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The Dialogue Between Corporations and Institutional Investors: An Introduction

Law Working Paper N° 725/2023

January 2024

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ECGI Working Paper Series in Law

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Abstract

This introductory chapter provides the reader with some figures about institutional investors' role in the governance of listed companies in the US and Europe. Based on data drawn from various databases, we sketch out the phenomenon of share ownership reconcentration in the hands of institutional investors across jurisdictions, tracking the nationality and ownership of the largest asset managers as well as drawing some implications therefrom. In particular, we look into whether divergence in ownership patterns (the presence vs absence of a controlling shareholder), and the identity and characteristics of asset managers, may lead to divergence in the incentives structure for, and the focus of, shareholder engagement on the two sides of the Atlantic. Finally, we provide the reader with a roadmap of the book contents.

Keywords: Asset Managers, Big Three, Corporate Governance, Corporate Ownership, Shareholder Engagement, ESG Investing, Institutional Investors, Stewardship

JEL Classifications: G18, G28, G23, G32, G38, K22

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Abstract

This introductory chapter provides the reader with some figures about institutional investors' role in the governance of listed companies in the US and Europe. Based on data drawn from various databases, we sketch out the phenomenon of share ownership reconcentration in the hands of institutional investors across jurisdictions, tracking the nationality and ownership of the largest asset managers as well as drawing some implications therefrom. In particular, we look into whether divergence in ownership patterns (the presence *vs* absence of a controlling shareholder), and the identity and characteristics of asset managers, may lead to divergence in the incentives structure for, and the focus of, shareholder engagement on the two sides of the Atlantic. Finally, we provide the reader with a roadmap of the book contents.

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(*) We wish to thank participants in the Assogestioni Corporate Governance Conference 2022, and especially Maria Ortino for their helpful comments. Javier Paz Valbuena and Vasile Rotaru provided excellent research assistance.

I. Introduction

Institutional ownership of listed companies has grown significantly almost everywhere in the last three decades. Equity ownership has steadily moved from retail to institutional investors in that period.[1] With (minority) shares now concentrated in the hands of a relatively small number of institutions, the free rider problem that prevented atomized individual shareholders of listed corporations from monitoring managers' (or controlling shareholders') actions and performance has become less daunting. In fact, institutional investors play an ever-increasing role in the governance of listed companies worldwide.

Not only are they capable of exerting influence on investee companies by using their voice through voting and engagement, but expectations that they do so have been growing considerably. In a context where sustainability-related issues are in the spotlight as they have never been before and legislators (especially in the EU) are nudging institutions into including ESG factors in their investment and stewardship strategies, institutions are called to engage with investee companies not only to monitor their financial performance but also to push them to pursue environmental and social goals.

However, the actual willingness of institutional investors[2] to engage with portfolio companies and to focus on ESG-related issues remains uncertain. Indeed, regardless of whether stewardship activities are conducted at the individual company level or at the portfolio level, holding stakes that are large enough to enable them to exert pressure over investee companies and capture potential economic benefits from stewardship activities is a precondition for institutions' engagement. But several economic and legal factors can affect the propensity of institutional investors towards engagement with portfolio companies, as well as the methods by which engagement is undertaken and the topics covered.

Against this backdrop, this Chapter proceeds as follows. Part II provides an overview of the institutionalization of listed companies' ownership. Part III illustrates asset managers' ownership and nationality in different jurisdictions. Part IV describes the shift to ESG-related engagement and discusses the relevance of end-clients' preferences as a main driver of this move as well as the potential regulatory backlash arising from

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[1] See for an overview Amil Dasgupta, Vyacheslav Fos, and Zacharias Sautner, 'Institutional Investors and Corporate Governance' (2021) ECGI Finance Working Paper N° 700/2020.<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3682800> accessed 25 June 2023.

[2] The definitions of institutional investor and asset manager are not synonymous in the text. The term institutional investor (or institution) refers to any entity that invests money on behalf of its clients. In addition to asset managers, the definition of institutional investors includes asset owners such as pension funds, sovereign wealth funds, banks, endowments and insurance companies.

increasing ESG engagement. Part V provides the reader with a roadmap of the book contents.

II. The institutionalisation of listed companies' ownership

Institutional investors dominate the ownership of publicly listed firms worldwide. At the aggregate level, they are the largest category of shareholders.[3] They hold 41% of global market capitalisation, accounting for more than USD 30 trillion invested in public equity markets.[4] This is three times the amount invested by public-sector owners and six times the value of investments by strategic individuals.[5] Institutional investors' presence in listed companies, while by far stronger in the US and the UK, where ownership is traditionally highly dispersed, is relevant also in countries, such as European ones, where the percentage of companies with a controlling shareholder (be it a private entity, a family, or the state) is common.[6] For example, as reported by the OECD, institutional investors hold 26.9% of total market capitalization in Italy, 27.5% in France and 28.3% in Germany.[7]

Focusing on the asset management industry, the market is more concentrated in the US than elsewhere: since 1980, the top 10 institutional investors have quadrupled their holdings in U.S. stocks[8] and, at the end of 2021, the five largest mutual fund and exchange traded fund sponsors—out of a total of 825—accounted for 54 per cent of the industry's total assets.[9] While not as dramatic as in the US, concentration within the asset management industry is significant in the EU as well. At the end of 2021, the share of

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[3] Adriana De La Cruz, Alejandra Medina and Yun Tang, 'Owners of the World's Listed Companies' (2019) < https://www.oecd.org/corporate/Owners-of-the-Worlds-Listed-Companies.pdf > accessed 25 Jube 2023; Gur Aminadav and Elias Papaioannou, 'Corporate Control around the World' (2020) 75 Journal of Finance 1191.

[4] According to the OECD, the reported percentage of 41% is underestimated because institutional investors are not required to disclose their full ownership in most jurisdictions due to their overall size or the limited size of their stakes. See De La Cruz et al (n 3) 13 ff.

[5] According to the definitions used by ibid 9. Strategic investors are 'physical persons that are either controlling owners or members of a controlling family or block-holders and family offices'.

[6] See online appendix of Aminadav and Elias (n 3) providing percentage and identity of second and third largest categories.

[7] OECD, 'OECD Capital Market Review of Italy 2020: Creating Growth Opportunities for Italian Companies and Savers' (2020) OECD Capital Market Series,<http://www.oecd.org/corporate/OECD-Capital-Market-Review-Italy.htm>, accessed 25 June 2023.

[8] Itzhak Ben-David, Francesco Franzoni, Rabih Moussawi, and John Sedunov, 'The Granular Nature of Large Institutional Investors' (2021) 67 Management Science 6629.

