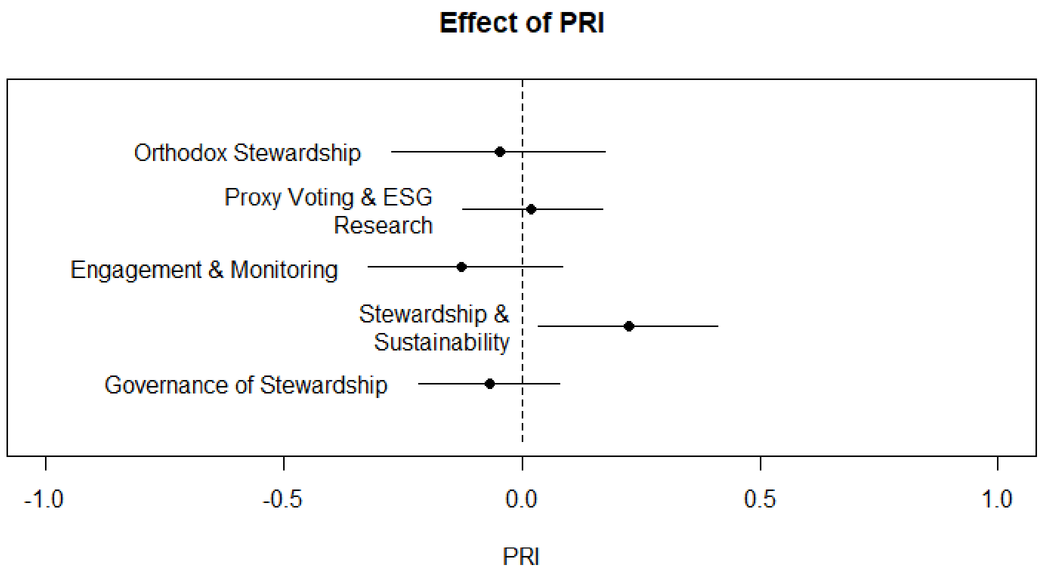

Figure 8: Effects of PRI on stewardship topics

Next, the prevalence of the six topics is contrasted depending on the PRI status of the signatories. Figure 8 confirms that PRI signatories refer more often to the *Stewardship & Sustainability* topic compared to non-PRI signatories.[307] However, both PRI and non-PRI signatories refer to the other four topics in a similar proportion. A possible explanation here may be the fact that fund managers often sign up to the PRI, which establishes a series of voluntary and aspirational recommendations, to gain a marketing badge even though do not make any actual changes in their investment practices.[308]

[307] P–value=0.078.

[308] *See* Arieta A. A. Majoch, Andreas G. F. Hoepner & Tessa Hebb, *Sources of Stakeholder Salience in the Responsible Investment Movement: Why Do Investors Sign the Principles for Responsible Investment?*, 140 J. OF BUS. ETHICS, 732–741 (2016), https://link.springer.com/article/10.1007/s10551–016–3057–2 (empirically analyzing the reasons why investors sign the PRI).

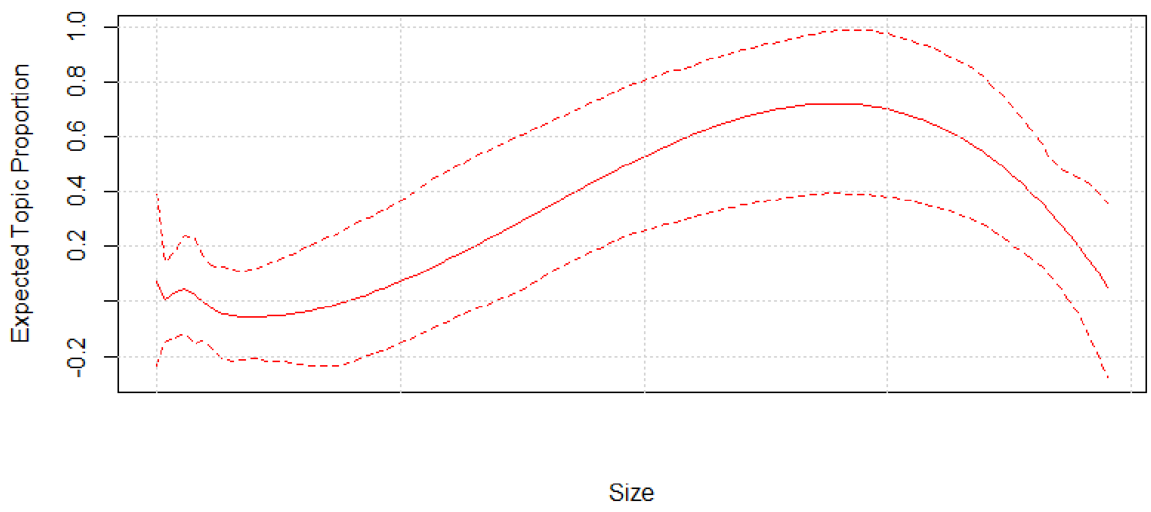

Figure 9: Effects of Size on Governance of Stewardship (Topic 5)

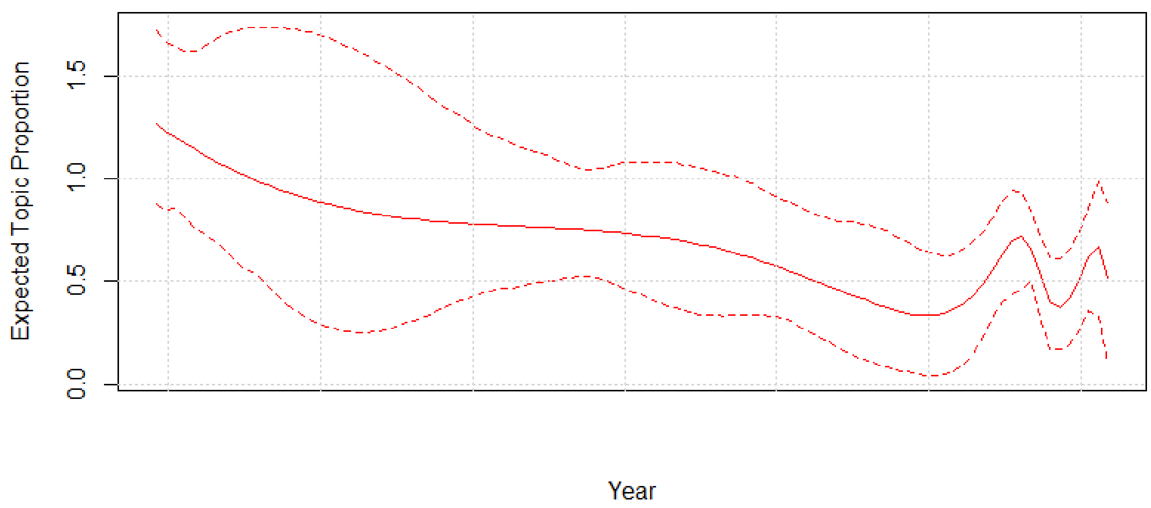

Figure 10: Effects of Year on Engagement & Monitoring (Topic 3)

The *Size* of the activist signatory is found to be significant only for the *Governance of Stewardship* topic; larger asset managers tend to emphasize more on this topic which may be explained by the larger teams and greater resources these signatories devote to stewardship (Figure 9). Finally, an association is found between the *Year* and the *Engagement & Monitoring* topic. Asset managers founded more recently tend to emphasize this topic less in their stewardship statements (Figure 10).

