

VANDERBILT LAW REVIEW

VOLUME 75

MAY 2022

NUMBER 4

ARTICLES

Will Corporations Deliver Value to All Stakeholders?

*Lucian A. Bebchuk**

*Roberto Tallarita***

Amid growing concerns for the effects that corporations have on stakeholders, supporters of stakeholder governance advocate relying on

* James Barr Ames Professor of Law, Economics, and Finance, and Director of the Program on Corporate Governance, Harvard Law School. For other affiliations and activities, see <http://www.law.harvard.edu/faculty/bebchuk/bio.shtml>.

** Lecturer on Law, Terence M. Considine Senior Fellow in Law and Economics, and Associate Director of the Program on Corporate Governance, Harvard Law School.

We have benefitted from discussions with and suggestions from Jesse Fried, Scott Hirst, and Kobi Kastiel. We also gratefully acknowledge the valuable research assistance of Jack Bagley, Aaron Haefner, Ariella Kahan, Peter Morgan, Zoe Piel, Aisha Saad, Navjit Sekhon, Travis Taylor, and especially Wanling Su. The Harvard Law School Program on Corporate Governance and the John M. Olin Center for Law, Economics, and Business provided financial support. A summary of this Article appeared on Lucian A. Bebchuk & Roberto Tallarita, *'Stakeholder' Talk Proves Empty Again*, WALL ST. J. (Aug. 19, 2021, 6:20 PM), <https://www.wsj.com/articles/stakeholder-capitalism-esg-business-roundtable-diversity-and-inclusion-green-washing-11629313759> [<https://perma.cc/M6NX-UBUN>].

All corporate documents manually collected and reviewed for this Article are available in an online archive, the BRT Corporate Purpose Archive. The Archive, which holds over six hundred such documents, is accessible on *BRT Corporate Purpose Archive*, HARV. L. SCH. PROGRAM ON CORP. GOVERNANCE, <https://pcg.law.harvard.edu/data/BRTPurposeArchive> (last visited Apr. 1, 2022) [<https://perma.cc/CB8Z-BWMZ>].

This Article is part of the project on stakeholder capitalism of the Program on Corporate Governance at Harvard Law School. Other parts of this project are Lucian A. Bebchuk & Roberto

corporate leaders to use their discretion to protect stakeholders, and they seem to take corporate pledges to do so at face value. By contrast, critics question whether corporate leaders have incentives to protect stakeholders and to follow through on pledges to do so. We provide empirical evidence that can contribute to resolving the debate between these rival views.

The most celebrated pledge by corporate leaders to protect stakeholders was the Business Roundtable's 2019 Statement on the Purpose of a Corporation (the "BRT Statement"). The BRT Statement expressed a commitment to deliver value to all stakeholders, not just shareholders, and was widely viewed as a major milestone that would usher in "stakeholder capitalism" and significantly improve the treatment of stakeholders. If any companies could be expected to follow through on stakeholder rhetoric, those whose CEOs signed the highly visible BRT Statement would be natural candidates to do so.

We review a wide array of hand-collected corporate documents of the 128 U.S. public companies that joined the BRT Statement (the "BRT Companies"). Examining the two-year period following the issuance of the BRT Statement, we obtain the following six findings:

First, the numerous BRT Companies that updated their corporate governance guidelines during the two-year period generally did not add any language that improves the status of stakeholders and, indeed, most of them chose to retain a commitment to shareholder primacy in their guidelines.

Second, as of the end of the two-year period, most of the BRT Companies had governance guidelines that reflected a shareholder primacy approach.

Third, in SEC submissions or securities filings responding to the over forty shareholder proposals that were submitted to BRT Companies regarding their implementation of the BRT Statement, most of the BRT Companies explicitly stated that their joining the BRT Statement did not require any such changes, and none of them accepted that the Statement required any changes.

Fourth, all of the BRT Companies had and retained corporate bylaws that reflect a shareholder-centered view.

Fifth, in their proxy statements following the BRT Statement, the great majority of the BRT Companies did not even mention their joining the

Tallarita, *The Illusory Promise of Stakeholder Governance*, 106 CORNELL L. REV. 91 (2020); Lucian A. Bebchuk, Kobi Kastiel & Roberto Tallarita, *For Whom Corporate Leaders Bargain*, 94 S. CAL. L. REV. 1467 (2022); Lucian A. Bebchuk, Kobi Kastiel & Roberto Tallarita, *Stakeholder Capitalism in the Time of Covid*, 40 YALE J. ON REG. (forthcoming 2023), <https://ssrn.com/abstract=4026803> [<https://perma.cc/TU9C-9LHF>]; Lucian A. Bebchuk, Kobi Kastiel & Roberto Tallarita, *Does Enlightened Shareholder Value Add Value?*, 77 BUS. LAW. (forthcoming 2022), <https://ssrn.com/abstract=4065731> [<https://perma.cc/9W9D-B4KK>]; and Lucian A. Bebchuk & Roberto Tallarita, *The Perils and Questionable Promise of ESG-Based Compensation*, 48 J. CORP. L. (forthcoming 2022), <https://ssrn.com/abstract=4048003> [<https://perma.cc/JD67-8DGG>].

BRT Statement, and, among the minority of companies that did mention it, none indicated that their endorsement required or was expected to result in any changes in stakeholder treatment.

Sixth, the BRT Companies all continued to pay directors compensation that strongly aligns their interests with shareholder value and avoided any use or support of stakeholder-oriented metrics.

Overall, our findings support the view that the BRT Statement was mostly for show and that BRT Companies joining it did not intend or expect it to bring about any material changes in how they treat stakeholders.

INTRODUCTION.....	1034
I. THE QUESTION AND THE STAKES	1038
A. <i>A Reorientation of Corporate Purpose</i>	1038
B. <i>An Alternative Hypothesis and a Question</i>	1042
C. <i>The Stakes</i>	1043
II. CORPORATE GOVERNANCE GUIDELINES	1047
A. <i>Companies that Amended Their Guidelines</i>	1049
B. <i>The BRT Board Sample</i>	1052
C. <i>Large Companies</i>	1058
D. <i>Other Companies</i>	1062
III. REACTIONS TO SHAREHOLDER PROPOSALS	1064
A. <i>The Proposals</i>	1064
B. <i>Requests for SEC No-Action Letters</i>	1066
C. <i>Statements in Opposition to Proposals</i>	1070
IV. BYLAWS AND PROXY STATEMENTS	1073
A. <i>Bylaws</i>	1073
B. <i>Proxy Statements</i>	1076
V. DIRECTOR COMPENSATION.....	1077
A. <i>Principles of Director Compensation</i>	1078
B. <i>Actual Director Compensation</i>	1083
CONCLUSIONS	1086
APPENDIX.....	1087

INTRODUCTION

Stakeholder governance is now at the center of a fundamental and heated debate in corporate law and public policy.¹ Supporters of stakeholder governance (which we refer to by the shorthand “stakeholderism”) advocate harnessing the discretion of corporate leaders to address serious and growing concerns about the effects of corporations on their nonshareholder constituencies (“stakeholders”), such as employees, suppliers, customers, and local communities.² Stakeholderists are encouraged by and rely on widespread support for stakeholderism expressed by corporate directors and top executives (“corporate leaders”) and their pledges to give weight to stakeholder interests.³ Critics of stakeholderism, however, argue that corporate leaders have incentives not to serve stakeholders beyond what would serve shareholder value.⁴ These critics also question the reliability and meaningfulness of pledges and promises corporate leaders make to serve stakeholders’ interests.⁵

We seek to contribute to this debate by empirically investigating the aftermath of what is clearly the most celebrated and highly publicized pledge by corporate leaders to give weight to stakeholder interests. In August 2019, the Business Roundtable (the “BRT”)—a prominent association of chief executive officers (“CEOs”) of major companies—issued a Statement on the Purpose of a Corporation (the “BRT Statement”),⁶ which was saluted as a “revolutionary moment in business”⁷ and a “major philosophical shift.”⁸

Because the BRT Statement committed its more than 180 signatory CEOs to deliver value to all stakeholders, many observers expected the BRT Statement to bring about major improvements in the

1. See sources cited *infra* notes 46–51 and accompanying text.

2. See sources cited *infra* note 46.

3. See sources cited *infra* notes 47–48.

4. See sources cited *infra* notes 50–51.

5. See sources cited *infra* notes 50–51.

6. *Statement on the Purpose of a Corporation*, BUS. ROUNDTABLE 1 (Aug. 19, 2019), <https://s3.amazonaws.com/brt.org/BRT-StatementonthePurposeofaCorporationJuly2021.pdf> [<https://perma.cc/5ZFW-KDCG>] [hereinafter BRT Statement].

7. Afdhel Aziz, *The Power of Purpose: How Conscious Capitalism Is Helping Shape the New Paradigm for Business*, FORBES (Sept. 5, 2019, 11:05 AM), <https://www.forbes.com/sites/afdhelaziz/2019/09/05/the-power-of-purpose-how-conscious-capitalism-is-helping-shape-the-new-paradigm-for-business/> [<https://perma.cc/5YQC-AWGY>].

8. David Benoit, *Move Over, Shareholders: Top CEOs Say Companies Have Obligations to Society*, WALL ST. J. (Aug. 19, 2019, 6:55 PM), <https://www.wsj.com/articles/business-roundtable-steps-back-from-milton-friedman-theory-11566205200> [<https://perma.cc/2XWT-D2XB>].

treatment of stakeholders.⁹ In 2020 and in 2021, the BRT and its leaders celebrated the first and second anniversaries of the Statement by highlighting the accomplishments made by its signatories. For example, on the first anniversary BRT President Joshua Bolten stated that companies had held to the commitments included in the BRT Statement;¹⁰ and on the second anniversary the BRT declared that CEOs “have powerfully demonstrated their commitment to work for the benefit of all stakeholders.”¹¹

By contrast, critics of stakeholderism expressed the view that the BRT Statement was mostly for show.¹² To shed empirical light on the promise of stakeholderism, we investigate the aftermath of the BRT Statement to assess whether joining it represented a meaningful commitment or was mostly a public-relations move.

Our analysis is based on a review of a large array of corporate documents of the 128 U.S. public companies that joined the original BRT Statement in August 2019 (the “BRT Companies”).¹³ We manually collected and analyzed over six hundred corporate documents, which we will make available in an online archive, the BRT Corporate Purpose Archive. Our analysis of these documents provides considerable evidence consistent with the hypothesis that the BRT Statement was largely for show and did not reflect a meaningful commitment to bring about material improvement in the treatment of stakeholders. These findings, we argue, have significant implications for the heated debate on stakeholder capitalism.

Our analysis is organized as follows. Part I begins by discussing the significance of the BRT Statement and identifying the BRT Companies that we use to assess the promise and limits of stakeholderism. The BRT Statement was a key manifestation of the rising support for stakeholderism among corporate leaders. The

9. See sources cited *infra* notes 22–34.

10. Joshua Bolten, *A Good Year for Stakeholder Capitalism*, WALL ST. J. (Aug. 18, 2020, 7:15 PM), <https://www.wsj.com/articles/a-good-year-for-stakeholder-capitalism-11597792536> [<https://perma.cc/L8MQ-GC97>] (“It’s been a year since 181 CEOs of America’s largest companies overturned a 22-year-old policy statement that defined a corporation’s principal purpose as maximizing shareholder return. . . . Companies have held to their commitments.”).

11. *Business Roundtable Statement on the Purpose of a Corporation: Two Year Anniversary*, BUS. ROUNDTABLE, <https://www.businessroundtable.org/purposeanniversary> (last visited Apr. 24, 2022) [<https://perma.cc/V2BM-832N>].