[9] See Steve Johnson, 'Passive fund ownership of US stocks overtakes active for first time' *Financial Times* (London, June 6 2022 <https://www.ft.com/content/27b5e047-5080-4ebb-b02a-0bf4a3b9bc08> accessed 25 June 2023.

assets under management (AUM) held by the top 20 EU asset managers was 43.71%.[10] Relatedly, in 2021, the share of the total AUM held by the world's top 20 asset managers (all from the US, the EU and the UK) was 45,2%.[11]

The concentration process that has taken place in the asset management industry over the past few decades has mainly been fuelled by the exponential rise of passive funds and ETFs. In the US, they accounted for 18 per cent of US stock market capitalisation at the end of 2022, surpassing the 14 per cent held by active funds.[12] Indeed, despite its continuous growth, the passive index fund industry remains highly concentrated. The market is dominated by Blackrock, Vanguard and State Street Global Advisors (SSGA)—the 'Big Three'—which, overall, manage over 90% of all AUM in passive funds.[13]

The combination of ownership reconcentration and asset management industry concentration dynamics has a direct impact on the ownership of listed companies and carries significant corporate governance implications. Indeed, although sectoral passive funds and personalized index funds that adopt active-like investment strategies and thus comprise more concentrated portfolios are increasingly widespread,[14] giant asset managers dominating the passive funds industry are heavily invested across all companies included in major stock indexes.[15] According to Lazard, at the end of 2021, Vanguard, BlackRock and State Street together held on average 18.7 per cent of S&P 500 companies. Their ownership of smaller companies was even more concentrated as they held 22.8 per

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[10] See Detlef Glow, 'European Fund Industry Review 2021' (2022) <https://lipperalpha.refinitiv.com/wp-content/uploads/2022/03/21-12-31-European-Fund-Industry-Review-2021-Awards-Edition-FINAL.pdf> accessed 25 June 2023, documenting that 2,239 promoters with at least one fund domiciled in a European fund domicile account for 56.37% of the overall AUM.

[11] Thinking Ahead Institute and Willis Towers Watson, 'The world's largest 500 asset managers, 2022' (2023) https://www.thinkingaheadinstitute.org/research-papers/the-worlds-largest-asset-managers-2022 accessed 25 June 2023/. See also Robert G. Eccles, 'Concentration in The Asset Management Industry: Implications for Corporate Engagement' Forbes (New Jersey, April 17, 2019) <https://www.forbes.com/sites/bobeccles/2019/04/17/concentration-in-the-asset-management-industry-implications-for-corporate-engagement/> accessed 25 June 2023, reporting that, at that time, the top five asset managers held 22.7 percent of externally managed assets, and the top 10 held 34 percent.

[12] See Investment Company Institute, 'Factbook' (2023) <https://www.icifactbook.org/pdf/2023-factbook.pdf.>, 23.

[13] See generally Jan Fichtner, Eelke Heemskerk and Javier Garcia-Bernardo, 'Hidden power of the Big Three? Passive index funds, re-concentration of corporate ownership, and new financial risk'(2017) 19 Bus and Pol, 298; Lucian Bebchuk and Scott Hirst, 'Index Funds and the Future of Corporate Governance: Theory, Evidence, and Policy' (2019) 119 Colum L Rev (2019), 2029. See also Lund & Robertson, chapter 17 in this book.

[14] See Adriana Z. Robertson, 'Passive in Name Only: Delegated Management and Index Investing' (2019) 36 Yale J on Reg 795.; Paul G. Mahoney and Adriana Z. Robertson, 'Advisers by Another Name' (2021) 11 Harv Bus L Rev 311.

[15] Investment Company Institute (n 12) 106 noting that "Net assets of index equity mutual funds are concentrated more heavily in large-cap blend funds that target US large-cap indexes, such as the S&P 500".

cent of the shares in the S&P MidCap 400 index and 28.2 per cent in the S&P SmallCap 600 index.[16]

The fact that the largest asset managers are large shareholders in an enormous number of listed companies is widely documented. To our knowledge, though, available studies mainly focus on the US and data on European markets are limited.

To fill this gap, we collected data on the shareholdings of the 25 largest institutional investors in each of the continental European companies included in the Euro Stoxx 50[17] and the fifteen largest UK companies in the FTSE 100 as of the end of April 2022.[18] We find that leading institutional investors rank among the largest shareholders in most companies comprised in the Stoxx 50 index. On average, the top institutional shareholder at these companies owns 6.54% of the equity, the top three institutional shareholders own 14.09%, and the top five institutional shareholders 18.50%. We also look at the cumulative shareholding of the Big Three and the Big Four (BlackRock, Vanguard, State Street and Fidelity). As far as the top 15 FTSE 100 are concerned, the corresponding figures are 13.42% and 14.65%. The percentage held by the Big Three and the Big Four in the Stoxx 50 companies amounts to 8.31 and 9.40, respectively.

To shed further light on the corporate governance role asset managers can play, we also look at the basic characteristics of the shareholder base of Stoxx 50 and top 15 FTSE 100 companies. Namely, we look at the type of entity the top shareholder qualifies as and the stake it holds.

Table 1 – Type of largest shareholders at top 65 European companies

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Type of largest shareholder	Asset managers	Government	Foundations and mutual entities	Families, insiders, managers	Strategic individuals, other companies
No. of companies	38	8	4	9	6

Table 1 classifies top shareholders at these 65 companies as asset managers, government (central or local government, a state-owned enterprise or a sovereign wealth

[16] Lazard, '2021 Review of Shareholder Activism' (2022), on file with the authors. See also Scott Hirst and Lucian Bebchuk, 'Big Three Power, and Why It Matters' (2022) 102 Boston UL Rev, 1547.

[17] The EURO STOXX 50 Index covers 50 blue-chip stocks from 8 Eurozone countries: Belgium, Finland, France, Germany, Ireland, Italy, the Netherlands and Spain. Therefore, it is the most representative index of European larger listed companies.

[18] Our analysis is based on data from CapIQ that is a widely used database (owned by S&P) in the financial industry (eg equity research, asset management) for its reliability and breadth. CapIQ collects the data on the shareholdings of the top 25 institutional investors in each of the companies in the sample.

fund), foundations and mutual entities (four cases), insiders, managers and families and strategic individuals and other operating companies and provides the number of companies with such shareholder at the top. Interestingly, only in three companies does the largest shareholder account for the majority of the share capital. The stake of the largest shareholder exceeds 30% or 20% in four and six companies, respectively.

With regard to the size of the Big Three's shareholdings, it is worth mentioning that there is a significant difference in the size of the stakes of the Big Three depending on whether the company has a shareholder with a stake exceeding 30% of the share capital or of the voting rights. Namely, the Big Three hold together, on average, 10.22% of capital in non-controlled companies and 3.45% in controlled companies. As the Big Three dominate the passive investment market and their AUM are largely represented by passive funds and ETFs, the fact that the Big Three’s holdings in controlled companies are lower is also explained by the fact that the benchmark indices take into account the free float. For instance, the STOXX 50 index is weighted by companies’ free-float market capitalization.[19] As a consequence, controlled companies have a lower weight in the index than widely held ones with equal total capitalisation.