* * *

Overall, the application of structural topic modelling highlighted the presence of five key stewardship topics. The activist signatories to the UK Code 2010/12 understand stewardship broadly as including both conventional and non-conventional elements. Three out of five topics are associated with a conventional understanding of micro-level shareholder stewardship, including monitoring of and engagement with issuers on governance and other environmental issues, the use of proxy voting, and ESG research. Importantly, however, my analysis uncovered the topics of sustainability and active ownership and highlighted the importance of the internal governance of stewardship, especially for larger, defensive activists. Turning now to what explains these topics, the topic of *Sustainability & Active Ownership* is best explained by the $Activist_{aproach}$ and *PRI* variables; activist signatories who adopt a friendly approach and are PRI signatories tend to associate shareholder stewardship with responsible ownership and sustainability. There is also strong evidence that non-UK signatories understand stewardship differently compared to the UK signatories, especially in relation to *Proxy Voting & ESG Research* but also in terms of the more conventional understanding of shareholder stewardship associated with Topic 1. Tiering only impacted the *Governance of Stewardship* topic, which may suggest that the FRC would need to reconsider its assessment and public exercise. Finally, larger and defensive-oriented signatories tend to focus more on the *Governance of Stewardship* topic, while those founded more recently tend to focus less on the conventional *Engagement & Monitoring* topic. The next Part will discuss some of the implications of the key findings.

IV. MARKET, REGULATORY AND POLICY IMPLICATIONS

A. The Road from Instrumental to Enlightened Shareholder Stewardship

This Article has covered significant ground in laying out the theoretical underpinnings of the model of shareholder stewardship and its policy prescriptions, and then in exploring through the means of NLP and structural topic modeling the rhetoric of stewardship as is unveiled in the statements of the activist signatories to the UK Code 2010/12. The analysis has highlighted a largely neglected actor: the activist steward who has better incentives and abilities to undertake micro-level shareholder stewardship.

The four key empirical findings are as follows. First, activist signatories to the UK Code 2010/12 understand shareholder stewardship in an orthodox way as including both corporate governance and investment management aspects; the

Orthodox Stewardship topic is the most frequent one across all disclosure statements. It is clear from NLP that for all of the activist signatories, shareholder stewardship is mainly about engagement on corporate governance issues via both formal and informal means. This understanding accords with the depiction of the UK Code 2010/12 as an "Engagement Code."[309] At the same time, it is clear from the statements of the activist signatories that shareholder stewardship cannot be understood—and more fundamentally cannot be effectively exercised—if the investors' own business models, incentives, and abilities as well as regulatory constraints (including fiduciary duties) are not taken into account. Second, the notion of responsibility and psychological ownership, which is an inherent element of the investor paradigm, is much more embedded in the statements of friendly activist stewards and the ones who are PRI signatories. This has important implications for the future of shareholder stewardship practices and the broader regulatory stewardship ecosystem. Third, overseas investors tend to place greater emphasis on proxy voting and ESG research, while domestic investors seem to place a greater emphasis on what can be called the "orthodox" understanding of shareholder stewardship and therefore to be in close alignment with the UK Code 2010/12 itself. Finally, the FRC's grouping of the signatories to the UK Code 2010/12 into tiers based on the quality of reporting in their statements only has an impact on the least frequent topic, the *Governance of Stewardship* topic. This topic is also associated with defensive activist signatories.

The findings have important implications for (current and future) activist stewards and policymakers alike, especially now that the new 2020 UK Stewardship Code revamps a broader model of shareholder stewardship beyond engagement and voting in equity.[310] First, there are two key lessons for the activist stewards themselves. Some activist stewards (mainly overseas and aggressive ones) tend to understand shareholder stewardship in an *instrumental* way which echoes a shareholder-centered, contractarian understanding of the role of investors–shareholders in corporate governance. On the other hand, friendly activist signatories and those who are PRI signatories appear to have a more sustainable and environment-friendly orientation in the way they perceive and communicate shareholder stewardship, while defensive activists show a greater appreciation of the need to align their internal business models with policy prescriptions. This is an understanding of shareholder stewardship which seems to be more "enlightened" in the sense that they view shareholder stewardship as a means to create sustainable value for beneficiaries, investee companies, the economy and society, and address major societal goals that are not being met right

[309] Davies, *The UK Stewardship Code 2010–2020, supra* note 119.
[310] KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 16.

now due to public companies' transgressions.[311] Such an "enlightened" understanding seems to be consistent with the investor paradigm of corporate governance, which places shareholder stewardship and shareholder engagement in the public interest.[312]

Second, for the FRC the key lesson is that the tiering exercise, which was introduced in 2016 with the aim to improve the disclosure quality of the stewardship statements and establish a transparent and active "market for stewardship," does not map the differences across the statements as these are revealed by the topic modelling of the stewardship topics. This finding strongly suggests that any future tiering exercise or any other form of enforcement needs to be closer connected to informational quality. Any assessment of stewardship reporting needs to be tailored to the spirit and language of the stewardship statements and enable improvement not only in stewardship reporting itself but also in the actual stewardship practices and outcomes. The revised UK Stewardship Code in 2020, with its greater emphasis on the market for stewardship which starts with end investors and beneficiaries and its new reporting framework can provide the impetus and the means to greatly improve the quality of stewardship reporting.[313] The UK Code 2020 replaced forward-looking, aspirational disclosure with backward looking reporting. In the place of the previous stewardship policy statements, the applicants to the UK Code 2020 should submit a stewardship report that explains how they have applied the code over a 12-month period.[314] Upon the introduction of the revised code the FRC refrained from tiering the new statements and has instead undertaken some steps to improve the quality of stewardship reporting at the aggregate level, including providing early advice on the reporting expectations,[315] and offering detailed guidance to market participants.[316] As this Article was going to press, the FRC announced that they will not tier the signatories to the revised UK Code 2020.[317] This decision is in line with the findings of this Article that the previous tiering exercise did not adequately differentiate between the signatories' statements to the UK Code 2010/12. One could also argue that the standards to become a signatory to the revised Code is already high and therefore there is already a

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[311] For a thorough analysis of the model of "enlightened stewardship", *see* KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 16.

[312] *See supra* Part II.A.

[313] *See* KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 16.

[314] https://www.frc.org.uk/getattachment/Investors/UK-Stewardship-Code/Stewardship-Code-Application-and-Assessment-March-2021.pdf

[315] https://www.frc.org.uk/getattachment/975354b4-6056-43e7-aa1f-c76693e1c686/The-UK-Stewardship-Cod-Review-of-Early-Reporting.pdf

[316] https://www.frc.org.uk/getattachment/Investors/UK-Stewardship-Code/How-to-report/210929-Advice-for-October-2021-applications-Final.pdf

[317] FINANCIAL REPORTING COUNCIL, FRC encouraged by investors embracing the spirit of the UK Stewardship Code (Mar. 10 2022), https://www.frc.org.uk/news/march-2022-(1)/frc-encouraged-by-investors-embracing-the-spirit-o (last visited Mar. 14, 2022)

differentiation between the signatories and the non-signatories that can stimulate the supply side of stewardship.[318] Nevertheless it remains questionable whether the supply side of the market of stewardship can efficiently work in the absence of an alternative differentiation system that rates the signatories' quality of adherence to stewardship norms and practices. In the absence of any "formal" enforcement mechanism, including membership sanctions or adherence procedures that target an individual signatory, is will be more difficult for market participants to assess the quality of stewardship commitment at the individual level.[319] Focusing on the demand side of the stewardship market, Katelouzou and Micheler show that even though most demand for stewardship is coming from contributors to financial markets that are seeking financial return, there are large-scale portfolio end investors who are prepared to be guided by altruistic considerations and forgo financial return to support good causes.[320] Whether the supply for such "altruistic," enlightened shareholder stewardship will be provided by the activist stewards studied here is open to further research, but surely the tiering exercise was good to be discontinued. The million-dollar question still remains however how to improve the market of stewardship and whether a new system of public rating and evaluation is needed to improve the quality of both stewardship reporting and actual stewardship practices.[321]

Another key message for the FRC is that the overhaul of the first generation UK Code and the introduction of the 2020 UK Stewardship Code, which places a strong focus on sustainability, responsible investment, and the governance of stewardship was a step in the right direction and in alignment with the way many of the activist signatories were already perceiving stewardship. In addition to (or perhaps instead of) focusing on the corporate-governance-conception of stewardship and ascribing investors as shareholders–monitors, the UK Code 2020 now also refers to environmental and social factors, particularly climate change.[322] Principle 7 requires that "signatories systematically integrate stewardship and investment, including material environmental, social and governance issues, and climate change, to fulfil their responsibilities."[323] The UK Code 2020 also clarifies that stewardship is not only about firm-specific engagement, and alternative business models can be compatible with a broader notion of "investment

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[318] Id. (explaining this decision as follows "asset owners, investment consultants and investment managers felt that standard to become a Stewardship Code signatory is already high and that the FRC should focus on encouraging more of the market to reach this standard").