12. See sources cited *infra* notes 40–43.

13. The initial sample included 131 companies. Three signatory companies (AK Steel Corporation, Noble Energy, Inc., and United Technology Corporation) were acquired in 2020 and therefore were excluded from the final sample. As of July 2021, the Boeing Company (included in our sample) is no longer listed as a signatory, although it was listed in the original statement (August 2019) and in all the subsequent updates through June 2020.

Statement was originally signed by 181 CEOs, including most of the country's major companies, and it committed to move away from shareholder primacy and to deliver value to all stakeholders.

Consequently, the BRT Statement was celebrated by many as a meaningful commitment. Under this "Commitment" view, the Statement was expected to lead to significant improvements in the way BRT Companies treat their stakeholders. By contrast, under an alternative and more skeptical view, the companies signing the BRT Statement did it mostly for show. Under this "PR view," signatory CEOs did not expect or intend to make any material improvements in their treatment of stakeholders. We seek to provide evidence that can resolve which of these rival views, and their competing predictions, is valid.

Part I then explains the significant stakes involved in the resolution of our question for the general debate on stakeholder governance. If the BRT Statement were found to represent a meaningful commitment, this finding would lend support to stakeholderism and to its supporters' hopes that embracing stakeholderism would substantially benefit stakeholders. By contrast, if the BRT Statement were found to represent a mere public-relations move, this finding would support critics of stakeholderism and their claims that the promise of stakeholderism is illusory, and that it is aimed at serving the interests of corporate leaders rather than those of stakeholders.

Part II begins the presentation of our empirical analysis by examining the corporate governance guidelines of the BRT Companies. Governance guidelines, which are frequently updated, are official corporate documents that provide a detailed account of the main principles and procedures guiding the company's corporate governance. These documents therefore provide a natural place to look for the company's official position on corporate purpose and the objectives that should guide the board of directors.

Despite the high expectations that accompanied the publication of the BRT Statement, our analysis shows that almost none of the majority of BRT Companies that updated their governance guidelines after the BRT Statement made any changes to the language describing their corporate purpose. More strikingly, a majority of the updated guidelines reaffirmed an explicit commitment to shareholder primacy. In general, when we examined all the guidelines of BRT Companies that were in place two years after the issuance of the BRT Statement (the "Two-Year Period") regardless of whether or not they had been updated in that time, we found that a majority included an explicit statement in support of shareholder primacy, and an even larger majority did not include any mention of stakeholders in their discussion of corporate purpose.

Part III analyzes the response of twenty-six BRT Companies to shareholder proposals regarding the companies' implementation of the BRT Statement. Each one invariably opposed these proposals and reacted to them by trying to exclude them from the ballot, by recommending that shareholders vote against them, or both.

Our analysis indicates that, whereas the shareholder proposals were based on the premise that joining the BRT Statement was a meaningful commitment that would require changes to the companies' governance and policies, none of the companies receiving a proposal accepted this premise. To the contrary, a substantial majority of the companies explicitly stated that their joining the BRT Statement did not require and was not expected to bring about any changes in their treatment of stakeholders.

Part IV examines the bylaws of all the 128 BRT Companies in force as of the end of the Two-Year Period. Bylaws are legally binding documents setting forth principles and procedures for the company's governance. While bylaws commonly refer to shareholders a very large number of times, we found no relevant mention of stakeholders in general, or of particular stakeholder groups, with the exception of the bylaws of one BRT Company.

Part IV also examines the 2020 proxy statements of the BRT Companies in order to identify any mention of the BRT Statement that BRT Companies chose to include (other than in instances in which they were forced to do so by a shareholder proposal on the subject). Consistent with the hypothesis that the BRT Companies did not view joining the BRT Statement as a meaningful step, we found that the majority of BRT Companies chose not to mention the BRT Statement at all in their proxy statements. Of the minority of companies that included such a mention, none described the BRT Statement as representing a meaningful commitment that could require or bring about material changes, and several of them explicitly indicated that no such changes were required or expected.

Part V examines the principles and actual practices of the BRT Companies with respect to director compensation. The structure of director compensation is important for assessing the objectives that companies want directors to pursue, both because compensation shapes the directors' incentives and because it sends them a strong signal as to what goals the company considers important. We begin our examination of director compensation with a review of the principles regarding director compensation contained in the governance guidelines of the BRT Companies. We found that a majority of the guidelines of BRT Companies included an explicit requirement that directors own

company stock or be paid with company stock in order to align their interests with those of shareholders. By contrast, none of the guidelines of BRT Companies included any requirement to tie director compensation to any metric reflecting or related to stakeholder interests.

Part V then turns to examine the actual practice of director compensation in BRT Companies. We found that BRT Companies generally tie such compensation tightly to stock value and avoid any tie to stakeholder metrics. In particular, we found that during the year following the issuance of the BRT Statement, BRT Companies commonly paid a substantial fraction of director compensation in stock. By contrast, we did not find any instance in which director compensation was tied to any stakeholder objective either to incentivize the directors to pursue such an objective or to signal its importance.

Finally, we present our conclusions. Our findings overall are inconsistent with the hypothesis that the BRT Statement represented a genuine commitment in favor of stakeholders. Instead, they support the hypothesis that the BRT Statement was a mere public-relations move. Thus, our findings question the promise of stakeholder governance that relies on the discretion of corporate leaders to serve stakeholders. These findings indicate that pledges by corporate leaders to use their discretion to serve stakeholders, and reliance on the use of such discretion, may well not produce their purported benefits for stakeholders. These findings also support and reinforce concerns that such stakeholderist pledges and the support expressed by corporate leaders for stakeholderism might be aimed at serving the private interests of corporate leaders rather than truly addressing the rising concerns regarding corporations' treatment of stakeholders.

I. THE QUESTION AND THE STAKES

A. *A Reorientation of Corporate Purpose*

Corporate decisions are increasingly viewed as one of the major drivers of some of the most pressing social problems, including rising inequality, labor market dislocations, growing market power, and climate change.¹⁴ In the words of one prominent academic observer, capitalism is operating in a “world . . . on fire.”¹⁵ This background likely

14. For a discussion of the societal impact of corporations, see, for example, Leo E. Strine, Jr. & Kirby M. Smith, *Toward Fair Gainsharing and a Quality Workplace for Employees: How a Reconceived Compensation Committee Might Help Make Corporations More Responsible Employers and Restore Faith in American Capitalism*, 76 BUS. LAW. 31 (2020).

15. REBECCA HENDERSON, REIMAGINING CAPITALISM IN A WORLD ON FIRE 8–9 (2020).

played a major role in the increasing influence of and rising support for stakeholderism.

Let us start by discussing the significance of the BRT Statement within the debate on stakeholderism. In August 2019, the BRT issued a statement announcing a major revision of its conception of corporate purpose.¹⁶ The new conception sought to move away from the BRT's long-standing support for shareholder primacy,¹⁷ and committed to "deliver value" not just to shareholders but also to employees, customers, suppliers, and communities,¹⁸ and communicated a promise to "lead . . . companies for the benefit of all stakeholders."¹⁹

The BRT Statement was widely viewed by many observers and the media as a major milestone and a significant turning point for corporate America. For example, the *Wall Street Journal* called the statement a "major philosophical shift."²⁰ The *New York Times* viewed it as a "significant shift" that broke "with decades of long-held corporate orthodoxy."²¹ It was a "potential sea change" that was "so significant and

16. BRT Statement, *supra* note 6.

17. This long-standing support was expressed in the BRT's earlier statement on corporate purpose published in 1997. See BUS. ROUNDTABLE, STATEMENT ON CORPORATE GOVERNANCE 3 (1997), <http://www.ralphgomory.com/wp-content/uploads/2018/05/Business-Roundtable-1997.pdf> [<https://perma.cc/NNA8-JQXQ>] (stating that "the paramount duty of management and of boards of directors is to the corporation's stockholders").

18. BRT Statement, *supra* note 6.

19. *Business Roundtable Redefines the Purpose of a Corporation to Promote 'An Economy that Serves All Americans,'* BUS. ROUNDTABLE (Aug. 19, 2019), <https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans> [<https://perma.cc/A6PD-UFKJ>] [hereinafter *BRT Redefines Purpose*].

20. Benoit, *supra* note 8.

21. David Gelles & David Yaffe-Bellany, *Shareholder Value Is No Longer Everything, Top C.E.O.s Say*, N.Y. TIMES (Aug. 19, 2019), <https://www.nytimes.com/2019/08/19/business/business-roundtable-ceos-corporations.html> [<https://perma.cc/HER7-AKHZ>]; Andrew Ross Sorkin, *How Shareholder Democracy Failed the People*, N.Y. TIMES, <https://www.nytimes.com/2019/08/20/business/dealbook/business-roundtable-corporate-responsibility.html> (last updated Aug. 21, 2019) [<https://perma.cc/H3WJ-GPJB>].

so welcome,” announced the *Washington Post*.²² The *Financial Times*, in turn, labeled it “a major change in thinking.”²³

In other dramatic portrayals, the statement was described as a “bombshell . . . announcement” (*Reuters*);²⁴ as a “stunning new mission statement” (*USA Today*);²⁵ a move that “tossed the old [corporate purpose] into the dustbin” (*Fortune*);²⁶ and a “revolutionary . . . moment in business” (*Forbes*).²⁷ A year later, the BRT Statement was still portrayed by media observers as a “historic . . . commitment,”²⁸ that “jettison[ed] [the BRT’s] prior focus on shareholders above all others,”²⁹ that “struck many as potentially revolutionary,”³⁰ or even “an important step toward renewing the social compact of the United States.”³¹

22. David Ignatius, *Corporate Panic About Capitalism Could Be a Turning Point*, WASH. POST (Aug. 20, 2019, 7:10 PM), https://www.washingtonpost.com/opinions/even-the-business-moguls-know-its-time-to-reform-capitalism/2019/08/20/95e4de74-c388-11e9-9986-1fb3e4397be4_story.html [<https://perma.cc/YB2V-MF3U>]; Tory Newmyer, *The Finance 202: Corporate Critics Cautiously Optimistic About New CEO Mission Statement*, WASH. POST (Aug. 20, 2019, 7:43 AM), <https://www.washingtonpost.com/news/powerpost/paloma/the-finance-202/2019/08/20/the-finance-202-corporate-critics-cautiously-optimistic-about-new-ceo-mission-statement/5d5b307d88e0fa7bb93a85a9> [<https://perma.cc/T5J3-SS3K>]; Steven Pearlstein, *Top CEOs Are Reclaiming Legitimacy by Advancing a Vision of What’s Good for America*, WASH. POST (Aug. 19, 2019, 5:00 AM), <https://www.washingtonpost.com/business/2019/08/19/top-ceos-are-reclaiming-legitimacy-by-advancing-vision-whats-good-america> [<https://perma.cc/HR27-WLVF>].

23. The Editorial Board, *Business Must Act on a New Corporate Purpose*, FIN. TIMES (Aug. 19, 2019), <https://www.ft.com/content/3732eb04-c28a-11e9-a8e9-296ca66511c9> [<https://perma.cc/MF72-E7SW>].

24. Alison Frankel, *If Corporations Don’t Put Shareholders First, What Happens to Business Judgment Rule?*, REUTERS (Aug. 22, 2019, 4:16 PM), <https://www.reuters.com/article/us-otc-bizroundtable/if-corporations-dont-put-shareholders-first-what-happens-to-business-judgment-rule-idUSKCN1VC2FS> [<https://perma.cc/24G8-SPMA>].

25. Steve H. Hanke, *Business Roundtable Suffers from Economic Illiteracy*, USA TODAY (Aug. 28, 2019, 5:24 PM), <https://www.usatoday.com/story/opinion/2019/08/28/business-roundtable-suffers-economic-illiteracy-editorials-debates/2144794001> [<https://perma.cc/EJ96-JBKW>].