III. Asset managers’ ownership and nationality

In addition to the ownership structure of investee companies and the ownership stake held in them, the nationality and ownership structure of asset managers themselves may lead to divergence in the incentives structure and in the focus of shareholder engagement.[20]

We focus on ownership as it can affect asset managers’ incentives structures and, in particular, can help explain potential conflicts of interests affecting asset managers’ willingness to engage. As highlighted by the European Commission, “conflicts of interest in the financial sector seem to be one of the reasons for a lack of shareholder engagement”

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[19] See STOXX/Qontigo, ‘STOXX Index Methodology guide’ (2023) https://www.stoxx.com/document/Indices/Common/Indexguide/stoxx_index_guide.pdf., 75, clarifying that “All the stocks on the selection list are then ranked in terms of free-float market capitalization to produce the final index selection list”. Otherwise, the FTSE 100 Index is not weighted by free float market capitalisation. To be included in the FTSE UK index series, a security must have a minimum free float of 10% if the issuing company is incorporated in the UK and a minimum free float of 25% if the issuing company is incorporated outside the UK. A minimum free float of 10% if the issuing company is incorporated in the UK and a minimum free float of 25% if it is incorporated outside the UK. Not incorporated in the UK. See FTSE/Russell, ‘FTSE UK Index Series, v15.8’ (2023), <https://research.ftserussell.com/products/downloads/FTSE_UK_Index_Series.pdf.>, 15.

[20] For on overview of the corporate governance implications of investors’ heterogeneity see Dasgupta et al (n 1) 57-67.

and “conflicts of interest often arise where an institutional investor or asset manager, or its parent company, has a business interest in the investee company.”[21]

It is widely recognized that also independent asset managers not belonging to conglomerate financial groups can be affected by conflicts of interests that can influence their stewardship and engagement decisions. Indeed, independent asset managers having financially significant business ties with investee companies and their managers may abstain from engaging with portfolio firms and from taking an adversarial stance for fear of losing corporate business.[22] For example, in the US asset managers may be interested in obtaining, or maintaining, the substantial revenues they derive from managing defined contribution plans (“401(k) plans”) of many of their portfolio firms. [23]

Nevertheless, it can be assumed that potential conflicts of interests are more relevant for asset managers belonging to multi-services banking and/or insurance groups. Where an asset manager is owned by one such group, in addition to potential conflicts of interests arising from asset managers’ business ties with investee companies, a second layer of conflicts exists. In fact, it may happen that banks and insurance companies pressure their asset management arms to avoid antagonising the clients of another of the group’s arms (for example, the investment banking arm) by voting against the board or conducting adversarial engagement initiatives.[24] Of course, the intensity of intra-group conflicts of interests depends on the weight of the asset management arm within the group. The higher the asset management arm’s contribution to the group’s profits, the lower the influence of other group’s branches over the asset management arm should be.

Moreover, asset managers belonging to banking and/or insurance groups could be less keen on conducting engagement initiatives because they can rely on a large base of group-captive clients and are less interested in winning over new clients. Hence,

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[21] European Commission, ‘Green paper: The EU corporate governance framework (Communication from the Commission)’ COM (2011) 164 final.

[22] See eg Simon Wong, ‘How Conflicts of Interest Thwart Institutional Investor Stewardship’ (*Harvard Law School Forum on Corporate Governance*, 6 Nov2011) <https://corpgov.law.harvard.edu/2011/11/06/how-conflicts-of-interest-thwart-institutional-investor-stewardship/> accessed 25 June 2023.

[23] See Bebchuk and Hirst (n 13) 2059 ff.; Dijana Cvijanović, Amil Dasgupta, and Konstantinos E. Zachariadis, ‘Ties that Bind: How Busines Connections Affect Mutual Fund Activism’ (2016) 71 Journal of Finance 2933, finding that investment managers are more likely to vote in support of portfolio company managers on closely contested proposals when the investment manager has significant business ties to the portfolio company. See also Benjamin Braun, ‘Asset Manager Capitalism as a Corporate Governance Regime’ in Jacob S. Hacker et al. (eds), *The American Political Economy: Politics, Markets, and Power* (CUP, 2021), 270.

[24] See eg Simon Wong (n 22); ; European Commission (n 21), 14, noting that in financial groups “the asset management branch may not want to be seen to actively exercise its shareholder rights in a company to which its parent company provides services or in which it has a shareholding”. Along the same lines see Miguel A. Ferreira, Pedro Matos, and Pedro Pires, ‘Asset Management within Commercial Banking Groups: International Evidence’ (2018) 73 Journal of Finance, 2181

reputational (or marketing-related) incentives to engage with investee companies may be lower for such asset managers.

Nevertheless, available anecdotal evidence shows that European asset managers controlled by banking or insurance companies do conduct a significant number of engagements covering a wide range of ESG issues. For example, according to evidence provided by the London-based think-tank InfluenceMap,[25] European bank- and insurance-controlled asset managers, including BNP Paribas Asset Management, Legal & General Investment Management, UBS Asset Management, Aviva Investors and AXA Investment Management, showed greater transparency around the targets of company engagements and the topics discussed, and engaged more intensively on climate-related issues than US independent peers. Relatedly, AXA, BNP Paribas, Legal & General, Aviva, and Allianz all supported 80% or more of climate-relevant resolutions, while big US players, namely BlackRock, Vanguard and Fidelity Investments, declined support for 75% of them.

To shed light on asset managers' ownership and its potential impact on investors' approach to engagement we collected ownership data on the top 20 US asset managers and the top 20 European (EU and UK) asset managers[26] and tracked their weight in Stoxx 50 companies and the top fifteen FTSE 100 companies. Based on ownership data for the companies in our sample, we excluded the four US asset managers (Pimco, Prudential Financial, Edward Jones Investments and TIAA) and the four EU and UK asset managers (Aegon, Insight, Generali, APG) which the CapIQ database does not capture, either because they do not invest in equity (Pimco) or because none of their stakes is among the top 25 holdings by institutional shareholders in any of the companies in the dataset. Therefore, our final sample includes 16 US asset managers and 16 European asset managers.

We grouped asset managers in the following categories: bank-owned; insurance-owned; publicly owned (including asset management companies listed on a stock exchange); independent and team-owned; others (including asset managers with peculiar

[25] InfluenceMap, 'Asset Managers and Climate Change 2021' (2022) <https://influencemap.org/report/Asset-Managers-and-Climate-Change-cf90d26dc312ebe02e97d2ff6079ed87> Similar evidence are also provided by ShareAction, 'Voting Matters' 2022 (2023) <https://shareaction.org/reports/voting-matters-2022/general-findings#finding5>, finding that "there is a clear regional divide. European asset managers, on average, backed 81% of proposals in 2022 compared to 69% in 2021. By contrast, we continue to find particularly poor performance from US asset managers. US managers backed on average less than half (43%) of the environmental and social resolutions on our list in 2022".