[319] KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 16. Generally on the distinction between formal and informal enforcement mechanisms in the context of shareholder stewardship, see Katelouzou & Sergakis *Enforcement of Shareholder Stewardship*, supra note 164.

[320] Katelouzou & Micheler, *supra* note 152.

[321] KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 16.

[322] UK CODE 2020, *supra* note 13232, at 4.

[323] UK CODE 2020, *supra* note 13232, at 15.

stewardship."[324] Future research should focus on how the activist signatories to the new Code will incorporate these new requirements into their stewardship policies, activities, and outcomes. It is expected that the UK Code 2020 will stimulate other signatories to move from an instrumental to an enlightened understanding of shareholder stewardship. It is also likely that a larger number of investors will sign up to the new Code now that firm-specific engagement is not the only legitimate stewardship approach.

Thirdly, the empirical findings confirm that shareholder activism and micro-level shareholder stewardship are not incompatible. Shareholder stewardship may not be understood in the same way by all the activist stewards in the sample but there is encouraging evidence that activist stewards, especially the friendlier ones who are PRI signatories, recognize "shared value" rather than monolithic shareholder value as the driver for their investment decisions and stewardship activities. Whether and to what extent the "enlightened" rhetoric is translated to outcomes is open to further research, but the findings of this study offer some cautionary notes against policy attempts exerting downward pressure on the style of firm-specific stewardship and monitoring associated with activist stewards, such as the failed Brokaw Act in the United States.[325]

A final cautionary note. This study covers significant ground, investigating the stewardship rhetoric of activist signatories in the United Kingdom through the means of NLP and structural topical modeling, but it is characterized by a key limitation. The disclosure statements of the activist stewards studied here are *aspirational*; they focus on stewardship policies rather than the outcomes of engagement and stewardship activities. Kingman Review's assessment of the first generation UK Code highlighted this flaw when it criticized the Code as "simply [a] driver of boilerplate reporting."[326] We recognize that even though the systematic analysis of the disclosure statements can offer key insights on the activists' perceptions about the UK Code's principles and the functioning of soft-law disclosure obligations, it cannot provide evidence as to what the activist stewards have actually done in response to the UK Code 2010/12. And there is always the possibility that activist stewards are not acting in accordance with the disclosure statements they published.[327] Future research should focus on whether what signatories state about their stewardship policies, activities, and outcomes is simply a reflection of what they aspire to or what they believe the market for stewardship expects rather than how they really operate.

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[324] On the broader notion of "investment stewardship", *see* KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 16.
[325] *See* text accompanying note **Error! Bookmark not defined.** below.
[326] OPEN GOVT. LICENCE, INDEPENDENT REVIEW OF THE FINANCIAL REPORTING COUNCIL (2018), 10.
[327] *See* Gibson Rajna et al., *Do Responsible Investors Invest Responsibly?* (ECGI Finance Working Paper 712, 2020), https://ssrn.com/abstract=3525530.

B. Streamlining Activist Stewards as "Stewardship Arbitrageurs" or "Stewardship Intermediaries"

The UK Code may be addressed to all asset managers and asset owners with equity holdings in UK listed companies, but the preceding analysis has shown that the model of micro-level shareholder stewardship is by definition more suited to an undiversified investment strategy that entails firm-specific monitoring of operational and governance decisions and management oversight on a cost effective basis. The UK Code 2020 does not undermine the importance of firm-specific shareholder stewardship, even though it has certainly broadened the ambit of investment management models that can serve the now-broader policy aspirations.[328] The textual analysis of the activist signatories' statements to the first generation UK Code confirms that activist stewards fulfill the stewardship prescriptions (at least in terms of words written in the disclosure statements), and some of them are driven by strong notions of responsibility and accountability, not only to their clients but to their investee companies and broader stakeholders.[329] It remains a reality, however, that from the potential large pool of activist funds with equity holdings in UK listed companies who could serve the role of a shareholder steward, only a few have been signatories to the UK Code 2010/12. Examples of absentees include one of Europe's biggest activist funds, Cevian Capital, whose chairman is Paul Myners—one of the protagonists of the stewardship reform in the United Kingdom—and The Children's Investment Fund (TCI), the iconic UK activist hedge fund.[330] While one needs to recognize that incorporating shareholder stewardship into investment management and signing up to the UK Code is the outcome of complex synergistic internal governance factors, this penultimate part points to two recent trends—*coalition building* and *ESG activism*—that could streamline activists' stewardship ability in the near future and perhaps enlarge the pool of potential activist shareholder stewards.

1. Coalition Building

It is well explained in the literature that for shareholder activism to take place the accrued benefits from the intervention needs to outweigh the monitoring costs.[331] Typically, an activist investor bears all the costs of a campaign but enjoys only a fraction of the benefits corresponding to the size of its ownership stake.[332]

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[328] UK CODE 2020, *supra* note 13232, Principles 9–11 and 12. *See, further*, KATELOUZOU, THE PATH TO ENLIGHTENED SHAREHOLDER STEWARDSHIP, *supra* note 16.
[329] *See supra* Part III.
[330] Cevian Capital was, however, an early signatory to the UK Code until 2013 (data on file with author). For a short biography of Paul Myner, *see* Owen Walker, *Paul Myners: regulators have failed to act on liquidity risk*, FIN. TIM. (Aug. 3, 2019), https://www.ft.com/content/5dd0fc35–9734–3ff6–b64d–c0f003a7fff2.
[331] Gantchev, *supra* note 212.
[332] *Id.*

Activist funds do not normally hold a sufficiently large number of shares to drive corporate change without the support of their fellow institutional shareholders.[333] The solution to the persistent free rider problem is found in collective engagement initiatives and implicit or explicit coalitions between activist and non-activist investors.[334]

Previous literature has highlighted the importance of the "wolf pack" tactic that enables collective (or parallel) action by more than one activist fund without legally forming a group for the purposes of disclosure regulation.[335] Because of the ability of wolf pack participants to stay below the relevant reporting thresholds (section 13d of the Williams Act in the United States or Disclosure and Transparency Rule 5.1 of the FCA in the United Kingdom), even though their collective ownership holdings as a group would require disclosure,[336] wolf pack activism has attracted the attention of policymakers and courts, especially in the United States.[337] While the "wolf pack" technique allows looser or tighter affiliations among like-minded activists, engagement coalitions are increasingly built among a wider range of institutional investors, and non-activist investors are

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[333] For recent empirical data in the US, see Alon Brav, Wei Jiang & Rongchen Li, Governance by Persuasion: hedge Fund Activism and the Market for Corporate Influence, ECGI Finance Working Paper No 797/2021 (Nov. 2021) (reporting "a median initial (maximum) percentage stake that a hedge fund takes in the target is 6.6(9.4) percent).