26. Alan Murray, *America’s CEOs Seek a New Purpose for the Corporation*, FORTUNE (Aug. 19, 2019, 3:30 AM), <https://fortune.com/longform/business-roundtable-ceos-corporations-purpose> [<https://perma.cc/V3S5-9M5D>].

27. Aziz, *supra* note 7.

28. Richard C. Shadyac Jr., *Why a Year Later, the Business Roundtable’s Updated Statement of Purpose Is More Relevant than Ever*, FORTUNE (Aug. 19, 2020, 4:00 AM), <https://fortune.com/2020/08/19/business-roundtable-statement-purpose-responsibility> [<https://perma.cc/3AUA-CB8A>].

29. Lauren Weber, *During Coronavirus Crisis, Big Companies Display Largess—but for How Long?*, WALL ST. J. (Mar. 22, 2020, 1:24 PM), <https://www.wsj.com/articles/during-coronavirus-crisis-big-companies-display-largessbut-for-how-long-11584893891> [<https://perma.cc/EP7J-34YL>].

30. Geoff Colvin, *Revisiting the Business Roundtable’s ‘Stakeholder Capitalism,’ One Year Later*, FORTUNE (Aug. 19, 2020, 5:00 AM), <https://fortune.com/2020/08/19/business-roundtable-statement-principles-stakeholder-capitalism-corporate-governance> [<https://perma.cc/WE7Z-6V4J>].

31. Henry Olsen, *U.S. Business Leaders Have Taken a Step to Finally Renew the American Social Compact*, WASH. POST (Aug. 20, 2019, 1:01 PM), <https://www.washingtonpost.com/opinions/2019/08/20/us-business-leaders-have-taken-step-finally-renew-american-social-compact> [<https://perma.cc/TDF8-ALDK>].

This widely held view that the BRT Statement was a major turning point for corporate governance was partly a product of declarations made by the BRT and some of its leaders. They described it as a “transformative statement,”³² which “raise[d] the bar for everyone”³³ and “broadened the responsibility of corporate America to all stakeholders.”³⁴ Reflecting on the first anniversary of the BRT Statement in the *Wall Street Journal*, BRT President Joshua Bolten stressed that the statement overturned the shareholder primacy approach and asserted that BRT member companies were living up to the commitment to deliver value to all stakeholders.³⁵

The BRT Statement was also applauded by scholars advocating stakeholderist views. Oxford Professor Colin Mayer, who in his recent book argues that the purpose of business should be to “produc[e] profitable solutions to problems of people and planet,”³⁶ stated that the BRT Statement was a “profoundly significant moment in the debate” on the social impact of corporations.³⁷ Harvard Business School Professor Rebecca Henderson, who in her recent book advocates reimagining capitalism so that companies “embrac[e] a pro-social purpose beyond profit maximization”³⁸ commended the BRT Statement as a “good thing to do” that would move business leaders away from a focus on maximizing shareholder value.³⁹

Under this widespread reading, the BRT Statement expressed a genuine and meaningful commitment to change the way companies treat their stakeholders. Therefore, we shall refer to this interpretation as the Commitment Hypothesis. According to this hypothesis, we should

32. Gary Norcross, *FIS Chairman, President & CEO Gary Norcross on Advancing Business Roundtable’s Commitment to Diversity and Inclusion*, MEDIUM (Aug. 14, 2020), <https://medium.com/@BizRoundtable/fis-chairman-president-ceo-gary-norcross-on-advancing-business-roundtables-commitment-to-293c2b2995e3> [<https://perma.cc/7MF2-XR5L>].

33. Murray, *supra* note 26 (quoting Ginni Rometty, former CEO of IBM).

34. Ed Bastian, *Delta Air Lines CEO Ed Bastian on Corporate Purpose and Putting People Before Profits*, MEDIUM (Aug. 18, 2020), <https://medium.com/@BizRoundtable/delta-air-lines-ceo-ed-bastian-on-corporate-purpose-and-putting-people-before-profits-52a49e6591e9> [<https://perma.cc/QFY6-6ZZ6>].

35. Bolten, *supra* note 10.

36. COLIN MAYER, PROSPERITY: BETTER BUSINESS MAKES THE GREATER GOOD 39 (2018).

37. Andrew Edgecliffe-Johnson & Attracta Mooney, *The Year Capitalism Went Cuddly*, FIN. TIMES (Dec. 19, 2019), <https://www.ft.com/content/da1d824a-1bd4-11ea-97df-cc63de1d73f4> [<https://perma.cc/AWC7-VSX7>].

38. HENDERSON, *supra* note 15, at 11.

39. Andrew Edgecliffe-Johnson & Billy Nauman, *CEOs’ Plans To Reset Capitalism Bump into Reality of Pandemic*, FIN. TIMES (Aug. 20, 2020), <https://www.ft.com/content/34e702fe-0ea4-460a-b4fc-b9f3fce4b0ce> [<https://perma.cc/J2NW-RJMT>].

expect the BRT Statement to bring about many material improvements in how companies consider and treat their stakeholders. Clearly, if no such changes were expected to take place, despite the widely accepted view that corporate effects on stakeholders present socially important concerns, the BRT Statement would not have been a “turning point” or a “revolutionary moment,” but an inconsequential and practically irrelevant text.

B. An Alternative Hypothesis and a Question

The Commitment Hypothesis is not universally shared. An alternative view is that the BRT Statement was merely a public-relations move, done mostly for show. We put forward this view in our earlier academic work on the illusory promise of stakeholder capitalism.⁴⁰ Other authors have expressed a similarly skeptical view in op-ed articles and blog posts on the BRT Statement.⁴¹ We shall refer to this view as the PR Hypothesis.

Under this alternative reading, the CEOs who joined the BRT Statement did not intend or expect to make significant changes to their companies’ treatment of stakeholders. Rather, they were trying to project a favorable image of themselves and their companies geared towards a public opinion increasingly preoccupied with corporate social responsibility, and to deflect regulatory pressure (on environmental, labor, privacy, and other pressing issues) by introducing hopes that corporations would address concerns about stakeholders on their own without the need for government intervention.

The PR Hypothesis carries with it, of course, very different predictions than the Commitment Hypothesis. Whereas the Commitment Hypothesis predicts substantial improvements in the treatment of stakeholders, the PR Hypothesis does not. In fact, under the PR Hypothesis, we would expect the BRT Companies to do business

40. See Lucian A. Bebchuk & Roberto Tallarita, *The Illusory Promise of Stakeholder Governance*, 106 CORNELL L. REV. 91, 124–39 (2020) [hereinafter Bebchuk & Tallarita, *Illusory Promise*]. For a *Wall Street Journal* op-ed article we wrote to provide an overview of this Article, see Lucian Bebchuk & Roberto Tallarita, ‘Stakeholder’ Capitalism Seems Mostly for Show, WALL ST. J. (Aug. 6, 2020, 7:07 PM) <https://www.wsj.com/articles/stakeholder-capitalism-seems-mostly-for-show-11596755220> [https://perma.cc/BV4W-GFWZ].

41. See Luca Enriques, *The Business Roundtable CEOs’ Statement: Same Old, Same Old*, PROMARKET (Sept. 9, 2019), <https://promarket.org/2019/09/09/the-business-roundtable-ceos-statement-same-old-same-old> [https://perma.cc/FZ23-VUL9] (arguing that the BRT Statement was “an undeniable PR coup”); Luigi Zingales, *Don’t Trust CEOs Who Say They Don’t Care About Shareholder Value Anymore*, WASH. POST (Aug. 20, 2019, 5:54 PM), <https://www.washingtonpost.com/opinions/2019/08/20/dont-trust-ceos-who-say-they-dont-care-about-shareholder-value-anymore> [https://perma.cc/MH42-Q5VW] (describing the BRT Statement as a “marketing ploy with no real bite”).

as usual and to continue to treat stakeholders just as they had prior to the BRT Statement.

Which of the two hypotheses, the Commitment Hypothesis or the PR Hypothesis, provides a better account of the motivation behind the BRT Statement and, most importantly, its expected aftermath? This is the question on which this Article focuses.

In our prior academic work, we provided some evidence in favor of the PR Hypothesis. In particular, based on a survey of BRT Companies, we documented that even though board approval is generally sought for any major corporate decision, signatory CEOs generally did not seek approval by the board of directors for their decision to join the BRT Statement, consistent with the CEOs not viewing the joining of the BRT Statement as a meaningful commitment.⁴² This evidence gained some significant media attention,⁴³ and both the President of the BRT and the Society for Corporate Governance sought to challenge the inference we drew from our survey.⁴⁴

In this Article, we seek to advance this debate by providing a comprehensive empirical analysis based on several substantial sources. We delve deep into the weeds of a wide array of corporate documents—corporate governance guidelines, proxy statements, no-action letter requests filed with the Securities Exchange Commission (the “SEC”), and corporate bylaws—to investigate whether BRT Companies expected to materially improve their treatment of stakeholders by joining the BRT Statement. The mosaic we put together, we believe, provides a solid basis for resolving the debate between the Commitment Hypothesis and the PR Hypothesis.

C. The Stakes

Let us now turn to the substantial implications of the question that we investigate. Whether the BRT Statement was mostly for show has implications both (i) directly, for predicting how a major part of the

42. Bebchuk & Tallarita, *Illusory Promise*, *supra* note 40, at 130–33.

43. See, e.g., *Academics Make an Empirical Case Against Stakeholderism*, *ECONOMIST* (Mar. 14, 2020), <https://www.economist.com/business/2020/03/12/academics-make-an-empirical-case-against-stakeholderism> [<https://perma.cc/6G4F-6HP8>]; Matt Levine, *Robinhood Picked a Bad Day to Break*, *BLOOMBERG* (Mar. 3, 2020, 11:59 AM), <https://www.bloomberg.com/opinion/articles/2020-03-03/robinhood-picked-a-bad-day-to-break> [<https://perma.cc/858P-EWNF>].

44. Edgecliffe-Johnson & Nauman, *supra* note 39; Randi Val Morrison, *BRT Statement of Corporate Purpose: Debate Continues*, *HARV. L. SCH. F. ON CORP. GOVERNANCE* (Aug. 28, 2020), <https://corpgov.law.harvard.edu/2020/08/28/brt-statement-of-corporate-purpose-debate-continues> [<https://perma.cc/89K3-RMRE>].

country's corporate sector will likely treat stakeholders in the coming years, and most importantly (ii) indirectly, for the ongoing key debate on the promise and pitfalls of stakeholderism.

Because of the economic significance of the BRT Companies, changes in how they treat their stakeholders would by themselves be important for any assessment of societal concerns regarding stakeholders. The BRT Companies include such major household names as Apple, Amazon, American Express, Goldman Sachs, JPMorgan Chase, Mastercard, Coca-Cola, Walmart, Procter & Gamble, Lockheed Martin, General Motors, IBM, Johnson & Johnson, Morgan Stanley, Exxon-Mobil, Pfizer, AT&T, Target, Texas Instruments, and Best Buy. Indeed, the BRT Companies have an aggregated market capitalization exceeding \$15 trillion.⁴⁵ Thus, if the Commitment Hypothesis were valid, the expected impact of the BRT initiative on society would be considerable, and there would be a solid basis for expecting major improvements in the treatment of stakeholders in the coming years.

Beyond the direct effect of expected changes in the behavior of BRT Companies, our empirical analysis has important implications for the heated debate on stakeholderism. The BRT Statement is the most important manifestation of a much broader phenomenon that has been increasingly influential in the business, political, and academic discourses. The stakeholderist approach of encouraging and relying on the discretion of corporate leaders to protect the interests of stakeholders is widely held out as a solution for the rising concerns about corporations' effects on stakeholders.