[26] We obtained data on AUM from the worldwide ranking provided by ADV Ratings (https://www.advratings.com/top-asset-management-firms#google_vignette) that includes world's top 50 asset managers. 20 out of them are from the US. Only 17 are from Europe. To have the same number of asset managers from the two continents and facilitate comparisons, we have added the three European asset managers not already in the list that appear most frequently among the shareholders of the companies in our dataset (EuroStoxx 50 and top fifteen FTSE companies), namely two German managers (Deka, and Union AM) and a UK one (Bailie Gifford).

ownership structures which do not fall in any of the above categories).[27] The independent and team-owned category includes asset management companies that are not listed and whose stakes are owned privately either by entities other than banks, insurance companies or other entities identified separately in the list (eg pension funds or sovereign wealth funds), or by their own workers and/or management team.

We find that bank-owned asset managers make up the largest category among the EU largest asset managers: nine out of the sixteen of them are bank-owned, whereas in the US banks own six out of the 16 asset managers in the sample. By contrast, large publicly owned and independent asset managers are much more common in the US: nine out of the top 16 US asset managers included in the sample are listed or independent firms not belonging to banking or insurance groups. By contrast, there are only 3 listed companies among the top 16 European asset managers.[28]

As far as US publicly owned or independent asset management companies are concerned, it is perhaps unsurprising but no less noteworthy that, with the exception of Vanguard,[29] they all have other top asset managers among their shareholders.[30] For example, Vanguard is the largest shareholder of BlackRock and SSGA, and Fidelity ranks among Vanguard's largest shareholders. Similarly, Vanguard, BlackRock and SSGA are the three largest shareholders of T. Rowe Price and Northern Trust Global Investments Limited and rank among the largest shareholders of Invesco. Moreover, leading asset managers are large shareholders in some banks and insurance companies that have an asset management arm ranked among the top 20 investors.[31]

Whether cross-shareholdings among leading asset managers can affect their approach to engagement, especially in regard to social and environmental matters, is controverted. On the one hand, as a recent op-ed in the Wall Street Journal contends, cross-shareholdings make leading asset managers non-independent actors.[32] According to this view, common ownership explains why major asset managers do share common

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[27] Namely, only two assets managers fall in this category: APG Asset Management which is a wholly-owned subsidiary of Stichting Pensioenfonds ABP ("ABP"), one of the largest pension funds in the world and Norges Bank Investment Management that is the sovereign wealth fund of Norway.

[28] Amundi is also a publicly traded company, but we classify it as bank-owned because Credit Agricole Group owns roughly 70% of the share capital. It is also worth mentioning that Schroders, one of 3 listed companies among the top 17 European asset managers, is controlled by the Schroders family which owns 43,16% of capital.

[29] Vanguard's ownership structure is fairly unique as it is owned by its funds. Thus, Vanguard is owned by the people who invest in its funds and has no outside shareholders other than its clients.

[30] See Dan Morenoff, 'Break Up the ESG Investing Giants' *Wall Street Journal* (New York, 31 August 2022) <https://www.wsj.com/articles/break-up-the-esg-investing-giants-state-street-blackrock-vanguard-voting-ownership-big-three-competitor-antitrust-11661961693 accessed> 25 June 2023.

[31] See Gerald Epstein, 'The asset management industry in the United States', (2019) Financing for Development series271, 12 ff <https://repositorio.cepal.org/bitstream/handle/11362/45045/1/S1900994_en.pdf > accessed 25 June 2023.

[32] Morenoff (n 30).

ESG preferences and regularly engage on these topics. An alternative point of view is that common ownership in the asset management industry is too low to influence the preferences and behaviour of leading investors. It is in fact the case that the most influential shareholders of some asset managers do not hold significant stakes in their rivals. For example, the most influential shareholder at Fidelity Investments, FMR LLC (which is controlled by Fidelity's founder family), does not hold any stakes in other asset managers. Moreover, the fact that the Big Three and other major asset managers push on the ESG rhetoric and spend increasing sums in ESG-related engagements may support the view that they compete for investment flows by attracting clients who are more sensitive to ESG issues.[33]

Our analysis also shows that the number of insurance-owned firms on the top asset managers' list has decreased in recent years, particularly in the United States, where only one insurance-owned asset manager is among the 16 included in the sample (whereas there are four out of 16 of them within the EU). According to consultancy Oliver Wyman, this decline can be attributed to the fact that, up until recently, persistently low interest rates pushed insurers to outsource more of their fund management needs to independent groups and, at the same time, insurance-owned asset managers have come under pressure from independent rivals, particularly from leading passive fund managers.[34]

To better assess whether asset manager ownership affects engagement, it is helpful to look into the distribution of AUM by asset manager ownership category. Data on the world's top 20 asset managers collected by the Thinking Ahead Institute show that 12 independent asset managers make up 70% of total AUM, while eight bank- and insurance-owned asset managers account, respectively, for 22% and 8% of those assets.[35]

To shed further light on this, drawing from data collected from the CapitalIQ database, we provide evidence on the weight of each type of asset manager in the ownership of Stoxx 50 and top 15 FTSE 100 companies. We find that publicly owned and independent asset managers hold, on average, significantly larger stakes in companies included in our sample than bank and insurance asset managers. On average, publicly owned asset managers own 8.40%, and independent asset managers own 6.99%. Bank-

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[33] We thank Martin Schmalz for his insights on this issue.

[34] Julia Hobart, Anthony Bice - Oliver Wyman, 'At a Tipping Point? The State of European Insurance Asset Management' (2021) 4 <https://www.oliverwyman.com/our-expertise/insights/2021/oct/european-insurance-asset-management.html> reporting that 'where insurer-controlled asset managers' share of AuM [asset under management] has fallen by nearly a third over the last ten years … At the same time, the ten largest independent asset managers almost trebled their AuM during this same period'. See also Adrienne Klasa, 'Insurer-owned fund managers lose out in hunt for returns' *Financial Times* (London, 21 February 2022) <https://www.ft.com/content/f4662b44-c0a2-4503-bbb5-bddaca500c36> accessed 25 June 2023, noting that "[t]he degree of interdependence between investors and their parents varies. Only about 10 per cent of Legal & General's assets are managed internally, and 30 percent of those at German group Allianz. In contrast, more than 70 per cent of the money overseen by Aviva Investors comes through its parent."

[35] Thinking Ahead Institute and Willis Towers Watson (n 11), 34.

and insurance-owned asset managers account, on average, for 4.11% and 0.77% of ownership of companies comprised in the sample, respectively. The average weight of publicly owned asset managers is significantly higher in the top 15 FTSE 100 companies, where they account for 10.84%, while holding, on average, 7.67% in Stoxx 50 companies. Bank-owned (insurance owned) asset managers hold, on average, 5.45% (2.13%) in the top 15 FTSE 100 companies and 3,70% (0.35%) in the Stoxx 50 companies.