[334] *But see* Gaia Balp & Giovanni Strampelli, *Institutional Investor Collective Engagements: Non–Activist Cooperation vs Activist Wolf Packs*, 14 OHIO ST. BUS. L.J. 135 135 (2020) (arguing that coordinated engagement can be an alternative to activist–driven ownership involvement).

[335] For the use of this strategy in the United States, *see* Thomas W. Briggs, *Corporate Governance and the New Hedge Fund Activism: An Empirical Analysis*, 32 J. CORP. L. 681, 712 (2007) (for an early account that activist hedge funds are "not stymied by the collective action problem … [and] they do not have trouble attracting like–minded and unconflicted hedge–fund and other allies") and Coffee & Palia, *supra* note 222 (highlighting that "the "wolf–pack" technique enables activists to largely outflank the poison pill and assemble a larger stock position before the bidder learns of their existence"). *See also* Yu Ting Forester Wong, *Wolves at the Door: A Closer Look at Hedge Fund Activism*, 66 MGMT. SCIENCE 2347 (finding empirical evidence that wolf packs are orchestrated by lead activists and are not spontaneous).

[336] *See, e.g.*, William R. Tevlin, *Conscious Parallelism of Wolf Packs: Applying the Antitrust Conspiracy Framework to Section 13(d) Activist Group Formation*, 84 FORDHAM L. REV. 2335 (2016) (identifying when wolf–packs in the United States could be 13(d) groups).

[337] *See Third Point LLC vs Ruprect* 2014 WL 1922029 (Del. Ch.): a high–profile Delaware case which sustained a low–threshold poison pill deployed again an activist hedge fund. For a thorough review of this case, *see* William W. Bratton, *Hedge Fund Activism, Poison Pills, and the Jurisprudence of Threat*, Faculty Scholarship at Penn L. 1667 (2016), https://scholarship.law.upenn.edu/faculty_scholarship/1667. The prime example of proposed federal legislation to address the risks associated with "wolf–packs" is the so–called Brokaw Act, which aimed, among others, at disallowing the supporting members of a wolf–pack to avoid disclosures under section 13d and position themselves as passive investors by using Schedule 13G even though they cooperate with an activist. For an analysis of this proposed Act, *see* Alon Brav, J.B. Heaton & Jonathan Zandberg, *Failed Anti–Activist Legislation: The Curious Case of the Brokaw Act*, 11 J. BUS. ENTREPRENEURSHIP & L. 329 (2018).

increasingly seen in the finance literature as "complements" of activist funds.[338] For instance, Alon Brav, Amil Dasgupta and Richmond Mathews build a theoretical model where a wolf pack is comprised of a "lead" activist with a sizeable stake and supporting smaller institutional investors (activist, active or passive).[339] Simi Kedia, Laura Starks and Xianjue Wang provide large-scale empirical evidence to suggest that the presence of activism-friendly institutional investors increases not only the likelihood of targeting a company but also the success rate of the campaign itself.[340]

In the legal literature, the coalition-building processes among activist and non-activist investors have been theorized within the classic agency theory framework. In the "agency capitalism" framework of Gilson and Gordon, non-activist institutions have been transformed from "rationally apathetic" investors to "rationally reticent" in that they are increasingly willing to support activist funds' proposals but are unlikely themselves to initiate them.[341] In this framework, activist funds' firm-specific monitoring is "an endogenous response to the monitoring shortfall that follows from ownership re-concentration in intermediary institutions." [342] Activist funds, therefore, play the role of "governance intermediaries" or "governance rights arbitrageurs," to put it in the words of Gilson and Gordon. [343] Several important links between activist funds and traditional institutional investors, including institutional investor investment in hedge-fund-style activists and the increasing mobility of corporate governance professionals across institutions, further support such alliances.[344]

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[338] *See*, *e.g.*, Alex Edmans, Vivian W. Fang & Emanuel Zur, *The Effect of Liquidity on Governance*, 26 REV. FIN. STUD. 1443 (2013); Øyvind Norli, Charlotte Ostergaard & Ibolya Schindele, Liquidity and Shareholder Activism, 28 REV. FIN. STUD. 486 (2015); and Nikolay Ganthcev & Chotibhak Jotkasthira, *Institutional Trading and Hedge Fund Activism*, 64 MGMT. SCIENCE 2930 (2018) (all finding that stock liquidity which is increased by the presence of institutional ownership is an important factor for activist hedge funds).

[339] Alon Brav, Amil Dasgupta & Richmond D. Mathews, *Wolf Pack Activism* (ECGI Finance Working Paper No. 501, 2017), https://ssrn.com/abstract=2529230 (attributing the collective engagement by supportive minority investors to reputational rather than financial incentives). *See also* Alon Brav, Wei Jiang, Tao Li & James Pinnington, *Picking Friends Before Picking (Proxy) Fights: How Mutual Fund Voting Shapes Proxy Contests* (ECGI Finance Working Paper 601, 2019), https://ssrn.com/abstract=3101473 (finding that active funds are more likely to support activist campaigns).

[340] Simi Kedia, Laura T. Starks & Xianjue Wang, *Institutional Investors and Hedge Fund Activism* (Mar. 24, 2020), https://ssrn.com/abstract=3560537. *See also* Ian R. Appel, Todd A. Gormley & Donald B. Keim, *Standing on the Shoulders of Giants: The Effect of Passive Investors on Activism*, 32 REV. FIN. STUD. 2720 (2018) (empirically documenting a positive link between (passive) institutional ownership and the likelihood of an activist hedge fund campaign seeking board presentation or the sale of the targeted company).

[341] Gilson & Gordon, *The Agency Costs of Agency Capitalism*, *supra* note 30, 867. *See* also Kahan & Rock, *Index Funds and Corporate Governance*, *supra* note 18989.

[342] Gilson & Gordon, *The Agency Costs of Agency Capitalism*, *supra* note 30, 867 and 869.

[343] *Id.*, 867 and 869.

[344] Edward Rock, *Institutional Investors in Corporate Governance*, in: THE OXFORD HANDBOOK OF CORPORATE LAW AND GOVERNANCE (Jeffrey N. Gordon & Wolf–Georg Ringe ed., 2018).

With large passive managers having few incentives to engage in micro-level shareholder stewardship, it is the sophistication of the joint forces between activist funds and other (active or passive) investors, including index funds, often supported by proxy advisory firms' voting recommendations,[345] that cannot be ignored anymore. In most of these stewardship alliances, large asset managers, including the Big Three or the Big Four, who play the role of "kingmakers," can "be passive or reactive and have much leeway to decide how active they wish to be."[346] While short-term profit making "wolf packs" are not legitimized by the UK Stewardship Code,[347] the model of shareholder stewardship is certainly facilitative of coalition building. And it is the role of activist stewards that is becoming of critical importance and cannot be anymore ignored. Echoing Gilson and Gordon, the empirical findings of this Article reveal that there is a breed of *enlightened* activist stewards that can play the role of "stewardship arbitrageurs" or "stewardship intermediaries" advancing long-term sustainability through firm-specific shareholder stewardship. The intermediary role that these activist stewards can play is—contrary to what Gilson and Gordon argue—*within* rather than outside the regulatory stewardship framework.[348] The empirical findings of this study support that for most activist signatories to the UK Code 2010/12 the role of "stewardship arbitrageurs" is not too far from the truth—at least on the basis of what is stated in the signatories' statements.[349]