Stakeholderism has been attracting increasing support from academics in law, economics, and management.⁴⁶ At the same time, it

45. Data on market capitalization of the BRT Companies has been collected from Compustat, as of August 31, 2021. For a description of the Compustat database, see *Compustat® Fundamentals*, S&P GLOBAL, [https://www.marketplace.spglobal.com/en/datasets/compustat-fundamentals-\(8\)](https://www.marketplace.spglobal.com/en/datasets/compustat-fundamentals-(8)) (last visited Mar. 27, 2022) [<https://perma.cc/6XM2-M74T>].

46. For notable work by legal scholars in support of stakeholderism, see, for example, LYNN STOUT, *THE SHAREHOLDER VALUE MYTH* 2–8 (2012) (arguing against “shareholder value maximization” from both a doctrinal and normative standpoint); Margaret M. Blair & Lynn A. Stout, *A Team Production Theory of Corporate Law*, 85 VA. L. REV. 247, 255–57, 276–86 (1999) (advocating that directors be viewed as “mediating hierarchs” who should balance the interests of shareholders, employees, creditors, and other stakeholders); Einer Elhauge, *Sacrificing Corporate Profits in the Public Interest*, 80 N.Y.U. L. REV. 733 (2005); and Simon Deakin, *The Corporation as Commons: Rethinking Property Rights, Governance and Sustainability in the Business Enterprise*, 37 QUEEN'S L.J. 339 (2012).

For notable recent works by economists and management scholars, see, for example, MAYER, *supra* note 36; ALEX EDMANS, *GROW THE PIE: HOW GREAT COMPANIES DELIVER BOTH PURPOSE AND PROFIT* (2020); HENDERSON, *supra* note 15; and Robert G. Eccles & Tim Youmans, *Materiality in Corporate Governance: The Statement of Significant Audiences and Materiality*, 28 J. APPLIED CORP. FIN. 39, 39 (2016).

has been embraced by business leaders, corporate advisors, and legal practitioners.⁴⁷ Shortly after the issuance of the BRT Statement, the World Economic Forum published a manifesto urging companies to move from the traditional model of shareholder capitalism to a model of stakeholder capitalism;⁴⁸ and corporate advisors en masse have been clamoring to assist and advise the development of stakeholderist practices by their clients.⁴⁹

Critics of stakeholderism, however, worry that corporate leaders do not have incentives to use their discretion to protect stakeholders for this purpose and are therefore unlikely to do so.⁵⁰ In fact, an analysis of the various incentives that corporate leaders face indicates that they have incentives *not* to protect stakeholders beyond what would serve

For recent expression of support for stakeholderism from a group of prominent academics from various fields, see BRITISH ACAD., PRINCIPLES FOR PURPOSEFUL BUSINESS (2019), <https://www.thebritishacademy.ac.uk/publications/future-of-the-corporation-principles-for-purposeful-business> [<https://perma.cc/7VHQ-9JSF>] (promoting accountability to all constituencies and advocating for changes in corporate law and governance that would require directors to consider the interests of all stakeholders).

47. For endorsement of stakeholderism by business leaders, see Klaus Schwab, *Davos Manifesto 2020: The Universal Purpose of a Company in the Fourth Industrial Revolution*, WORLD ECON. F. (Dec. 2, 2019), <https://www.weforum.org/agenda/2019/12/davos-manifesto-2020-the-universal-purpose-of-a-company-in-the-fourth-industrial-revolution> [<https://perma.cc/3NAK-SCDQ>] [hereinafter *Davos Manifesto 2020*] (“The purpose of a company is to engage all its stakeholders in shared and sustained value creation. In creating such value, a company serves not only its shareholders, but all its stakeholders . . .”).

For expressions of support from prominent corporate advisors, see, for example, Martin Lipton & Kevin S. Schwartz, *Reclaiming “Value” in the True Purpose of the Corporation*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Oct. 10, 2020), <https://corpgov.law.harvard.edu/2020/10/10/reclaiming-value-in-the-true-purpose-of-the-corporation> [<https://perma.cc/6JMP-78F2>].

48. *Davos Manifesto 2020*, *supra* note 47; see also Klaus Schwab, *Why We Need the ‘Davos Manifesto’ for a Better Kind of Capitalism*, WORLD ECON. F. (Dec. 1, 2019), <https://www.weforum.org/agenda/2019/12/why-we-need-the-davos-manifesto-for-better-kind-of-capitalism> [<https://perma.cc/62J6-89ME>].

49. See, e.g., Adam O. Emmerich, David M. Silk & Sabastian V. Niles, *Using ESG Tools to Help Combat Racial Inequity*, HARV. L. SCH. F. ON CORP. GOVERNANCE (July 21, 2021), <https://corpgov.law.harvard.edu/2021/07/21/using-esg-tools-to-help-combat-racial-inequity/> [<https://perma.cc/5ZSG-TRU4>]; Blair Jones & Semler Brossy, *Key Considerations for Companies Looking to Integrate ESG and DE&I into Compensation Programs*, HARV. L. SCH. F. ON CORP. GOVERNANCE (July 2, 2021), <https://corpgov.law.harvard.edu/2021/07/02/key-considerations-for-companies-looking-to-integrate-esg-and-dei-into-compensation-programs> [<https://perma.cc/S2KK-3GZ6>]; Myrto Kontaxi & Brian Tomlinson, *Integrating Sustainability and Long Term Planning for the Biopharma Sector*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Apr. 17, 2021), <https://corpgov.law.harvard.edu/2021/04/17/integrating-sustainability-and-long-term-planning-for-the-biopharma-sector> [<https://perma.cc/8QKN-4PTE>].

50. See, e.g., 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).

shareholder value.⁵¹ According to this “agency” critique of stakeholderism, acceptance of stakeholderism should not be expected to produce material benefits for stakeholders.⁵²

Indeed, the agency critique of stakeholderism suggests that acceptance of stakeholderism would be counterproductive by producing two types of major costs.⁵³ First, the enhanced discretion given to corporate leaders under the pretense of stakeholder protection would insulate them from shareholder oversight and make them less accountable. Indeed, stakeholderism would by definition make corporate leaders freer in their decisionmaking, as they would now be able to justify their choices on the basis of the purported benefit for one or more stakeholder groups.

For example, stakeholderism has already been used to urge institutional investors to be more deferential to corporate leaders and more willing to side with them in any engagement with hedge fund activists, or to accept legal arrangements that insulate management from market pressures.⁵⁴ Indeed, in an op-ed published in the *Wall Street Journal* for the first anniversary of the BRT Statement, BRT President Joshua Bolten argued that stakeholderism calls for opposition to hedge fund activists.⁵⁵ However, if stakeholderism does not reflect a real commitment to stakeholders, the increased insulation from shareholders would only serve the private interests of corporate leaders. By increasing slack and underperformance, it could reduce the pie available to shareholders and stakeholders.

51. See Bebhuk & Tallarita, *Illusory Promise*, *supra* note 40, at 139–63 (discussing compensation and labor and control markets as incentives for directors and corporate officers).

52. For current contributions to the heated debate on the subject, see, for example, Edward B. Rock, *For Whom is the Corporation Managed in 2020? The Debate Over Corporate Purpose*, 76 BUS. LAW. 363 (2021); Leo E. Strine, Jr., *Restoration: The Role Stakeholder Governance Must Play in Recreating a Fair and Sustainable American Economy: A Reply to Professor Rock*, 76 BUS. LAW. 397 (2021); Jill E. Fisch & Steven Davidoff Solomon, *Should Corporations Have a Purpose?* 99 TEX. L. REV. 1309 (2021); Dorothy S. Lund, *Corporate Finance for Social Good*, 121 COLUM. L. REV. 1617 (2021); Michal Barzuza, Quinn Curtis & David H. Webber, *Shareholder Value(s): Index Fund ESG Activism and the New Millennial Corporate Governance*, 93 S. CAL. L. REV. 1243 (2020); and Stavros Gadinis & Amelia Miazad, *Corporate Law and Social Risk*, 73 VAND. L. REV. 1401 (2020).

53. Bebhuk & Tallarita, *Illusory Promise*, *supra* note 40, at 164–75.

54. See, e.g., Martin Lipton, *Takeover Bids in the Target's Boardroom*, 35 BUS. LAW. 101, 102 (1979); Martin Lipton, *Twenty-Five Years After Takeover Bids in the Target's Boardroom: Old Battles, New Attacks and the Continuing War*, 60 BUS. LAW. 1369 (2005); Martin Lipton & Steven A. Rosenblum, *Election Contests in the Company's Proxy: An Idea Whose Time Has Not Come*, 59 BUS. LAW. 67, 67–68 (2003) (arguing that shareholders are one of many constituencies that invest in the corporation and that their powers should be balanced against the goal of board independence for the benefit of all stakeholders); Martin Lipton & William Savitt, *The Many Myths of Lucian Bebchuk*, 93 VA. L. REV. 733, 744–45 (2007) (opposing proposals to strengthen shareholder power to replace directors on the grounds that, among other things, doing so would have an adverse impact on stakeholders).

55. Bolten, *supra* note 10.

The second potential major cost of acceptance of stakeholderism is that it could introduce illusory hopes that large corporations will on their own reduce negative externalities for employees, communities, and other stakeholders. If stakeholderism is only empty rhetoric, however, such perception would not only be false but also harmful: by raising illusory expectations about its ability to remedy corporate externalities, stakeholderism would divert resources and attention away from policy reforms that could offer effective protections to stakeholders. Indeed, because insulation from both shareholder pressures and government intervention serves the private interests of corporate managers, the support for stakeholder capitalism by some corporate leaders and their advisors might be at least partly motivated by a desire to obtain such outcomes.

One central empirical question at the root of the disagreement between advocates and critics of stakeholderism is the following: Should we expect corporate leaders to use their discretion to protect stakeholders? The evidence that we present in this Article sheds light on this important question. If the Commitment Hypothesis were valid, we would expect to find evidence that the corporate leaders of BRT Companies were planning to take seriously their pledge to deliver value to all stakeholders. In that case, this finding would support the views of stakeholderism advocates, because it would confirm their hopes and expectations that corporate leaders will use their discretion to protect stakeholders.

Conversely, if the PR Hypothesis were valid, we would expect corporate documents to show evidence that the endorsed stakeholderist values are not meant to be put in practice. This finding would support the skepticism of many critics of stakeholder capitalism, and it would reinforce the suspicion that corporate leaders have no real intention to serve stakeholders beyond what would benefit shareholders and their own private interests.

II. CORPORATE GOVERNANCE GUIDELINES

This Part describes the findings of our detailed review of all the corporate governance guidelines of the BRT Companies. Corporate governance guidelines (also called corporate governance principles or policies) are official governance documents that are typically approved

by the board of directors.⁵⁶ Companies disclose the approval of corporate governance guidelines in proxy statements or in other securities filings, as well as on their institutional websites. Guidelines are frequently updated to provide at any given time a detailed account of the main governance principles and procedures directing the company.⁵⁷ These documents therefore provide a natural place to look for the company's official position on corporate purpose.

To investigate the impact of the BRT Statement on the corporate governance principles of its signatories, we manually collected these documents from the institutional websites of the BRT Companies and reviewed the corporate governance guidelines of the BRT Companies in force at the end of the Two-Year Period. Our final sample consists of 128 governance guidelines, approved between 2015 and 2021, of which a very large majority (eighty-two percent) were updated after the publication of the BRT Statement. We analyze both the versions in force at the end of the Two-Year Period and, when applicable, the changes made to the versions in force before the BRT Statement. In order to examine the amendments made to the governance guidelines after the publication of the BRT Statement, we manually searched and collected from the Wayback Machine of the Internet Archive⁵⁸ for the most recent version of the guidelines in force before August 19, 2019.⁵⁹

Our review of the guidelines indicates that they indeed provide a very useful text for gauging the “corporate purpose” of the BRT Companies. Of the 128 guidelines in force at the end of the Two-Year Period, 116 have specific language concerning the purposes and objectives that should guide the board of directors in their decisions, and the constituencies that the board must serve.