Ownership structure of asset managers is only one of several factors that together may influence investors' role in corporate governance.[36] As some studies show,[37] nationality is also key, as it can affect institutional investors' approach to engagement in at least four ways.

First, consider that social norms, legal rules and, perhaps more generally, clients' and beneficiaries' preferences and expectations, and political pressures may impact the behaviour of institutional investors vis-à-vis investee companies.[38] In fact, the empirical literature reveals that nationality has an impact on stewardship concerning ESG issues, in relation to which investor preferences on the two sides of the Atlantic significantly diverge. Namely, based on voting records and stewardship policies**,** EU-based institutional investors have been found to pay greater attention to ESG issues than US competitors.[39]

Second, an institution can be expected to engage more with home portfolio companies than with foreign ones. The incentives to engage with the latter are intuitively weaker. First of all, cultural estrangement may justify caution, if not passivity, abroad, because a different corporate culture may yield a very different, and potentially counterproductive, reaction to the same active behaviour[40]. Second, to the extent that investors tend to favour domestic asset managers and so long as institutions use engagement also as a marketing tool,[41] retail clients and beneficiaries will be more sensitive to domestic engagement than to engagement abroad, as they obviously care

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[36] Dasgupta et al (n 1), 57 ff.

[37] See for a literature overview ibid 66 f.

[38] See, recently, Rob Bauer, Jeroen Derwall and Colin Tissen, 'Legal Origins and Institutional Investors' Support for Corporate Social Responsibility' (2022) <https://ssrn.com/abstract=4096769> accessed 25 June 2023, 5 arguing that 'legal origin captures difference in institutional investors' preferences for CSR beyond what is captured by these alternative sources of investor heterogeneity;' Anne Lafarre, 'Do Institutional Investors Vote Responsibly?' (2022) TILEC Discussion Paper No. DP2022-001 <https://ssrn.com/abstract=4042907> accessed June 25 2023.

[39] Lafarre (n 38), 19 ff; Andrew Marshall, Sandeep Rao, Partha P. Roy, and Chandra Thapa, 'Mandatory Corporate Social Responsibility and Foreign Institutional Investor Preferences' (2022) 76 J Corp Fin 1, 4 arguing that "firms belonging to civil law origin countries, particularly Scandinavian civil law, are engaged in higher levels of CSR activities compared to firms originating from common law origin countries".

[40] See eg, Lin Lin chapter 15 in this book.

[41] Michal Barzuza, Quinn Curtis and David H. Webber, 'Shareholder Value(s): Index Fund ESG Activism and the New Millennial Corporate Governance' (2020) 93 S Cal L Rev 1243.

more about inequality, environmental protection and social issues at home rather than abroad.

Third, there are greater political risks to engagement abroad, no matter whether the engagement is shareholder-oriented or ESG-focused: traditional as well as environmentally focused engagement may well have a negative impact on social aspects (for employees, local communities, suppliers). Other things equal, political backlash to protect local constituencies will be likelier against a foreign institution than a domestic one, because the latter may well be politically connected and the former is a more appealing target for a political campaign. That foreign investors can face more political pressure seems to be confirmed by the recent decision of the Texas Comptroller to include nine European asset managers in a list of ten names (also including BlackRock) deemed to boycott fossil fuel companies, a designation that could lead Texas pension funds to stop trading with those asset managers.[42]

The political risk attaching to activism abroad can be expected to increase as a function of geopolitical tensions and the resurgence of nationalism: even assuming that geopolitical tensions will not just stop cross-border indirect investment altogether, governments with a tense relationship with the home country of an institutional investor will react harshly to any attempt from that investor to influence how local companies should be run. Having said that, it is also worth considering that, as suggested by the data on US asset managers' support for shareholder resolutions on environmental and social issues in both the US and the EU,[43] asset managers may well be more pro-ESG abroad than at home in cases where foreign legislation (as in the EU) is clearly more favourable to ESG factors than domestic legislation. Last but not least, foreign institutions wield less influence over politics when it comes to shaping the very laws that affect engagement.

Given the potential implications of asset managers' nationality, we track the shareholdings held by the 16 US investors comprised in our sample at Stoxx 50 companies and the top fifteen FTSE 100 companies. We focus on the US because investors domiciled there account for almost one-third of total cross-market equity investments globally and have a dominant position in EU and UK markets as well.[44]

We find that blocks held by top US investors are (by far, in many cases) larger than those held by the top European investors in all the companies included in our sample. Interestingly, US asset managers are among the largest shareholders also in two insurance

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[42] See Patrick Temple-West and Brooke Masters, ''exas accuses BlackRock of energy company boycott in ESG clampdown', *Financial Times* (London, 24 August 2022) <https://www.ft.com/content/1fc2cc54-d364-48ad-aace-30625e5c61f6.> Accessed 25 June 2023.

[43] See n 69 and accompanying text.

[44] See De La Cruz et al. (n 3) 15. The dominant position of US investors has been fuelled, over the last few years, by the rise of passive investing, as the market is dominated by a handful of investors domiciled in the United States that hold relevant stakes in all companies included in major world stock market indices.

companies included in the Stoxx 50 (Allianz, Axa), which control two of the top European asset managers. On average, the 16 US asset managers included in our sample own 15.56% of the equity, while the 16 European institutional shareholders in the sample own a mere 5.71%. While the average weight of the 16 European institutional shareholders in the top 15 FTSE 100 companies and Stoxx 50 companies is similar (5.93% and 5.64%, respectively), the average weight of the 16 US asset managers in the sample is significantly higher in top 15 FTSE 100 companies, where they account, on average, for 21.40%, whereas their average holding in Stoxx 50 companies is 13.81%.

IV. The shift towards ESG-related engagement: End-clients' preferences and potential regulatory backlash

The analysis above is not sufficient to draw any conclusion on the actual ability and willingness of institutional investors to engage with investee companies, as other factors can similarly affect asset managers' approach.

First, it must be considered that, as is widely recognized in the literature,[45] the propension of institutional investors to engage with investee companies may depend on the balance between costs and benefits arising from engagement initiatives. Resource and cost constraints are particularly pronounced for passive fund managers. In fact, costs associated with stewardship impinge much more significantly on asset managers' income, as passive funds have much lower fees. No performance fees apply for passively managed vehicles, but rather, if any at all, management fees proportional to the amounts invested in the fund: therefore, the financial incentive for asset managers to allocate funds to stewardship activities with the aim of improving the fund's return appears to be nil. In addition, passive fund managers face significant collective action problems that can limit potential benefits arising from engagement activities. As each fund tracking the same index holds the same stocks in the same proportion, 'funds managed by other index fund managers will capture exactly the same returns from the stewardship activity'.[46] Therefore, index fund managers are able to capture only a small fraction of the benefits from stewardship, given the very low fees that they charge.[47] Indeed, sensitivity to the free-rider problem is particularly high within the asset management industry where fund

[45] See eg Bebchuk and Hirst (n 16) 1582.