Another parameter needs to be considered here. While investors often coordinate themselves informally,[350] third party coordinators can further streamline coalition-building among heterogenous investors and boost firm-specific shareholder stewardship. In some countries, investor organizations are established to address the problems associated with the widely diversified structure of equity portfolios and to increase the incentives for investors to collectively engage with investee companies. The prime example is the UK Investor Forum, an industry initiative of 52 institutional investors, including Blackrock, Standard Life Aberdeen, Fidelity International and Schroders, which accounts for a third of the UK FTSE (Financial Times Stock Exchange) all-share market capitalization.[351] The Investor Forum was established in 2014 in response

[345] *See generally* K.J. Martjin Cremers, Saura Masconale & Simone M. Sepe *Commitment and Entrenchment in Corporate Governance*, 110 NORTHWESTERN UNIV. L. REV. 727 (2016).
[346] Asaf Hamdani & Sharon Hannes, *The Future of Shareholder Activism*, 99 BOSTON UNIV. L. REV. 972, 983 (2019).
[347] BARKER & CHIU, *supra* note 9, at 175.
[348] Cf. Gilson & Gordon, *The Agency Costs of Agency Capitalism*, *supra* note 30.
[349] *See supra* Part III.
[350] *See, e.g.*, Alan D. Crane, Andrew Koch & Sébastian Michenaud, *Institutional investor cliques and governance*, 133 J. FIN. ECON. 15 (inferring which investors are likely to coordinate and studying the impact of "institutional investor cliques" on voting and exit).
[351] *See* Andy Griffiths, *The cheery scrapper who keeps UK plc in line*, FIN. TIM. (Oct. 25, 2018); Attracta Mooney, *UK urged to introduce mandatory climate votes at AGMs*, FIN. TIM. (Jan. 12, 2021). *See also* KAY REVIEW, *supra* note 113, at 13.

to the Kay Review's recommendation that collective engagement by asset managers in UK companies should be facilitated.[352] The Investor Forum's creators envisaged it as the means to bestir Principle 5 of the UK Code 2010/12, which provided that "[i]nstitutional investors should be willing to act collectively with other investors where appropriate" and especially "at times of significant corporate or wider economic stress, or when the risks posed threaten to destroy significant value."[353] Despite a slow start, the Investor Forum has played an increasingly important role in facilitating collective engagement between different institutional shareholders in UK listed companies in recent years. Since 2015, the Investor Forum has considered more than 70 engagements and initiated action in 40 UK companies, 21 of which occurred between 2018 and 2019.[354] While the shareholder engagement of the Investor Forum does not share the confrontational character of many hedge-fund-style activist campaigns,[355] the Forum has successfully voiced together different types of investors (activist, active and passive). For instance, the Forum, together with other investors, has succeeded in forcing Unilever to abandon its plan to move its headquarters to the Netherlands[356] and spearheaded pressures against Firstgroup,[357] and Sport Direct.[358] More recently, the Investor Forum joined the "say on climate" initiative that TCI started and called on the UK government to introduce mandatory shareholder votes for UK listed companies' actions concerning climate change on an annual basis.[359]

Other examples of investor associations aiming to enhance collective engagement exist. For example, the Institutional Investors Collective Engagement Forum was established in 2017 to support the exercise of the collective engagement

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[352] For the history of the Investor Forum see generally: https://www.investorforum.org.uk/about/history/#:~:text=The%20Kay%20Review%20of%20UK,UK%20investors%20in%20UK%20companies%E2%80%9D.&text=A%20Collective%20Engagement%20Working%20Group,Investor%20Forum%20should%20be%20established.

[353] UK CODE 2012, *supra* note 114.

[354] THE INVESTOR FORUM, REVIEW 2020 (Jan 2021), https://www.investorforum.org.uk/wp–content/uploads/securepdfs/2021/01/TIF–Annual–Review–2020–FINAL.pdf.

[355] INVESTOR FORUM 2019 REPORT, 15 ("In contrast to the approach taken in many activist campaigns, the Forum seeks to highlight to the Board the need for it to recognise an issue and respond effectively"); INVESTOR FORUM 2020, *supra* note 35554, 24 (explaining that the "first phase" (between March 2019 and January 2020) engagement with Barclays plc aimed at emphasizing "the priorities of long–standing Barclays investors at a time when the bank was facing a campaign from an activist investor seeking a Board position.")

[356] Attracta Mooney, *Not–so–gentle Unilever rebuff shows investor clout*, FIN. TIM. (Oct. 15, 2018).

[357] Oliver Gill, *FirstGroup bows to pressure and appoints former rival as chairman*, DAILY TELEGRAPH (Aug. 16, 2019).

[358] David Oakley & Mark Vandevelde, *Investors step up pressure on Sports Direct board* (Aug. 26 2016).

[359] Attracta Mooney, *UK urged to introduce mandatory climate votes at AGMs*, FIN. TIM. (Jan. 12, 2021), https://www.ft.com/content/c0e039ae–b6c0–482a–af06–c8902e3ab989.

principle of the Japanese Stewardship Code.[360] Additionally, the Canadian Coalition for Good Governance (CCGG), a group of 54 institutional investors, engages with companies privately to advance governance reforms, such as say-on-pay or majority voting for individual directors.[361] In the area of environmental and social ("E&S") activism, the "Collaboration Platform" of the PRI has emerged as a prominent international forum that facilitates explicit coordination among like-minded investors and aggregates shareholder engagement.[362] A recent empirical study on PRI coalitions shows the importance of the leading investor in such coordinated E&S engagements and finds parallels between "wolf packs" and "two tier engagement," i.e. an engagement with a "lead" and supporting PRI signatories.[363] This has important implications for shareholder stewardship because, as detailed above, those activists who are signatories to both the UK Code and the PRI have a more holistic, enlightened understanding of shareholder stewardship as serving long-term societal goals and sustainability.[364] Other not-for-profit groups, such as ShareAction or Climate Action 100+ increasingly have the capacity to coordinate and support firm-specific stewardship, especially when environmental or social issues (such as obesity) are at stake, as recent shareholder revolts against HSBC, Barclays and Tesco show.[365] Indeed, several of the activist stewards' statements examined above highlight the role of third party coordinators and investors' groups in facilitating collective engagement.[366]

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[360] The Institutional Investors Collective Engagement Forum is itself a signatory to the Japanese Stewardship Code. *See* INSTITUTIONAL INVESTORS COLLECTIVE ENGAGEMENT FORUM (IICEF) (2021), https://www.iicef.jp/en/ (last visited July 30, 2021).

[361] *See generally* CANADIAN COALITION FOR GOOD GOVERNANCE (CCGG) (2021), https://ccgg.ca/. Also note that CCGG is the author of the Canadian stewardship code: CCCG, https://ccgg.ca/download/4066/ (last visited on July 30, 2021). For empirical evidence, *see* Craig Doidge, Alexander Dyck, Hamed Mahmudi & Aazam Virani, *Collective Action and Governance Activism*, 23 REV. FIN. 893 (2019) (studying private engagement by CCGG between 2008 and 2015 and finding that formal coordination through CCGG can increase investor activism and have an impact on the targeted firms' governance choices).

[362] *See generally* UNPRI, https://collaborate.unpri.org/ (last visited July 24, 2021). For empirical data *see* Elroy Dimson, Oğuzhan Karakaş & Xi Li, *Coordinated Engagements* (ECGI Finance Working Paper No. 721, 2021), https://ssrn.com/abstract=3209072 (analyzing 31 PRI engagement projects between 2007 and 2015).

[363] *Id.*

[364] *See supra* Part III.D.