Under the Commitment Hypothesis, if BRT Companies were indeed committed to “mov[ing] away from shareholder primacy,”⁶⁰ we

56. See NYSE LISTED CO. MANUAL § 303A.09 *Corporate Governance Guidelines* (requiring companies listed on the New York Stock Exchange to adopt and disclose corporate governance guidelines); see also Yaron Nili & Cathy Hwang, *Shadow Governance*, 108 CALIF. L. REV. 1097, 1112–13 (2020) (reporting that 87.1 percent of S&P 1500 companies disclose their corporate governance guidelines).

57. Nili & Hwang, *supra* note 56, at 1112–16.

58. INTERNET ARCHIVE, <https://web.archive.org/> (last visited Mar. 30, 2022) [<https://perma.cc/7RK8-YVU4>].

59. For all BRT Companies except one (Xylem, Inc.) we found archived web copies of governance guidelines in force at a date that is reasonably close to August 19, 2019, which therefore plausibly reflect the latest version of the guidelines immediately before the publication of the BRT Statement. All copies of these guidelines are available in our BRT Corporate Purpose Archive. See *BRT Corporate Purpose Archive*, HARV. L. SCH. PROGRAM ON CORP. GOVERNANCE, <https://pcg.law.harvard.edu/data/BRTPurposeArchive> (last visited Mar. 30, 2022) [<https://perma.cc/CB8Z-BWMZ>].

60. *BRT Redefines Purpose*, *supra* note 19.

would expect this commitment to be reflected in the companies' current governance guidelines. In particular, during the sixteen months after the publication of the BRT Statement, we would expect these companies to have overturned their endorsement of shareholder primacy and embraced a stakeholderist purpose.

As we explain below, however, the predictions of the Commitment Hypothesis are not borne out by the data. Below we first discuss our findings with respect to the amendments made to governance guidelines after the BRT Statement (Section II.A). Then we discuss (Sections II.B through II.D) our findings with respect to all the guidelines that were in place at the end of the Two-Year Period.

A. Companies that Amended Their Guidelines

We found that, during the Two-Year Period, eighty-two percent of the companies in our sample updated their governance guidelines. Under the Commitment Hypothesis, we would expect these companies to take this opportunity to incorporate the philosophical shift from shareholder primacy to stakeholder governance into their corporate guidelines. Consistent with the PR Hypothesis, however, we found that this was not the case. First of all, of the 105 companies that amended their guidelines during this period, only a very small number (nine) changed their corporate purpose language. Furthermore, and more strikingly, fifty-seven companies chose to retain shareholder primacy as the principle guiding the decisions of their board of directors.

We classify guidelines that explicitly recognize the obligation of directors to serve shareholder interests, but not other constituencies, as "shareholder primacy" guidelines. A typical example of this language is found in the Amazon guidelines, which provide that "[t]he Board's primary purpose is to build long-term shareowner value."⁶¹ Other standard formulations of shareholder primacy, which echo the language used in state corporate codes and in Delaware case law,⁶² provide that

61. *Guidelines on Significant Corporate Governance Issues*, AMAZON.COM, INC. (2022), <https://pcg.law.harvard.edu/data/BRTPurposeArchive/Amazon1.pdf> [<https://perma.cc/MGM4-3ERN>].

62. *See, e.g.*, CAL. CORP. CODE § 309(a) (West 2022) ("A director shall perform the duties of a director . . . in good faith, in a manner such director believes to be in the best interests of the corporation and its shareholders . . ."). For an influential Delaware case, see, for example, *In re Walt Disney Co. Derivative Litig.*, 907 A.2d 693, 746–47 (Del. Ch. 2005), *aff'd*, 906 A.2d 27 (Del. 2006) ("The business judgment rule is . . . a presumption that in making a business decision the directors of a corporation acted on an informed basis, . . . and in the honest belief that the action

the company must be managed “to serve the best interests of the company and its stockholders” (Texas Instruments)⁶³ or “in the best long-term interests of the Company and its shareholders” (MetLife).⁶⁴

It is worth noting, however, that some guidelines continue to use another traditional formulation, which states that the board must act “in the best interests of the company” without emphasis on any constituencies. This formulation reproduces the standard of conduct for directors as codified in the Model Business Corporation Act,⁶⁵ the American Law Institute’s Principles of Corporate Governance,⁶⁶ and many state corporate codes.⁶⁷ We believe that retaining such classical formulations of corporate purpose, with no emphasis on the welfare of stakeholders,⁶⁸ is evidence that the company did not want to abandon the traditional paradigm to embrace stakeholderism. However, to err on the side of caution, since some observers might argue that the interests of the corporation, as a separate entity, might include the interests of stakeholders,⁶⁹ we classify these guidelines in a separate category (“traditional corporate purpose”) and do not include them under “shareholder primacy.”

Table 1 below lists all the companies that amended their governance guidelines between the publication of the BRT Statement and the end of 2020 and chose to reaffirm their endorsement of shareholder primacy.

taken was in the best interests of the company [and its shareholders].” (alteration in original) (internal quotation marks omitted)).

63. *Corporate Governance Guidelines*, TEX. INSTRUMENTS INC. 1, <https://pcg.law.harvard.edu/data/BRTPurposeArchive/TI1.pdf> (rev. July 16, 2020) [<https://perma.cc/VY4J-76CW>].

64. *Corporate Governance Guidelines*, METLIFE, INC. 4 (Apr. 28, 2020), <https://pcg.law.harvard.edu/data/BRTPurposeArchive/MetLife1.pdf> [<https://perma.cc/HL6X-56MU>].

65. MODEL BUS. CORP. ACT § 8.30(a) (AM. BAR ASS’N 2016) (“Each member of the board of directors, when discharging the duties of a director, shall act: (i) in good faith, and (ii) in a manner the director reasonably believes to be in the best interests of the corporation.”).

66. PRINCIPLES OF CORP. GOVERNANCE: ANALYSIS & RECOMMENDATIONS § 4.01 (AM. L. INST. 1994) (“A director or officer has a duty to the corporation to perform the director’s or officer’s functions in good faith, in a manner that he or she reasonably believes to be in the best interests of the corporation . . .”).

67. *See, e.g.*, CONN. GEN. STAT. § 33-756(a) (2022) (“Each member of the board of directors, when discharging the duties of a director, shall act: (1) In good faith; and (2) in a manner the director reasonably believes to be in the best interests of the corporation.”).

68. In fact, half of the guidelines with a traditional corporate purpose contain one or more provisions requiring executives to own stock in the company or to be paid in a form linked to stock value in order to align the interests of the executives with those of shareholders.

69. *See, e.g.*, Douglas G. Baird & M. Todd Henderson, *Other People’s Money*, 60 STAN. L. REV. 1309, 1312 n.17 (2008) (arguing that certain Delaware cases “suggest[] that the interests of ‘the corporation’ can be interpreted to include other stakeholders’ interests”).

TABLE 1: UPDATING COMPANIES THAT REAFFIRMED SHAREHOLDER
PRIMACY

<i>3M</i>	<i>Duke Energy</i>	<i>Noble Energy</i>
<i>A.O. Smith</i>	<i>Eastman Chemical</i>	<i>PepsiCo</i>
<i>AECOM</i>	<i>Exxon Mobil</i>	<i>Pfizer Inc.</i>
<i>Amazon</i>	<i>FedEx</i>	<i>Principal Financial Group</i>
<i>American Airlines</i>	<i>Fluor</i>	<i>Qualcomm</i>
<i>American Electric Power</i>	<i>Fox</i>	<i>Raytheon Technologies</i>
<i>American Express</i>	<i>Freeport-McMoRan</i>	<i>Rockwell Automation</i>
<i>American Tower</i>	<i>General Dynamics</i>	<i>Sempra Energy</i>
<i>Apple</i>	<i>Goldman Sachs</i>	<i>Stryker</i>
<i>Aramark</i>	<i>Honeywell</i>	<i>Texas Instruments</i>
<i>Bank of America</i>	<i>Interpublic Group</i>	<i>The Carlyle Group</i>
<i>Best Buy</i>	<i>KeyCorp</i>	<i>The Home Depot</i>
<i>Caterpillar</i>	<i>Lockheed Martin</i>	<i>United Airlines</i>
<i>CF Industries</i>	<i>Marathon Oil</i>	<i>Visa</i>
<i>Chevron</i>	<i>Marathon Petroleum</i>	<i>Vistra Energy</i>
<i>ConocoPhillips</i>	<i>MetLife</i>	<i>Walgreens Boots Alliance</i>
<i>Corning</i>	<i>Micron Technology</i>	<i>Western Union</i>
<i>CVS Health</i>	<i>Morgan Stanley</i>	<i>Xerox Corporation</i>
<i>Dell Technologies</i>	<i>Motorola Solutions</i>	<i>Zebra Technologies</i>

Apple, for example, updated its governance guidelines on August 19, 2020—the date of the first anniversary of the BRT Statement—and chose to retain a sentence that states: “The Board . . . assures that the long-term interests of the shareholders are being served,” with no mention of the interests of stakeholders.⁷⁰ CVS Health, which updated its guidelines in January 2020, declares to “[have] adopted [its] guidelines . . . to promote the interests of stockholders”;⁷¹ and Pfizer’s guidelines, updated in December 2020, continue to state that “[e]ach Director is expected to serve the best interests of all shareholders.”⁷²

However, although telling, the fact that over half of the BRT Companies amended their guidelines during the Two-Year Period but reaffirmed their prime purpose of serving shareholders does not provide a full picture of the BRT Companies’ governance guidelines. In the next three Sections, we turn to examine the complete state of affairs with respect to governance guidelines at the end of 2020. To what extent did

70. *Corporate Governance Guidelines*, APPLE INC. § 1, at 1 (Aug. 19, 2020), <https://pcg.law.harvard.edu/data/BRTPurposeArchive/Apple1.pdf> [<https://perma.cc/YDH4-VU8Y>].

71. *Corporate Governance Guidelines*, CVS HEALTH CORP. 1 (Jan. 31, 2020), <https://pcg.law.harvard.edu/data/BRTPurposeArchive/CVS1.pdf> [<https://perma.cc/TAY2-8RPY>].

72. *Corporate Governance Principles*, PFIZER INC. § 6, at 2 (Dec. 2020), <https://pcg.law.harvard.edu/data/BRTPurposeArchive/Pfizer1.pdf> [<https://perma.cc/K444-YHXH>].

the BRT Companies' guidelines at that time reflect a common commitment to move away from shareholder primacy? We will discuss the answer in the following Sections. To this end, we divide our sample into three subsamples, and we examine in turn the above question for each of these subsamples.

B. The BRT Board Sample

Let us start with the group of twenty-seven companies whose CEOs served on the board of directors of the BRT either at the time the BRT Statement was issued or at the end of the Two-Year Period (the "BRT Board Sample"). As Table 2 shows, this group includes some of the most prominent signatories of the BRT Statement, with an aggregate market capitalization of more than \$6 trillion.⁷³ Arguably, since their CEOs play a leadership role at the BRT, these companies would be especially likely to officially reflect the move from shareholder primacy to stakeholder governance in their governance guidelines.