[46] Bebchuk and Hirst (n 16) 1584, noting that 'a gain created by one manager will be shared by the funds of all managers tracking that index'.

[47] Bebchuk and Hirst (n 13) 2052-2056.

managers compete to attract assets under management based on performance relative to alternative investment opportunities.[48]

While it is true that the cost issue remains a key constraint to engagement, the propensity of institutional investors towards engagement also largely depends on the preferences and priorities of their end-clients. Indeed, given their interest in preventing asset outflow and attracting new clients, there is growing reputational pressure for leading fund managers—chiefly the largest passive fund managers—to be active monitors.[49] In the light of this, it is also credible that creating the appearance of active ownership will help funds managers win over clients. Fund managers may see corporate engagement 'as a branding or marketing tool that provides them with another dimension on which to compete for assets.'[50]

This seems to be especially true for ESG-related engagement. Indeed, despite signs of a slowdown in the demand for funds that incorporate ESG into their investment strategies due to a number of factors, including the ESG backlash in the US,[51] there is no doubt that there has been a significant shift in the preferences of a large part of end investors. In this respect, the incorporation of ESG issues into the investment strategies and engagement policies is intended – perhaps above all – to attract the increasing share of clients that give central attention to those aspects.

This has been the case not only for major investors such as large pension funds and sovereign wealth funds but also for a significant portion of retail investors, who have been redirecting their capital to sustainable investments at a steadily increasing rate in recent years. Indeed, it may well be the case that ultimate beneficiaries may prefer to see

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[48] John C. Coates, IV and R. Glenn Hubbard, 'Competition in the Mutual Fund Industry: Evidence and Implications for Policy' (2007) 33 J Corp L 151.

[49] Hortense Bioy, 'Passive fund providers take an active approach to investment stewardship', Morningstar (2017), 3 <https://www.morningstar.com/articles/839337/passive-fund-providers-take-an-active-approach-to-investment-stewardship>ccessed 25 June 2023). See also Marcel Kahan and Edward Rock, 'Index funds and corporate governance: let shareholders be shareholders' (2020) 100 Boston U L. Rev,1771, 1797 ff.

[50] Kahan and Rock (n 49) 1798, noting that '[i]n a world in which funds following the same index are largely indistinguishable, BlackRock may gain additional assets by appealing to investors with a "taste" for socially responsible investment'. See also Caroline Chambers, 'The role of stewardship in ESG and beyond' (June 3, 2021) <https://capitalmarketsblog.accenture.com/role-stewardship-esg-beyond> accessed 25 June 2023, noting that proactive, transparent investment stewardship could be a competitive differentiator and offering several other benefits for asset managers. Namely, they can strengthen their brand and attract more investors by weaving their stewardship approach and vision into brand storylines; Bernard S. Sharfman, 'How the "Market Share Opportunism" of Investment Advisers is Harming Investors and Public Companies' (*Promarket*, 18 April 2023) <https://www.promarket.org/2023/04/18/how-the-shareholder-activism-of-investment-advisers-is-harming-america/> accessed 25 June 2023.

[51] See Tommy Wilkes and Patturaja Murugaboopathy, 'ESG funds set for first annual outflows in a decade after bruising year' (*Reuters*,19 December 2022) <https://www.reuters.com/business/sustainable-business/esg-funds-set-first-annual-outflows-decade-after-bruising-year-2022-12-19/> accessed 25 June 2023; Morningstar, 'Global Sustainable Fund Flows: Q1 2023 in Review' (2023) <https://www.morningstar.com/lp/global-esg-flows> accessed 25 June 2023.

companies behave responsibly toward the communities with which they interact, even if profits suffer, an intuition upon which Oliver Hart and Luigi Zingales build upon in chapter 2 to set out a new corporate governance paradigm. Moreover, this trend is set to increase as investment choices move into the hands of Millennials and GenZs, who are particularly attuned to such attitudes.[52] Acceptance by this increasing segment of the clientele of lower financial returns[53] and, even more importantly, higher management fees,[54] may prompt asset managers to invest more in engagement activities, as the possible corresponding increase in fees charged does not necessarily lead to a fund outflows.[55] Furthermore, institutions can reduce engagement expenses by joining institutions, like the PRI and 100+, which are promoting an increasingly relevant number of ESG-focused collective engagement initiatives. Relatedly, signing up to the collective engagement initiatives promoted by these institutions can also help fund managers attract clients by demonstrating a commitment to ESG initiatives.[56]

Against this background, it seems credible that, insofar as an increase in their returns and/or assets under management may follow, asset managers can engage with companies on ESG matters to win over clients sensitive to social and environmental issues.

Yet, other factors can limit asset managers' willingness to engage with investee companies on ESG-related matters.

Engaging on environmental and social issues can bring a substantial risk of regulatory backlash.[57] While ESG-related engagements can help asset managers win over end clients sensitive to social and environmental issues, the same kind of engagement can

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[52] Barzuza et al (n 41) 1283 ff.

[53] See Roberto Boffo and Riccardo Patalano,'ESG Investing: Practices, Progress and Challenges' (2020) 3 <www.oecd.org/finance/ESG-Investing-Practices-Progress-and-Challenges.pdf> accessed 25 June 2023, highlighting that 'returns have shown mixed results over the past decade, raising questions as to the true extent to which ESG drives performance'; Sanjai Bhagat, 'An Inconvenient Truth About ESG Investing' (2022), Harv. Bus. Rev <https://hbr.org/2022/03/an-inconvenient-truth-about-esg investing#:~:text=Unfortunately%20ESG%20funds%20don't,in%202%2C428%20non%2DESG%20portfolios> accessed 25 June 2023; Toni M. Barko, Martijn Cremers, and Luc Renneboog, 'Shareholder Engagement on Environmental, Social, and Governance Performance' (2022) 180 J Bus Ethics, 777; Luc Renneboog, Jeroen Ter Horst, and Chendi Zhang, 'Is ethical money financially smart? Nonfinancial attributes and money flows of socially responsible investment funds' (2011) 24 J Fin Interm 562.

[54] Javier Carlos Matallín-Sáez, Antonio Soler-Domínguez, Sandra Navarro-Montoliu, and Diego Víctor de Mingo-López, 'Investor behavior and the demand for conventional and socially responsible mutual funds' (2022) 20 Corp. Soc Resp Env Man 46, 56 finding that sensitivity of investors' redemptions to portfolio expenses is lower for ESG funds.

[56] For example, BlackRock reportedly joined the 100+ initiative after being criticized for greenwashing practices. See Richard Henderson, 'BlackRock joins climate action group after 'greenwash' criticism' *Financial Times* (London, 9 January 2020) <https://www.ft.com/content/16125442-32b4-11ea-a329-0bcf87a328f2> accessed 25 June 2023.