[365] *See*, *e.g.*, Alastair Marsh, *Climate activists push Barclays to ramp up green financing activities*, BUS. DAY (Dec. 15, 2020), *HSBC faces calls to dump fossil fuels*, NEWSBASE DAILY NEWS (Jan. 11, 2021), https://newsbase.com/story/hsbc–faces–calls–to–dump–fossil–fuels–199977 and *Tesco faces shareholder vote to do more to tackle obesity*, MARKETSCREENER (Feb. 9, 2021), https://www.marketscreener.com/news/latest/Tesco–faces–shareholder–vote–to–do–more–to–tackle–UK–obesity—32400742/. For the engagement work of ShareAction and Climate Action 100+, *see generally* SHAREACTION (2021), https://shareaction.org/ (last visited July 30, 2021) and CLIMATE ACTION 100+ (2021) https://www.climateaction100.org/ (last visited July 30, 2021).

[366] *See*, *e.g.*, "FTI may collaborate with institutional investors through our network of memberships. These include: The Principles for Responsible Ownership, UKSIF, Eurosif, International Corporate Governance Network. In addition we are associated with the Canadian Coalition for Good Governance through the board membership of an FTI employee" (Franklin Advisers 2016) and "We

2. ESG Activism

Another trend likely to streamline the role of activist stewards as "stewardship arbitrageurs" is the surge of ESG activism. Today traditional activist funds increasingly view addressing firm-specific ESG (and especially environmental) issues as a key tool in their arsenals.[367] While ESG objectives were absent from hedge-fund-style activist campaigns ten years ago, today, there are astonishing examples of potentially transformative stewardship undertaken by reputed activist hedge funds. For instance, TCI—previously characterized as a "locust" following its campaign against Deutsche Boerse in 2005—is now a "climate radical" bringing its offensive tactics to the fight against climate change.[368] TCI has threatened three large UK banks over coal funding,[369] and has been pushing companies globally to improve disclosures of greenhouse gas emissions and adopt annual shareholder votes on climate action plans.[370] ESG engagement also takes place with the means of exit, as the recent dropping of AIG from the funds of Legal & General shows.[371] While ESG activism is currently a niche strategy, the high demand from institutional clients, including index funds currently contesting to win the Millennial generation,[372] is among the key factors set to drive future growth.[373]

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work with a number of organisations in order to participate in collective engagement, including: • Asian Corporate Governance Association • The Investment Association • Council of Institutional Investors • The Investor Forum • The Principles for Responsible Investing • The 30% Club Investor Group" (Aberdeen Standard Investments, 2019) (on file with author).

[367] *See, e.g.*, Corrie Driebusch, *Activist Investors Join Push to Build Up Do–Good Funds*, WALL STR. J. (Mar. 9, 2020). For the role hedge funds and other "responsible investors" can play in promoting ESG activism, *see* Anna Christie, *The Agency Costs of Sustainable Capitalism*, 55 UC DAVIS L. REV. 875 (2021).

[368] Edward Robinson, *World's Most–Profitable Hedge Fund is Now a Climate Radical* 94 PALM BEACH DAILY BUS. REV. A13 (2020).

[369] Leslie Hook & Chris Flood, *TCI threatens banks over coal funding*, FIN. TIM., 11 (Mar. 2, 2020).

[370] Tim Human, *TCI goes global with "say on climate" campaign,* IR MAGAZINE (Nov. 27, 2020); *Hedge Fund manager Hohn steps up campaign over banks' fossil-fuel loans*, FIN. TIM. (Oct. 21, 2021). In October 2020, Spanish airport operator Aena was the first company in the world to adopt an annual advisory "say on climate" after pressures by TCI. *See* Attracta Mooney, *Billionaire Chris Hohn forces first annual investor vote on climate policy*, FIN. TIM. (22 Oct. 2020).

[371] Camilla Hodgson, *Britain's largest investor blacklists AIG over climate risk concerns*, FIN. TIM. (June 13, 2021).

[372] *See* Katelouzou & Micheler, *supra* note 152 (creating a taxonomy of market participants and examining their demand for stewardship and highlighting the role of the Millennials in demanding stewardship). On social activism by index funds, *see* Michal Barzuza, Quinn Curtis & David Webber, *Shareholder Value(s): Index Fund Activism and the New Millennial Corporate Governance*, 93 SOUTHERN CALIFORNIA L. REV. (forthcoming 2020), also available: https://ssrn.com/abstract=3439516.

[373] Amy Whyte, *Hedge Fund Activists Pivot to ESG*, INSTITUTIONAL INVESTOR MAGAZINE (Jan. 23, 2020); Greg Winterton, *ESG Issues Fuelling Shareholder Activism Growth*, ALPHAWEEK (Dec. 16, 2020) (reporting that in a study of 150 US investors three–quarters believe that they can be influential in activism relating to environmental protection and renewable energy).

Redirecting shareholder activism to ESG factors is a potentially transformative exercise of shareholder stewardship. However, despite aspirational sounding rhetoric (as revealed in Part III), empirical evidence shows that large asset managers, including Blackrock and Vanguard, vote against most ESG minority resolutions.[374] While it is a fantasy to expect that such investors will rationally internalize all the costs of ESG activism, especially when such engagement is firm-specific, they can streamline shareholder stewardship directed at ESG issues through implicit or explicit coalition building with like-minded activist stewards. Yet, not all activist funds approach ESG stewardship from the same angle. Iconic hedge-fund-style activists, such as Carl Icahn and Starboard Value LP, do not raise ESG issues with their target companies.[375] There is also growing skepticism among stakeholders about the broader motivations and incentives behind the use of ESG in activist campaigns.[376] A recent survey among asset managers, for instance, confirms that the main reasons why asset managers adopt stewardship are financial in nature, reflecting a broader recognition that ESG factors and exercising stewardship have a positive impact on returns.[377]

But here one must distinguish the activist stewards this Article focuses on from the rest of the activist funds. The activist signatories who have voluntarily signed to the UK Code have clearly indicated their commitment to ESG and responsible ownership. The 2020 UK Code highlights that stewardship aims to "create long-term value for clients and beneficiaries leading to sustainable benefits for the economy, the environment and society" and seeks to mainstream ESG factors, especially climate change, into stewardship.[378] Accordingly, the signatories to the new Code must reflect on how they integrate ESG into their own approach to investment. Activist signatories to the UK Code 2010/12—the focus of this Article—may still be a minority among all activists but have the potential to act as stewardship arbitrageurs. They have the incentives and abilities to engage in micro-level stewardship, bring together like-minded investors (including the

[374] Jackie Cook, *ESG Proxy Resolutions Find More Support in 2019,* MORNINGSTAR (Feb. 28, 2019), https://www.morningstar.com/articles/967699/esg–proxy–resolutions–find–more–support–in–2019. *See* also text accompanying note 294 above.
[375] Corrie Driebusch, *Activist Investors Join Push to Build Up Do–Good Funds*, WALL STR. J. (Mar. 9, 2020)
[376] *See, e.g.*, Hugh Leask, *Boardroom battles: Why activist hedge funds are back in the spotlight* HEDGE WEEK (Feb. 26, 2020) (arguing that even the use of 'G' (governance) by activist hedge funds is "often a smoke screen for their ultimate objectives; activist hedge funds are in for the profits, everything else is less relevant".
[377] LCP, RESPONSIBLE INVESTMENT SURVEY (Jan., 2020), at 12 (providing evidence that 85% of the survey respondents said 'they integrate ESG factors with the aim of improving long–term investment outcomes for their clients' and 67% said they do it 'because they believe ESG risks and opportunities can affect risk–adjusted returns over the short to medium term').
[378] UK CODE 2020, *supra* note 132, at 4.

largest asset managers[379]) and promote not only good corporate governance but also address environmental and social issues through shareholder engagement. Anecdotal evidence supports this claim. The pressure by Toscafund Asset Management on tool hire group Speedy Hire's chairman,[380] the engagement by a consortium of shareholders including Columbia Threadneedle, Janus Henderson Group, Legal & General and Aviva that voted against Unilever's plan to consolidate its headquarters in the Netherlands,[381] and more importantly the pressure investors put on UK mining companies Glencore plc and Rio Tinto,[382] are all indicative of the stewardship capability of activist investors. This Article's systemic analysis of the rhetoric of the disclosure statements of the activist signatories to the first generation UK Code confirms this. However, future research needs to examine how often and how successfully activist stewards walk the "stewardship talk."