73. Market capitalization data were collected from Compustat as of August 31, 2021.

TABLE 2: THE BRT BOARD SAMPLE

Company	CEO <i>(as of 2019 BRT Statement signing)</i>	Market Capitalization <i>(MM as of Aug. 2021)</i>
<i>AECOM</i>	Mike Burke	\$9,445
<i>Apple</i>	Tim Cook	\$2,509,775
<i>AT&T Inc.</i>	Randall Stephenson	\$195,779
<i>Best Buy Co., Inc.</i>	Corie Barry	\$29,183
<i>Boeing</i>	Dennis A. Muilenburg	\$128,660
<i>Cisco Systems, Inc.</i>	Chuck Robbins	\$248,722
<i>Cummins Inc.</i>	Tom Linebarger	\$33,888
<i>CVS Health</i>	Larry Merlo	\$113,998
<i>Dow</i>	Jim Fitterling	\$46,909
<i>Duke Energy</i>	Lynn Good	\$80,506
<i>Eastman Chemical Company</i>	Mark J. Costa	\$15,365
<i>General Motors Company</i>	Mary Barra	\$71,149
<i>IBM Corporation</i>	Ginni Rometty	\$125,790
<i>International Paper Co.</i>	Mark S. Sutton	\$23,485
<i>Johnson & Johnson</i>	Alex Gorsky	\$455,762
<i>JPMorgan Chase & Co.</i>	Jamie Dimon	\$477,955
<i>Lockheed Martin Corporation</i>	Marillyn A. Hewson	\$99,634
<i>Marriott International, Inc.</i>	Arne M. Sorenson	\$44,009
<i>Oracle</i>	Safra Catz	\$248,851
<i>Procter & Gamble</i>	David S. Taylor	\$345,768
<i>Progressive</i>	Tricia Griffith	\$56,375
<i>Raytheon Technologies Corporation</i>	Gregory J. Hayes	\$127,808
<i>S&P Global</i>	Douglas L. Peterson	\$106,961
<i>Steelcase Inc.</i>	James P. Keane	\$1,276
<i>Stryker</i>	Kevin Lobo	\$104,493
<i>Union Pacific</i>	Lance M. Fritz	\$141,406
<i>Walmart, Inc.</i>	Doug McMillon	\$414,998
Total		\$6,257,951

Our analysis of the guidelines in the BRT Board Sample, however, shows that in a substantial majority of cases (sixty-seven percent) the company's purpose does not include stakeholder welfare. Furthermore, as Table 3 below indicates, most of the guidelines containing corporate purpose provisions (fifty-eight percent) continue to state their explicit commitment to shareholder primacy.

Notable examples of companies that retained explicit endorsements of shareholder primacy are two companies whose CEOs played a key leadership role in the BRT's adoption of its statement. The

guidelines of JPMorgan Chase, whose CEO Jamie Dimon was the chairman of the BRT when the statement was issued, state that “[t]he Board as a whole is responsible for the oversight of management on behalf of the Firm’s shareholders.”⁷⁴ Similarly, Johnson & Johnson, whose CEO Alex Gorsky chaired the BRT’s Corporate Governance Committee at the time the BRT Statement was issued, states in quite clear terms that “[t]he business judgment of the Board must be exercised . . . in the long-term interests of our shareholders.”⁷⁵ Although these guidelines contain an introduction referring to the company’s 1934 “Credo,” which notes the corporation’s responsibility to customers, employees, and communities,⁷⁶ other provisions make it clear that directors’ business judgment must be exercised in the interests of shareholders.⁷⁷

TABLE 3: SHAREHOLDER PRIMACY IN THE BRT BOARD SAMPLE⁷⁸

Company	<i>Excerpt (emphasis added)</i>
AECOM*	<i>The primary responsibility of the Board . . . is to oversee the affairs of the Company for the benefit of stockholders.</i>
Apple*	<i>The Board oversees the Chief Executive Officer (the “CEO”) and other senior management in the competent and ethical operation of the Corporation on a day-to-day basis and assures that the long-term interests of the shareholders are being served.</i>
Best Buy Co., Inc.*	<i>The Board of Directors (the “Board”) of Best Buy Co., Inc., (the “Company”) has adopted these principles as a general framework to assist the Board in carrying out its responsibility for the oversight of the business and affairs of the Company. The Board is committed to good corporate governance practices and a sound governance structure that promotes the interests of all shareholders.</i>

74. *Corporate Governance Principles*, JPMORGAN CHASE & CO. § 3.1 (Jan. 2019), <https://pcg.law.harvard.edu/wp-content/uploads/btrpurposearchive/A.Corporate-Governance-Guidelines/AT&T%20Inc..pdf> [https://perma.cc/6A93-39GT].

75. *Principles of Corporate Governance*, JOHNSON & JOHNSON 1 (Feb. 13, 2018), <https://pcg.law.harvard.edu/data/BRTPurposeArchive/JJ1.pdf> [https://perma.cc/Z3AE-HMWB].

76. *Id.*

77. For example, another provision states that “[t]he fundamental responsibility of the Directors is to exercise their business judgment on matters of critical and long-term significance to the Company in furtherance of what they reasonably believe to be in the best interest of the Company, *and therefore its shareholders.*” *Id.* § 1, at 1 (emphasis added). A further provision states that “[m]anagement of the Company must be ethical, strive to uphold the highest standards of business practice and act in the long-term interests of the Company and its shareholders.” *Id.* § 4, at 4. In the former example, the guidelines explicitly equate the interests of the Company with those of its shareholders; in the latter, they use a conventional shareholder primacy formulation.

78. You can find the language excerpted in the following tables within the compiled governance documents in the BRT Corporate Purpose Archive, *supra* note 59. As noted above, we have bolded certain language for emphasis.

CVS Health*	<i>The Board of Directors . . . has adopted these guidelines to promote a high level of performance from the Board and management, to promote the interests of stockholders and to further the Company's commitment to best practices in corporate governance.</i>
Duke Energy*	<i>A director should at all times discharge his or her responsibilities with the highest standards of ethical conduct, in conformity with applicable laws and regulations, and act solely in the best interest of the Corporation's shareholders.</i>
Eastman Chemical Company*	<i>The Board of Directors is elected by the stockholders to oversee management and to assure that the long-term interests of the stockholders are being served. The primary role of the Board of Directors is to maximize stockholder value over the long-term.</i>
Johnson & Johnson	<i>The business judgment of the Board must be exercised independently and in the long-term interests of our shareholders.</i>
JPMorgan Chase & Co.	<i>The Board as a whole is responsible for the oversight of management on behalf of the Firm's shareholders.</i>
Lockheed Martin Corporation*	<i>The role of the Board is to oversee the management of the Corporation and to represent the interests of all the Corporation's stockholders.</i>
Oracle	<i>The Nomination and Governance Committee of the Board is responsible for reviewing with the Board the requisite skills and characteristics of new Board members as well as the composition of the Board as a whole. This assessment will include consideration of individual skills, experience and perspectives that will help create an outstanding, dynamic and effective Board to represent the interests of the stockholders.</i>
Procter & Gamble	<i>The Board represents and acts on behalf of all shareholders of the Company.</i>
Raytheon Technologies Corporation*	<i>Directors must be loyal to and act in the best interests of the Company and its shareowners.</i>
Steelcase Inc.	<i>These Corporate Governance Principles reflect the Board's commitment to monitor the effectiveness of policy and decision making both at the Board and management level, with a view to enhancing long-term stockholder value.</i>
Stryker*	<i>The Board of Directors (the "Board") of Stryker Corporation (the "Company") has adopted these guidelines to assist the Board in the exercise of its responsibilities to serve the best interests of the Company and its shareholders.</i>

*Guidelines updated after the publication of the BRT Statement (August 19, 2019).

The governance guidelines that do not have an explicit commitment to shareholder primacy can be divided into three groups. First, there are a small number of guidelines (only two of twenty-seven in the BRT Board Sample) that contain the traditional corporate

purpose paradigm.⁷⁹ As explained in Section II.A, this classical formulation does not authorize directors to consider stakeholder welfare and, due to its long-standing use in corporate documents, statutory language, and court opinions, does not signal any reorientation of corporate purpose.

Second, several guidelines (seven of the twenty-seven in the BRT Board Sample) urge directors to consider the welfare of stakeholders but make it clear that the consideration of stakeholder interests is subordinate to the main obligation of serving shareholders. We refer to this approach as “enlightened shareholder value.”⁸⁰ In these guidelines, the ultimate goal remains shareholder value—just as in the conventional shareholder primacy approach—but some stakeholder interests are highlighted as a means to maximize shareholder value.⁸¹

For example, General Motors’ guidelines state that “[d]irectors must fulfill their responsibilities consistent with their fiduciary duties to the shareholders” but add that “shareholders’ long-term interests will be advanced by responsibly addressing the concerns of other stakeholders essential to the Company’s success, including customers, employees, dealers, suppliers, government officials and the public at large.”⁸² Walmart’s guidelines specify that directors have a responsibility to act “in the best interests of the shareholders and the Company” but also advise directors to show their “awareness that the Company’s long-term success depends upon its strong relationship with its customers, associates, suppliers and the communities, including the global community, in which it operates.”⁸³

79. See *Corporate Governance Guidelines*, AT&T, INC. § 7, <https://pcg.law.harvard.edu/wp-content/uploads/brtpurposearchive/A.Corporate-Governance-Guidelines/AT&T%20Inc..pdf> (last visited Mar. 27, 2022) [<https://perma.cc/6A93-39GT>] (“[T]he primary responsibility of the Directors is to exercise their business judgment in the best interests of the Company.”); *Corporate Governance Guidelines*, DOW, INC. (Feb. 11, 2021), <https://pcg.law.harvard.edu/wp-content/uploads/brtpurposearchive/A.Corporate-Governance-Guidelines/Dow.pdf> [<https://perma.cc/XCL3-EC7T>] (“Directors are expected to expend sufficient time, energy and attention to assure diligent performance of their responsibilities to the Company.”).

80. In earlier work, we have also referred to it as “instrumental stakeholderism,” as stakeholder interests are taken into account only to the extent they serve shareholder value. Bebhuk & Tallarita, *Illusory Promise*, *supra* note 40, at 108.

81. Of these seven companies, five had already adopted an “enlightened shareholder value” approach before the BRT Statement.

82. *Corporate Governance Guidelines*, GEN. MOTORS CO. § 1, at 2, <https://pcg.law.harvard.edu/data/BRTPurposeArchive/GM1.pdf> (last updated Aug. 17, 2021) [<https://perma.cc/V2UC-M7KD>].

83. *Corporate Governance Guidelines*, WALMART INC. § 2, at 3 (Feb. 6, 2020), <https://pcg.law.harvard.edu/data/BRTPurposeArchive/Walmart1.pdf> [<https://perma.cc/9AJB-8FRW>].

Enlightened shareholder value hardly amounts to guiding directors to deliver value to all stakeholders, and it can often lead directors to impose substantial costs on stakeholders when doing so would serve shareholder value.⁸⁴ This approach is not operationally different from shareholder primacy: directors committed to shareholder primacy would also be well advised to consider stakeholder interests whenever doing so would serve long-term shareholder value.

Finally, only two companies in the BRT Board Sample (Cummins and International Paper) fall within the category of stakeholderism.⁸⁵ To be conservative, in order to classify guidelines under the category of stakeholderism, we do not require that they explicitly put shareholders and stakeholders on the same level; we only require that the guidelines not exclude such interpretation.

Both Cummins and International Paper had this kind of language before the publication of the BRT Statement, and they are both incorporated in states (Indiana and New York, respectively) whose corporate statutes authorize directors to consider the interests of stakeholders when making business decisions (or some major decisions).⁸⁶ Therefore, these guidelines do not reflect any changes prompted by the BRT Statement or the development of new stakeholder-oriented attitudes among corporate CEOs in recent years.