[57] See Benjamin Braun. 'Exit, Control, and Politics: Structural Power and Corporate Governance under Asset Manager Capitalism' (2022) 50 Politics & Society 630, 643 f.

draw criticism from a part of the client base and from public opinion. According to some conservative groups and commentators,[58] giant asset managers, like the Big Three, are using their power to play a political role that goes beyond institutional investors' duties and may undermine their legitimacy. Indeed, 'conservative critics decry the Big Three's effort to decide hotly contested questions of environmental and social policy outside the political arena'.[59] Institutional investors are seen as private regulators that bypass the democratic process of electing officials to political positions to pass laws and appoint regulators.[60] Such mounting criticisms can affect asset managers in several ways.

First, even though leading asset managers reiterate that stakeholder capitalism is not about politics and reject the accusation of 'wokism',[61] ESG backlash mainly inspired by conservative groups can harm asset managers' business by alienating conservative-minded clients.

Second, and perhaps more importantly, the belief that asset managers are increasingly using their power to impose a (supposedly, leftwing) ideological agenda has fueled political initiatives aimed at limiting the influence of leading passive fund managers. For example, several commentators and organizations are claiming for a breakup of the Big Three, or the introduction of ownership limits that would prevent the Big Three from owning more than a certain threshold (say, 10%) in the equity of any portfolio company.[62]

In May 2022, a group of Republican Senators introduced the Investor Democracy Is Expected Act (Index Act) which would require passive investment-fund managers that own more than 1% of a public company to collect instructions from their clients on how to vote their share.[63] In the light of this, while pass-through voting might also serve as a

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[58] See eg Rupert Darwall, 'BlackRock's choice: Investment fiduciary or political activist?' (*The Hill*, 5 February 2020= <https://thehill.com/opinion/energy-environment/495673-blackrocks-choice-investment-fiduciary-or-political-activist> accessed 25 June 2025;Tom Bailey, 'BlackRock's green guidelines raise profound questions about capitalism and democracy' (*CapX*, 25 March 25) <https://capx.co/blackrocks-green-guidelines-raise-profound-questions-about-capitalism-and-democracy/>.

[59] C. Boyden Gray and Jonathan Berry, 'The Welcome Pushback Against Politicized Investment Managers' The Wall Street Journal (New York, 19 May 2002) <https://www.wsj.com/articles/politicized-passive-investment-index-funds-managers-blackrock-esg-energy-prices-larry-fink-proxy-voting-fracking-investor-democracy-is-expected-index-act-11652992438> accessed 25 June 2023.

[60] Darwall (n 58).See also Dorothy S. Lund, 'Asset Managers as Regulators' (2023) 171 U. Pa. L. Rev. 77, 128 ff.

[61] See for example Larry Fink, 'Annual Letter to CEOs: The Power of Capitalism' (2022) <https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter> accessed 25 June 2023.

[62] Morenoff (n 30); Graham Steele, 'The New Money Trust: How Large Money Managers Control Our Economy and What We Can Do About It' (2020) Working Paper Series on Corporate Power 8/2020 28 ff <https://www.economicliberties.us/our-work/new-money-trust/> accessed 25 June 2023. See also See Bebchuk and Hirst (n 13) 2128 f.

[63] The text of the proposed bill is available at https://www.congress.gov/bill/117th-congress/senate-bill/4241/text?r=1&s=1

lever for offering an advantage to a firm's current and potential clients, it seems credible that the increasing regulatory pressure over investors' vast voting power was among the reasons behind BlackRock's decision to enable institutional clients, such as pensions and endowments, invested in certain pooled vehicles managed in the U.S. and the UK, to give vote-through instructions where legally and operationally viable.[64] Similarly, the aim to limit the potential negative consequences of a political and public backlash against their power may help explain why BlackRock and other leading asset managers have decided not to support climate-related shareholder proposals that are too prescriptive.[65]

The political controversy over (anti-)ESG investing is substantially limited to the US, where state laws having an impact on ESG investing significantly diverge depending on a state's political orientation.[66]. Things are very different in the EU, where consensus is wide on the opportunity to integrate ESG factors in investing decisions and institutional investors are strongly nudged to play a role in the transition to a more sustainable economic model. Indeed, over the last few years, the European legislature has introduced several pieces of legislation that clearly promote the pursuit of ESG goals by institutional investors.

To conclude, the different degree of political consensus over ESG investing on the two sides of the Atlantic and the backlash ESG is currently facing in the US are among the factors that contribute to explain why European asset managers are keener to engage

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[64] On 13 June 2022, BlackRock announced it would be increasing the range of funds eligible for its 'Voting Choice' program in the UK and expand the program to Canadian and Irish pooled funds. Nearly half (47%) of the $ 4.9 trillion index equity assets are now eligible to participate in the firm's program. Following the changes announced, voting choice is available for 100% of U.S. pension plans, and 95% of the firm's institutional index equity funds (amounting to about half of the firm's index equity assets and virtually all of its index equity assets outside ETFs and retail mutual funds). In Europe and the U.K., 80% of BlackRock's index equity assets (other than ETFs) are eligible for the program. See BlackRock, 'BlackRock Expands Voting Choice to Additional Clients', (2022) < https://www.blackrock.com/corporate/newsroom/press-releases/article/corporate-one/press-releases/2022-blackrock-voting-choice> accessed 25 June 2023. Blackrock also published a white paper outlining the firm's ambition to expand Voting Choice to all investors, including individual investors in funds: see BlackRock, 'It's All About Choice' (2022) < https://www.blackrock.com/corporate/literature/publication/its-all-about-choice.pdf > accessed 25 June 2023. According to the firm, BlackRock clients have committed $ 530 billion – or a quarter of eligible assets - to voting their own preferences through Voting Choice. Of these, clients representing $ 120 billion of assets have elected to vote their own preferences in the five months since BlackRock introduced the program. See Jill E Fisch and Jeff Schwartz, Corporate Democracy and the Intermediary Voting Dilemma (2023) ECGI Law Working Paper No. 685/2023, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4360428> accessed 25 June 2023.

[65] See Cidney S. Posner, 'More prescriptive proposals, less support for 2022 proxy season' (*Harvard Law School Forum on Corporate Governance*, 22 August 2022) <https://corpgov.law.harvard.edu/2022/08/22/more-prescriptive-proposals-less-support-for-2022-proxy-season> accessed 25 June 2023.