V. CONCLUDING REMARKS

> "Action speaks louder than words but not nearly as often"
>
> (Mark Twain)

We are currently at a major crossroads. As we grapple with the implications of the COVID-19 pandemic, an opportunity for institutional investors is emerging to regain society's confidence. The second generation UK Stewardship Code has broken new ground in forcing ESG into the heart of stewardship, but there are still significant differences in opinion on how to integrate ESG into investment management and what should be expected as a result. As the FRC has introduced a new reporting system to improve the quality of information and as the latest list of signatories to the new Code—published in spring 2022—will have to produce

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379 Some of the largest US asset managers, including Vanguard and Blackrock, publicly emphasize their commitment to stewardship, ESG and public trust even in the absence of soft–law stewardship responsibilities or hard–law duties. *See, e.g.*, BLACKROCK, INVESTMENT STEWARDSHIP ANNUAL REPORT (Sep. 2020), https://www.blackrock.com/corporate/literature/publication/blk–annual–stewardship–report–2020.pdf (last visited July 30, 2021): "We advocate for robust corporate governance and the sound of sustainable practices core to long–term value creation for our clients"; VANGUARD, INVESTMENT STEWARDSHIP 2020 ANNUAL REPORT (2021), https://about.vanguard.com/investment–stewardship/perspectives–and–commentary/2020_investment_stewardship_annual_report.pdf. (last visited July 30, 2021). *But see* Attracta Mooney, *Blackrock Accused of climate change hypocrisy*, FIN. TIM. (May 17, 2020) (reporting discrepancies between Blackrock's statements and voting).

380 Nicholas Megaw, *Toscafund urges Speedy Hire chairman to quit*, FIN. TIM 17 (Aug. 11, 2016).

381 Attracts Mooney, *Unilever must learn to listen to mood music*, FIN. TIM. 8 (Oct. 15, 2018), https://www.ft.com/content/5e441dbd–1823–395b–b8d9–2399e11f72db.

382 *Investors put pressure on miners to respond to climate change*, REUTER NEWS (Dec. 16, 2015), https://www.reuters.com/article/us–climatechange–investment–mining–idUKKBN0TZ1BS20151216.

annual reports detailing stewardship activities and outcomes,[383] this study is the first to empirically examine the stewardship rhetoric of activist signatories to the first generation UK Stewardship Code and provide unique and original evidence that help to identify the way activist stewards express—and exercise—stewardship.

That this Article focuses on activist shareholder stewards is not by chance. From the pool of all the signatories to the UK Code 2010/12, activist funds are the only ones for whom the model of micro-level shareholder stewardship is potentially compatible with their business models and can be used as a strategy to achieve long-term value. With a growing number of activist fund campaigns encompassing less confrontational approaches and "enlightened" objectives (especially outside the United States), it is time to understand how activist funds view shareholder stewardship and whether shareholder activism and shareholder stewardship can be compatible. This question is even more important in light of the diffusion of UK-style stewardship codes around the world.[384]

Applying NLP and structural topic modeling to systematically examine the stewardship statements of 50 activist stewards, this Article unveils that the stewardship rhetoric, especially of those domestic activists who are not confrontational and offensive in style, is in accordance with the policy aspirations of the UK Code 2010/12. The empirical findings also reveal an emerging crossover between the enlightened understanding of shareholder stewardship and the way the PRI promotes responsible investing. This has important implications for the future advancement of the complex and multilayer regulatory ecology of enlightened shareholder stewardship. Methodologically, this is the first study that applies NLP and structural topic modeling in legal research and unveils the prevalence of different topics in the statements of the activist signatories to the UK Code. Whereas actions speak louder than words, corporate law and financial regulation extensively use disclosure. Assessing the words revealed by market participants provides important lessons for both current and future signatories and policymakers alike.

The stewardship rhetoric that this Article unveils supports the claim that activist stewards not only can act "like real owners"[385] or as a "corrective

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[383] The latest list of signatories to the UK Code 2020 (as of March 2022) can be found at ….

[384] Eleven years after the launch of the landmark UK Code 2010/12, stewardship codes or principles can be found in twenty jurisdictions around the world. For the development of stewardship codes around the world *see* Katelouzou & Puchniak, *Global Shareholder Stewardship: Complexities, Challenges, and possibilities* in GLOBAL SHAREHOLDER STEWARDSHIP (Dionysia Katelouzou & Dan W. Puchniak eds., CUP forthcoming): https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3872579.

[385] Marcel Kahan & Edward B. Rock, *Hedge Funds in Corporate Governance and Corporate Control*, UNIV. PENN. L. REV., 155 (2007), 1021–94, 1047.

mechanism"[386] in corporate governance, but also can play the role of stewardship intermediaries or stewardship arbitrageurs and streamline the micro-level stewardship activities of other asset managers (active or passive in style) and asset owners. The increasing capacities for coalition building (both among activist and non-activist stewards and other investors often facilitated by third party coordinators), and the evolution of activist objectives and strategies to include E&S factors together with the parallel growth of ESG investing, have all converged to change how the model of shareholder stewardship will be exercised in the future. This applies to the micro- and macro-(portfolio- and market-) levels. One thing is increasingly clear today: activist and non-activist stewards perform "complementary" rather than mutually exclusive functions.[387]

This idea of enlightened shareholder stewardship and accountability has gained resonance over the last few years. However, not everyone agrees on the need to develop regulatory ("hard"/binding or "soft"/non-binding) norms to govern the stewardship role of institutional shareholders,[388] or even on whether the issue of the corporate governance capacity of institutional investors (or lack of it) needs a solution.[389] Nevertheless, and amidst the shifting emphasis on "stakeholder capitalism," a consensus is increasingly gathering among policymakers, regulators and investors themselves—in almost all countries where institutional investors dominate public equity—in support of the view that institutional investors should engage in micro- and portfolio- (and potentially market-) level corporate governance arrangements in a way that aligns with the interests of their end investors and promotes long-term and sustainable value.[390] The road from an "instrumental" to an "enlightened" understanding of stewardship may still be long, but there is encouraging evidence that activist stewards have the abilities and incentives to *walk* the stewardship *talk*.

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[386] Paul Rose & Bernard Sharfman, *Shareholder Activism as a Corrective Mechanism in Corporate Governance*, BYU L. REV. 1015 (2014).

[387] Kahan & Rock, *Index Funds and Corporate Governance*, *supra* note 18989.

[388] *See, e.g.,* Gilson & Gordon, *The Agency Costs of Agency Capitalism, supra* note 30 (favoring the role of activist shareholders in providing a form of market–based stewardship).

[389] Dan W Puchniak, The False Hope of Stewardship in the Context of Controlling Shareholders *Am. J. Comp. L.* (2021 forthcoming) (elaborating that outside the United Kingdom and the United States institutional investors are collectively minority shareholders in most listed companies around the world and forcefully arguing that transplanting the UK–style stewardship is a largely a "misfit").

[390] *See, e.g.,* Leo Almazora, *Institutional investors seeking change are going beyond disinvestment*, WEALTH PROFESSIONAL (Oct. 30, 2020), https://www.wealthprofessional.ca/investments/alternative–investments/institutional–investors–seeking–change–are–going–beyond–divestment/334714 (reporting that "[i]n a survey of 650 institutional investors around the world that represent US$25.9 trillion in assets, it found 59% saw active company engagement and stewardship as a key approach to integrating sustainability, compared to just 38% a year ago").