84. See Bebczuk & Tallarita, *Illusory Promise*, *supra* note 40, at 108–15.

85. Cummins' guidelines provided that "[t]he primary mission of the Board is to represent and protect the interests of the Company's stakeholders." *Corporate Governance Principles*, CUMMINS INC. § 1, at 1, <https://pcg.law.harvard.edu/data/BRTPurposeArchive/Cummins1.pdf> (last updated Dec. 8, 2020) [<https://perma.cc/WTG2-VUZ3>]. International Paper's guidelines provide that "[t]he Board is responsible for assuring appropriate alignment of its leadership structure, committees and management with the interests of shareowners, employees and the communities in which the Company operates, and may, pursuant to its By-Laws, establish committees to exercise delegated authority." *Corporate Governance Guidelines*, INT'L PAPER CO. 1 (Feb. 18, 2021), <https://pcg.law.harvard.edu/data/BRTPurposeArchive/PaperCo1.pdf> [<https://perma.cc/BFF6-MQV3>].

86. See IND. CODE § 23-1-35-1(d) (2022). ("A director may, in considering the best interests of a corporation, consider the effects of any action on shareholders, employees, suppliers, and customers of the corporation, and communities in which offices or other facilities of the corporation are located, and any other factors the director considers pertinent."); N.Y. BUS. CORP. LAW § 717(b) (McKinney 2022):

In taking action . . . a director shall be entitled to consider, without limitation . . . the effects that the corporation's actions may have in the short-term or in the long-term upon any of the following: (i) the prospects for potential growth, development, productivity and profitability of the corporation; (ii) the corporation's current employees; (iii) the corporation's retired employees and other beneficiaries receiving or entitled to receive retirement, welfare or similar benefits from or pursuant to any plan sponsored, or agreement entered into, by the corporation; (iv) the corporation's customers and creditors; (v) the ability of the corporation to provide, as a going concern, goods, services, employment opportunities and employment benefits and otherwise to contribute to the communities in which it does business.

C. Large Companies

We turn to the sample of the twenty-five largest companies that are not included in the BRT Board Sample (the “Large Companies Sample”). As Table 4 shows, these companies have an aggregate market capitalization of almost \$7 trillion. With their large professional resources, large companies are more likely to update their guidelines whenever warranted, and they are also ones whose governance is relatively more salient for any assessment of public policy.

TABLE 4: THE LARGE COMPANIES SAMPLE

Company	CEO <i>(as of Aug. 2019)</i>	Market Capitalization <i>(MM as of Aug. 2021)</i>
<i>Abbott</i>	Miles D. White	\$224,031
<i>Amazon</i>	Jeffrey P. Bezos	\$1,757,750
<i>American Express</i>	Stephen J. Squeri	\$131,844
<i>American Tower Corporation</i>	James D. Taiclet, Jr.	\$132,979
<i>Bank of America</i>	Brian Moynihan	\$351,322
<i>BlackRock, Inc.</i>	Laurence D. Fink	\$143,565
<i>Bristol-Myers Squibb</i>	Giovanni Caforio	\$148,571
<i>Chevron Corporation</i>	Michael K. Wirth	\$187,145
<i>Citigroup, Inc.</i>	Michael L. Corbat	\$145,746
<i>Comcast Corporation</i>	Brian L. Roberts	\$277,932
<i>Exxon Mobil Corporation</i>	Darren W. Woods	\$230,814
<i>Goldman Sachs</i>	David M. Solomon	\$140,495
<i>Honeywell</i>	Darius Adamczyk	\$160,110
<i>Mastercard</i>	Ajay Banga	\$338,900
<i>Morgan Stanley</i>	James P. Gorman	\$190,539
<i>PepsiCo</i>	Ramon Laguarta	\$216,149
<i>Pfizer Inc.</i>	Dr. Albert Bourla	\$258,300
<i>Qualcomm Incorporated</i>	Steve Mollenkopf	\$165,466
<i>Salesforce</i>	Keith Block	\$256,173
<i>Target</i>	Brian Cornell	\$120,934
<i>Texas Instruments</i>	Richard K. Templeton	\$176,250
<i>The Coca-Cola Company</i>	James Quincey	\$243,259
<i>The Home Depot</i>	Craig Menear	\$344,237
<i>UPS</i>	David Abney	\$142,475
<i>Visa Inc.</i>	Alfred F. Kelly Jr.	\$386,639
Total		\$6,871,626

Our review of these companies' governance guidelines indicates that a vast majority of the companies (eighty-four percent) did not include stakeholder interests in their corporate purpose, and most of the guidelines with corporate purpose language (seventy-three percent) explicitly embraced shareholder primacy. Table 5 below reports excerpts of the guidelines of the companies in the Large Companies Sample with a shareholder primacy approach.

TABLE 5: SHAREHOLDER PRIMACY IN THE LARGE COMPANIES SAMPLE

Company	Excerpt (emphasis added)
Amazon*	<i>The Board of Directors is responsible for the control and direction of the Company. It represents and is accountable only to shareowners. The Board's primary purpose is to build long-term shareowner value.</i>
American Express*	<i>Directors should be committed to representing the interests of all shareholders and not to advancing the interests of special interest groups or constituencies of shareholders.</i>
American Tower Corporation*	<i>The Board of Directors . . . has developed corporate governance practices to help it fulfill its responsibility to the stockholders to oversee the work of management and the Company's business results. These practices are memorialized in these guidelines. These guidelines assure the Board will have the necessary authority and practices in place to review and evaluate the Company's business operations as needed and to make decisions that are independent of the Company's management. They are also intended to align the interests of Directors and management with those of the Company's stockholders.</i>
Bank of America*	<i>The Board of Directors . . . has formally adopted these guidelines to promote a high level of performance from the Board and management, to promote the interests of stockholders and to further the Company's commitment to best practices in corporate governance.</i>
Chevron Corporation*	<i>Directors should have the highest professional and personal ethics and values, consistent with The Chevron Way and the Business Conduct and Ethics Code, and a commitment to building stockholder value.</i>
Exxon Mobil Corporation*	<i>The directors' fiduciary duty is to exercise their business judgment in the best interests of ExxonMobil's shareholders.</i>
Goldman Sachs*	<i>The Board of Directors (the "Board") of The Goldman Sachs Group, Inc. (the "Company"), acting on the recommendation of its Corporate Governance and Nominating Committee (the "Governance Committee"), has adopted these corporate governance principles (the "Guidelines") to promote the effective functioning of the Board and its committees, to promote the interests of shareholders, and to ensure a common set of expectations as to how the Board, its various committees, individual directors and management should perform their functions.</i>

<i>Honeywell*</i>	<i>The primary functions of the Honeywell International Inc. Board of Directors . . . are to oversee management performance on behalf of the shareowners, to ensure that the long-term interests of the shareowners are being served, to monitor adherence to Honeywell standards and policies, to promote the exercise of responsible corporate citizenship, and generally to perform the duties and responsibilities assigned to the Board by the laws of Delaware, the state of incorporation of the Company.</i>
<i>Morgan Stanley*</i>	<i>Directors are expected to exercise their business judgment to act in good faith, on an informed basis and in what they reasonably believe to be the best interests of the Company and its shareholders.</i>
<i>PepsiCo*</i>	<i>The following are the Board's primary responsibilities, some of which may be carried out by one or more Committees of the Board or the independent Directors, as appropriate: 1. Represent the interests of the Corporation's shareholders in maintaining and enhancing the success of the Corporation's business, including optimizing long-term returns to increase shareholder value.</i>
<i>Pfizer Inc.*</i>	<i>Each Director is expected to serve the best interests of all shareholders and must be committed to enhancing long-term Company growth.</i>
<i>Qualcomm Incorporated*</i>	<i>[The governance guidelines] will be regularly re-evaluated by the Board's Governance Committee in order to continue serving the best interests of the Company's stockholders.</i>
<i>Salesforce</i>	<i>Directors should possess the highest personal and professional ethics, integrity and values, and be committed to representing the long-term interests of our stockholders.</i>
<i>Texas Instruments *</i>	<i>These guidelines represent the current position of the Board on various corporate governance matters; the Board may, in its sole discretion, amend the guidelines from time to time if it deems it appropriate to do so in order to serve the best interests of the company and its stockholders.</i>
<i>The Home Depot*</i>	<i>The Board of Directors . . . is committed to maximizing long-term shareholder value while supporting management in the business and operations of the Company, observing the highest ethical standards, and adhering to the laws of the jurisdictions within which the Company operates.</i>
<i>Visa Inc.*</i>	<i>The basic responsibility of all directors is to exercise their business judgment to act in what they reasonably believe to be in the best interest of the Company and its stockholders.</i>

*Guidelines updated after the publication of the BRT Statement (August 19, 2019)

To illustrate, consider the guidelines of Amazon, Chevron, and Pfizer, three major corporations that enjoy extraordinary visibility due to their size and economic significance. The guidelines of all three companies, updated in 2020 or 2021, continue to pledge allegiance to shareholders with no meaningful mention of stakeholders. Amazon's directors have the "primary purpose . . . to build long-term shareowner

value”⁸⁷ and are required to have a “commitment to representing the long-term interests of the shareowners.”⁸⁸ Chevron’s directors must have a “commitment to building stockholder value” and their skills and characteristics must be assessed “in light of the current and anticipated strategic plans and operating requirements of the Corporation and the long-term interests of stockholders.”⁸⁹ Finally, Pfizer’s directors are “expected to serve the best interests of all shareholders and must be committed to enhancing long-term Company growth.”⁹⁰

Remarkably, the six companies in the Large Companies Sample that do not have an explicit commitment to shareholder primacy do not embrace stakeholderism either. Of these companies, two have guidelines with a traditional corporate purpose language (Comcast and Mastercard),⁹¹ and four have guidelines adopting an enlightened shareholder value approach (BlackRock, Bristol-Myers Squibb, Coca-Cola, and Citigroup).⁹² Both approaches, as explained above, are

87. AMAZON.COM, INC., *supra* note 61, § I.

88. *Id.* § III.

89. *Corporate Governance Guidelines*, CHEVRON CORP. 1 (Jan. 27, 2021), <https://pcg.law.harvard.edu/data/BRTPurposeArchive/Chevron1.pdf> [<https://perma.cc/TC38-NREP>].

90. PFIZER INC., *supra* note 72, § 6, at 2.

91. Comcast guidelines provide that “[i]n fulfilling [their] roles, each director must act in what he or she reasonably believes to be in the best interests of the Company and must exercise his or her business judgment.” *Corporate Governance Guidelines*, COMCAST CORP. 2, <https://pcg.law.harvard.edu/data/BRTPurposeArchive/Comcast1.pdf> (last updated Dec. 11, 2019) [<https://perma.cc/8XU6-6YR2>]. Mastercard guidelines provide that “[i]n all actions taken by the Board, the directors are expected to exercise their business judgment in what they reasonably believe to be in the best interests of the Company.” *Corporate Governance Guidelines*, MASTERCARD INC. (Sept. 2019), <https://pcg.law.harvard.edu/data/BRTPurposeArchive/Mastercard1.pdf> [<https://perma.cc/RD3A-HLCW>].

92. BlackRock guidelines provide that “[b]oth the Board and the management of BlackRock recognize that creating long-term value for the Company’s shareholders will require consideration of the concerns of other stakeholders and interested parties including clients, employees and the communities in which BlackRock operates.” *Corporate Governance Guidelines*, BLACKROCK, INC. § 2, at 1 (Sept. 30, 2020), <https://pcg.law.harvard.edu/data/BRTPurposeArchive/BlackRock1.pdf> [<https://perma.cc/4ACV-7JZV>].