[66] See Ropes & Gray, 'State Regulation of ESG Investment Decision-making by Public Retirement Plans: An Updated Survey' (2022) <https://www.ropesgray.com/en/newsroom/alerts/2022/August/Navigating-State-Regulation-of-ESG-Investments-by-Investment-Managers> accessed 25 June 2023.

on ESG issues and to support ESG-related resolutions than their US-based competitors. Indeed, the political risk arising from the ESG backlash (in addition to its potential impact on financial risk[67]) may affect the stewardship strategies of US asset managers by pushing them to adopt a less ESG-friendly approach. For example, amid the ESG backlash fuelled by conservatives, votes on environmental, social and governance resolutions in the US fell by around a third in 2023 compared to 2022.[68] It is also worth noting that since 2017, BlackRock has voted in favour of shareholder proposals on environmental and social issues 87% of the time in Europe, where there is a large consensus on ESG issues, while voting against such proposals 84% of the time in North America.[69]

V. An overview of the book's contents

This book's focus is on the dialogue between corporations, and boards more specifically, and their institutional shareholders. First, however, it sets the scene thanks to contributions, first, on the purpose of the corporation and, next, on the current landscape of engaged, ESG-sensitive asset managers, asset owners and beneficiaries. Oliver Hart and Luigi Zingales' chapter presents their provocative vision of the shareholder-welfare maximizing corporation as an alternative to the traditional shareholder value maximizing one. They are followed by Paul Davies' critique of Colin Mayer's idea, popularized in his book *Prosperity*, of purpose statements as a key tool to ensure that companies create value for society rather than profiting from the creation of negative externalities. A response by Colin Mayer follows.

The book then shifts focus from corporations to their institutional shareholders, first with a chapter by Dorothy Lund and Adriana Robertson that explores the misconceptions and oversimplifications associated with the term the "Big Three" to refer to the three largest managers of index funds: BlackRock, Vanguard and State Street. Those three asset managers, together with the fourth giant one, Fidelity, are the epitome of universal owners, which some scholars consider suitable for engaging in "systematic stewardship." Kahan and Rock's chapter analyzes the trade-offs and challenges faced by universal owners in adopting a systemic stewardship approach to tackle environmental externalities and systemic risks.

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[67] Temple-West and Masters (n 42).

[68] Jeff Green and Saijel Kishan, 'Support for ESG Shareholder Proposals Plummets Amid GOP Backlash' (*Bloomberg*, 9 June 2023) <https://www.bloomberg.com/news/articles/2023-06-09/support-for-esg-shareholder-proposals-plummets-amid-gop-backlash#xj4y7vzkg> accessed 25 June 2023; Patrick Temple-West and Attracta Mooney, 'Investors pull back support for green and social measures amid US political pressure' *Financial Times* (London, 8 June 2023) <https://www.ft.com/content/28ea4f17-8a0b-4f82-b2e1-c10949a65250> accessed 24 June 2023.

[69] Braun (n 57) 644.

Dionysia Katelouzou's chapter also explores engagement and stewardship by institutional investors, tracing its historical development and examining the motivations behind micro-level shareholder stewardship. It discusses the engagement practices of various institutional investors, including hedge-fund-style activists, and the impact of engagement on corporate practices and shareholder proposals.

Subsequent chapters explore the phenomenon of ESG investment and engagement. Lisa Fairfax takes an optimistic perspective on shareholders acting as defenders of other stakeholders' interests, based on the available evidence in this regard. The intuition is that promoting such interests leads to higher returns in the long-term.

Georg Ringe notices how ESG engagement relies on coalition-building even more than traditional activism and builds on this finding to recommend policies aimed to remove obstacles to investor collaboration. Such obstacles are then comprehensively described in the chapter by Peter Mülbert and Alexander Sajnovits.

One way to gauge the impact of any governance tool is to assess how it performs in the context of a merger or acquisition. Afra Afhsaripour's chapter analyzes how the consideration of ESG matters has affected the dynamics of the M&A market, including the dialogue between boards and shareholders in the context of an M&A transaction.

The remaining chapters examine the mechanics of the dialogue between companies and their boards from various angles and in different contexts. The chapter by Matteo Gatti, Matteo Tonello and one of us provides much needed empirical evidence on the reality of closed-door board-shareholder engagement through a survey of U.S. public corporations, documenting the scope, contents and perceived impact of initiatives for shareholder engagement.

Tim Bowley, Jennifer G. Hill and Steve Kourabas, in turn, survey the various engagement techniques that shareholders use, such as behind-the-scenes approaches, participation in shareholder meetings, public campaigns, and discussion boards and messaging apps oriented towards retail investors. They counter the idea that shareholder meetings are a relic of the past, arguing that they should instead be recognized as crucial when a company faces significant governance issues.

Anne Lafarre and Christoph Van Der Elst look into whether distributed ledger technologies (DLTs) can be the game changer in corporate governance that blockchain enthusiasts referred to them as only a few years ago. While they acknowledge DLT's potential to tackle custody chain issues, ameliorate transparency in stock ownership records and enhance shareholder and stakeholder rights, they also raise doubt about whether DLT is necessary to achieve outcomes that centralized systems with secure and transparent digital record-keeping may be sufficient to attain.

Hedge funds play a significant role in the dialogue between boards and shareholders, particularly in some countries. Lin Lin's chapter examines hedge fund

engagement in China, Japan and South Korea and shows that, while hedge funds in these East Asian countries have similar objectives and strategies to their counterparts in the UK and the US, the patterns of hedge fund engagement within the three countries differ.

Anna Christie's chapter spotlights one of the most intense forms of shareholder engagement, namely the election of institutional shareholders' nominees on corporate boards. While in the experience of some countries, such as Italy, traditional institutional investors take advantage of mandatory minority shareholder representation on the board to appoint independent directors, in the US, it is hedge fund activists that tend to express shareholder nominees as a lever to force change at target companies.

Shareholder proposals are the most traditional form of engagement by institutional investors. Jill Fisch and Adriana Robertson focus on proposals requesting environmental and social disclosures. Their empirical analysis provides evidence of their frequency and support by institutions and should guide the SEC in its current attempts to extend the mandatory disclosure framework to include ESG matters.

While the law is mostly silent on the processes and mechanisms to facilitate meaningful dialogue between companies and their shareholders, corporate governance codes typically do provide guidance on how to structure the dialogue with shareholders. Ana Taleska's chapter provides an analysis of various such code provisions across Europe, finding that most of them add very little to the existing hard-law framework or just replicate the most diffused practices, while the few that also require companies to spell out their policies on shareholder engagement should serve as a model.

The final two chapters in this book focus on a formidable obstacle to board-shareholder dialogue, namely the broad-scope insider trading rules set out by the European Union's Market Abuse Regulation (MAR), which still applies in the UK as well. Lars Klöhn's analysis provides a detailed account of MAR's serious impact on board-shareholder dialogue but concludes that the case for a safe harbour permitting the selective disclosure of inside information to institutional investors would not be justified, suggesting that greater disclosure on the board-shareholder dialogue should be preferred.

In the last chapter, Jennifer Payne focuses her attention on MAR's market soundings rules and asks whether they could serve as a valuable template for board-shareholder engagement. She reaches a negative conclusion but also concurs with Lars Klöhn's view that a broader safe harbour would not be justified.

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