Appendix 1

Name of Signatory	HQ Country	Corpus Size	Tier	PRI	AUM (in $ bn)	Year	Activist Style	Activist Approach
AB (AllianceBerstein LP)	USA	1792	1	1	585.96	1967	0	1
Aberdeen Standard Investments	UK	1482	1	1	644.50	1825	0	0
Alken Asset Management Limited	UK	1346	1	1	3.73	2005	0	1
Allianz Global Investors	Germany	3197	1	1	595.83	1998	0	0
Arrowgrass Capital Partners LLP	UK	997	2	1	7.49	2008	0	1
Asset Value Investors Limited	UK	745	2	0	13.26	1985	1	1
Aviva Investors	UK	3334	1	1	414.00	1696	0	0
Axa Investment Managers	UK	838	1	1	77.31	1994	0	0
Baillie Gifford	UK	1354	1	1	242.97	1908	0	0
Blackrock	USA	2203	1	1	7808.50	1988	0	0
BMO Global Asset Management (prev F&C)	Canada	2464	1	1	263.00	1817	0	1
BNP Paribas Investment Partners	France	2129	1	1	48.27	1964	0	0
City of London Investment Management	UK	696	2	1	5.63	1891	1	1
Columbia Threadneedle	UK	2497	1	0	468.00	2003	0	0
Edentree Investment Management Ltd	UK	1465	1	1	2.70	1988	0	0
Fidelity International	UK	1714	1	1	400.94	1980	0	0
Franklin Templeton Investments	USA	1796	2	1	744.70	1947	0	1
GAM Investments	Switzerland	2571	1	1	133.45	1983	0	1
Generation Investment Management LLP	UK	1552	1	1	18.50	2004	0	1
Gresham House Specialist Asset Management	UK	857	2	0	4.00	1857	0	1
Henderson Global Investors (Janus Henderson Group plc)	UK	804	1	1	357.30	1934	0	1
Hermes Fund Managers (Part of Federated Homes)	UK	1981	1	1	44.40	1983	0	0
Independent Franchise Partners LLP	UK	708	2	0	15.83	2009	0	1
JO Hambro Capital Management Limited	UK	907	2	1	36.11	1993	0	1
Jupiter Asset Management	UK	1485	1	1	54.85	1985	0	1

Lansdowne Partners (UK) LLP	UK	988	1	0	11.85	1988	1	1
Legal & General Investment Management	UK	1792	1	1	1636.81	1836	0	0
Liontrust Investment Ltd	UK	1338	1	1	14.10	1994	0	1
M&G Investment Management Ltd	UK	2285	1	1	338.45	1901	0	0
Macquarie Investment Management (ValueInvest)	Luxembo urg	1813	1	1	231.20	1969	0	1
Manulife Investment Management	Canada	1912	1	1	406.00	1968	0	0
Marathon Asset Management LLP	UK	1413	1	1	45.29	1986	0	1
Neuberger Berger Europe Ltd	USA	1415	1	1	2838.53	1939	0	0
91 Ninety One (previously Investec Asset Management)	UK	2560	1	1	98.00	1974	0	0
Odey Asset Management LLP	UK	1429	1	0	3.55	1991	0	1
Polar Capital	UK	1416	2	0	16.75	2001	0	0
Rathbone Unit Trust Management Ltd	UK	1608	2	1	48.59	1999	0	0
RBC Global Asset Management	Canada	2679	1	1	371.50	2002	0	1
Robeco Institutional Asset Management BV	NL	1499	1	1	208.04	1929	0	0
Royal London Asset Management	UK	845	1	1	156.35	1988	0	0
RWC Partners	UK	742	2	0	21.00	2000	1	1
Sarasin & Partners LLP	UK	2145	1	1	17.33	2007	0	0
Schroders	UK	2096	1	1	649.60	1804	0	0
Skagen Funds	Norway	1568	1	1	9.15	1993	0	1
Slater Investments Limited	UK	1005	1	0	1.43	1994	0	1
T Rowe Price	USA	2335	1	1	1188.46	1937	0	0
Toscafund Asset Management LLP	UK	1197	1	0	2.29	2000	1	1
TT International	UK	1149	1	1	8.07	1988	0	1
Vanguard Asset Management	USA	3029	1	1	5716.12	1975	0	0
Wellington Management	USA	1474	1	1	1229.64	1933	0	0

Appendix 2: Stemming Abbreviations (Tokens)

Stems (as per Porter algorithm)	**Words**

account	account(s), accounting, accountant, accountability, accountable
activ	active, actively
analyst	analyst(s)
annual	annual, annually
audit	audit(s), audited, auditor(s)
board	board(s)
capit	capital
client	client, clients
collabor	collaborate, collaboration(s), collaborative(ly), collaborating, collaborated
collect	collective(ly)
compani	company, companies
complianc	compliance
conflict	conflict, conflicts, conflicting
dialogu	dialogue(s)
director	director(s)
dislcos	disclose(s), disclosing, disclosed
disclosur	disclosure(s)
discuss	discuss(es), discussed, discussion(s)
duti	duty, duties
engag	engage, engages, engagement, engaged
environment	environment, environmental
equiti	equity, equities
escal	escalate, escalating, escalated, escalation
esg	ESG
fund	fund(s), funding
govern	govern, governs, governance
inform	inform, informed, informing, information
integr	integrate, integration, integral, integrating, integrated, integrity
interest	interest, interests, interested
invest	invest, invests, invested, investing, investment
investor	investor, investors
iss	ISS (Institutional Shareholder Services)
issu	issue, issuing, issued
longterm	Long-term

manag	manage(s), managed, management
meet	meet, meeting(s)
monitor	monitor(s), monitoring, monitored
nonexec	Non-executive(s)
perform	perform, performance, performing
polici	policy, policies
portfolio	portfolio(s)
principl	principle, principles
proxi	proxy, proxies
publicli	publicly
record	record(s), recorded
remuner	remuneration
report	report, reports, reported, reporting
report	report(s), reported, reporting
research	research(es), researched, researching
resolut	resolution(s)
respons	responsible, responsibility, responsibilities
return	return(s)
right	right(s)
risk	risk(s)
sharehold	shareholder, shareholders, shareholding
social	social, socially
stewardship	stewardship
strategi	strategy, strategies, strategic
sustain	sustainable, sustainability
team	team(s)
transpar	transparency, transparent
valu	value(s), valued
vote	vote, votes, voted, voting
websit	website

Appendix 3: Independent Variables for Structural Topic Modeling

Variables	**Definition**

Country	Primary HeadQuarter Country location of activist signatory. Equals 1 when the UK is the primary HQ country and 0 otherwise. Source: Activist Insight and signatories' websites.
Activist Style	Signatory's style of shareholder activism. Equals 1 if the activist signatory adopts an offensive style of activism, and 0 otherwise. Source: Activist Insight and signatories' websites.
Activist Approach	Signatory's approach to activist investing. Equals 0 if the activist signatory only engages with companies in a friendly way and 1 if it adopts both friendly and confrontational strategies. Source: Activist Insight and signatories' websites.
PRI	Equals 1 if the signatory is also a signatory to the Principles of Responsible Investment (PRI). Source: https://www.unpri.org/signatories
Tier	Equals 1 if the signatory's statement has been assessed by the Financial Reporting Council (FRC) as Tier 1 statement, and 0 otherwise. Source: https://www.frc.org.uk/investors/uk–stewardship–code/uk–stewardship–code–statements/asset–managers
Size	The assets under management in billion USD of the activist signatory as of May 2021. Source: Activist Insight and signatories' websites.
Year	The year the activist signatory was founded. Source: Activist Insight and signatories' websites.

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