Bristol-Myers Squibb guidelines provide that “[t]he basic responsibility of the directors is to exercise their business judgment to act in the best interests of the Company and its stockholders. In carrying out this responsibility, the Board also considers the concerns of its other stakeholders and interested parties, including its employees, customers, suppliers, partners, local communities, and the public at large.” *Corporate Governance Guidelines*, BRISTOL-MYERS SQUIBB CO. § 1, at 6 (Dec. 2020), <https://pcg.law.harvard.edu/data/BRTPurposeArchive/BMS1.pdf> [<https://perma.cc/38CK-AKV3>].

Coca-Cola guidelines provide that “[d]irectors must fulfill their responsibilities consistent with their fiduciary duties to the shareowners, in compliance with all applicable laws and regulations. Directors will also, as appropriate, take into consideration the interests of other stakeholders, including employees and the members of communities in which the Company operates.” *Corporate Governance Guidelines*, COCA-COLA CO. § 1 (Apr. 26, 2017), <https://www.coca->

operationally indistinguishable from shareholder primacy. Even under our conservative definition of stakeholderism, we were not able to identify any companies in this sample with such guidelines.

D. Other Companies

We now turn to the seventy-six companies that signed the BRT Statement but are neither in the BRT Board Sample nor in the Large Companies Sample. While these companies are not as large as those in the Large Companies Sample, they include many major firms, such as American Airlines, Dell, FedEx, Ford Motor Company, MetLife, and Walgreens. The aggregate market capitalization of the companies in this group exceeded \$2.3 trillion at the end of the Two-Year Period.⁹³

Our review of these companies' governance guidelines reinforces the conclusions of the preceding two Sections. Of these seventy-six companies, a substantial majority (seventy-five percent) do not include stakeholder interests in the purpose of the corporation, and a majority of the guidelines with corporate purpose language (sixty-two percent) affirm their explicit commitment to shareholder primacy. Table A1 in the Appendix contains excerpts of the forty-three guidelines in this group that reflect a shareholder primacy approach.

To illustrate, consider the guidelines of Dell, which provide that the board "is committed to the achievement of business success and the enhancement of long-term stockholder value with the highest standards of integrity and ethics"⁹⁴ and that "[e]ach director should have . . . an intense dedication to serving the interests of the Company's stockholders";⁹⁵ or of Marathon Petroleum, which provide that "[t]he business and affairs of [the company] are managed . . . for the benefit of the stockholders"⁹⁶ and that among the relevant skills of director

colacompany.com/policies-and-practices/corporate-governance-guidelines [https://perma.cc/2HWJ-82V8].

Citigroup guidelines provide that "[t]he Board of Directors' primary responsibility is to provide effective governance over Citi's affairs for the benefit of its stockholders, and to consider the interests of its diverse constituencies around the world, including its customers, employees, suppliers and local communities." *Corporate Governance Guidelines*, CITIGROUP, INC. 1 (Jan. 21, 2021), <https://pcg.law.harvard.edu/data/BRTPurposeArchive/Citi1.pdf> [https://perma.cc/4XRS-K4DK].

93. Data on market capitalization has been collected from Compustat, as of August 31, 2021.

94. *Corporate Governance Principles*, DELL TECHS., INC. 1 (Sept. 25, 2020), <https://pcg.law.harvard.edu/data/BRTPurposeArchive/Dell1.pdf> [https://perma.cc/X2CE-D3AR].

95. *Id.* at 3.

96. *Corporate Governance Principles*, MARATHON PETROLEUM CORP. § I.A, at 1 (Apr. 28, 2021), <https://pcg.law.harvard.edu/data/BRTPurposeArchive/MarathonPetroleum1.pdf> [https://perma.cc/4AWQ-M9KS].

nominees must be the “ability to represent all stockholders as opposed to a specific special interest group or constituency.”⁹⁷ These guidelines, and most others, show no sign of the ostensible paradigm shift announced by the BRT Statement.

Of the twenty-six companies in this sample that contain a formulation of corporate purpose and do not have an explicit commitment to shareholder primacy (a small minority of the sample), only five adhere to stakeholderism. The others have either guidelines with a traditional corporate purpose or with an enlightened shareholder value approach.

Notably, even the five companies that, under our criteria, fall under the category of “stakeholderism” are not completely devoid of shareholder-centric language. For example, Baxter International’s guidelines state that corporate governance should be a means to “address[] the needs of the Company’s shareholders, employees, customers and other stakeholders”⁹⁸ but shortly thereafter add that “each director is accountable to all shareholders of the Company, not to any particular interest group”⁹⁹ and has a “duty of loyalty owed to the Company and its shareholders.”¹⁰⁰ Leidos’ guidelines, as another example, recognize the importance of addressing the “various needs” of the company’s shareholders and stakeholders, but they also emphasize that “[a] fundamental goal of the Board is to build long-term value for the Company’s stockholders.”¹⁰¹

* * *

Thus, the three samples, and hence our review of the corporate governance guidelines as a whole, paint a coherent picture. In contrast with the predictions of the Commitment Hypothesis, the corporate governance guidelines of BRT Companies do not reflect, even after a substantial interim period following the issuance of the BRT Statement, a move away from shareholder primacy and a commitment to deliver value to all stakeholders. On the contrary, these companies have largely reaffirmed their commitment to shareholder primacy or reiterated a

97. *Id.* § IV.A, at 8.

98. *Corporate Governance Guidelines*, BAXTER INT’L INC., <https://pcg.law.harvard.edu/data/BRTPurposeArchive/Baxter1.pdf> (rev. Nov. 16, 2020) [<https://perma.cc/U58A-5JVS>].

99. *Id.* § I.B.1.

100. *Id.*

101. *Corporate Governance Guidelines*, LEIDOS HOLDINGS, INC. 1, <https://pcg.law.harvard.edu/data/BRTPurposeArchive/Leidos1.pdf> (last visited Feb. 8, 2022) [<https://perma.cc/GB4X-GH5R>].

long-standing approach of mentioning the interests or concerns of the company's stakeholders without making them equal to shareholders.

III. REACTIONS TO SHAREHOLDER PROPOSALS

This Part examines the reactions of twenty-six BRT Companies to shareholder proposals regarding the implementation of the BRT Statement. As we explain below, these reactions suggest that many BRT Companies expected their endorsement of the BRT Statement to have a negligible impact on their operations. Indeed, none of these companies suggested, in response to these proposals, that they expected to make significant changes in the way they treat their stakeholders. In fact, most (seventeen) explicitly stated that they had already been following the principles set forth in the BRT Statement and denied that they planned to make any major changes in order to implement the statement.¹⁰²

A. The Proposals

Following the publication of the BRT Statement, BRT Companies received shareholder proposals regarding the implementation of the stakeholderist principles set forth in the statement. Many of these proposals requested an assessment by the board of the principles announced in the BRT Statement and their consistency with the company's governance documents, goals, and plans for the future. For example, a proposal submitted to Amazon requested that the board prepare "a report based on a review of the BRT Statement . . . and to provide [its] perspective regarding whether our Company's governance and management systems should be altered to fully implement the [BRT] Statement."¹⁰³

102. See, e.g., Bank of Am. Corp., 2020 Proxy Statement (Form 14A) 84 (Mar. 9, 2020); <https://pcg.law.harvard.edu/wp-content/uploads/brtpurposearchive/Statement-in-Opposition-to-Shareholder-Proposals/Bank%20of%20America%20Corporation.pdf>

In light of our demonstrated and longstanding commitment to driving the economy in sustainable ways—helping to create jobs, develop communities, foster economic mobility, and address some of society's biggest challenges around the world—while managing risk and providing a return to our clients and our owners, and the extensive reporting we already provide addressing our policies and practices, we believe that our governance policies and practices are well-aligned with the Business Roundtable's Statement on the Purpose of a Corporation. Therefore, the report requested in the proposal is unnecessary and duplicative to our ongoing efforts driving Responsible Growth.

103. The text of all shareholder proposals discussed in this Part have been collected from the FactSet database.

Other proposals observed that the stakeholderist approach announced in the BRT Statement cannot be pursued by a conventional Delaware corporation, which is expected to operate for the maximization of shareholder value. Therefore, in order to implement the BRT Statement, these proposals requested that the board amend the certificate of incorporation and become a “public benefit corporation,” which under Delaware law is a stakeholder-centric corporate entity.¹⁰⁴ Proposals of this kind were submitted to, for example, Bank of America, BlackRock, Chevron, and Goldman Sachs.

Finally, many proposals focused on specific governance or business issues that have a significant social impact and requested that the board take action on those issues in furtherance of the stakeholder-oriented commitments announced in the BRT Statement. For example, a proposal submitted to Citigroup requested that the company disclose its lobbying activities and expenditures. Proposals submitted to Amazon, FedEx, Stryker and other companies recommended the inclusion of nonmanagement employees on the board. And proposals submitted to, among others, Marathon Petroleum and Marriott recommended the adoption of stakeholder-based metrics for executive compensation. In all these cases, the shareholder-proponents explicitly referred to the BRT Statement and urged the board to live up to the stakeholderist commitments contained therein.

We examined all the proxy statements and the no-action letter requests filed with the SEC¹⁰⁵ by BRT Companies after the publication of the BRT Statement in order to identify all shareholder proposals regarding the implementation of the BRT Statement and the relevant responses by the companies. To this end, we manually searched and reviewed all shareholder proposals reported by FactSet that were submitted to BRT Companies during the Two-Year Period. Then, for each relevant proposal, we manually collected the documents contained in the SEC decision record for no-action letter requests, available on the SEC website, as well as the proxy statement of each company for the annual meeting to which the proposal refers, available on the SEC’s Electronic Data Gathering, Analysis, and Retrieval system (“EDGAR”).

104. See Dana Brakman Reiser, *Benefit Corporations—A Sustainable Form of Organization?*, 46 WAKE FOREST L. REV. 591, 597–98 (2011).

105. Under Rule 14a-8, companies may exclude a shareholder proposal from the proxy statement if the proposal does not meet certain formal or substantive criteria. The standard process is that the company must file with the SEC a request of no-action letter presenting its reasons for excluding the proposals, the proponent may respond to the no-action request, and the SEC staff makes a decision on whether it agrees with the company or not. 17 C.F.R. § 240.14a-8 (2022).

We reviewed both the cases in which the company successfully excluded the proposal from the ballot and those in which the proposal ultimately went to a vote.

Our final sample includes forty-two shareholder proposals submitted to twenty-six BRT Companies (some companies received more than one proposal regarding the BRT Statement for the 2020 or the 2021 annual meetings). Since shareholder-proponents often target companies that are large and visible,¹⁰⁶ the vast majority of these proposals were submitted to companies in the BRT Board Sample, such as Apple, CVS, Johnson & Johnson, and JPMorgan Chase; or in the Large Companies Sample, such as Amazon, Bank of America, Chevron, and PepsiCo. However, other major companies, such as FedEx and Goldman Sachs, received proposals regarding the implementation of the BRT Statement.

Targeted companies reacted to these proposals in one of two ways (or both). In about half of the cases, they sought a no-action letter from the SEC in order to exclude the proposal from the ballot and thus avoid a shareholder vote on it. Then, for every single proposal that ultimately went to a vote—whether because the company did not request a no-action letter or because the no-action letter was not granted by the SEC—the company invariably recommended that shareholders vote against it.

In both cases, in order to persuade the SEC or the shareholders that the proposal was meritless, the company often had to take a position on the core issue: the implementation of the BRT Statement. In Section III.B we will examine the companies' statements on this point, both in their no-action letter requests and in their proxy statements.

B. Requests for SEC No-Action Letters

Of the fifteen companies that attempted to exclude proposals regarding the implementation of the BRT Statement, eleven stated in quite clear terms that they had already been following the principles of the BRT Statement and therefore did not expect any further changes to their governance or practices. Table 6 reports the relevant excerpts from the no-action letter requests of each of these companies.

106. For a discussion of this phenomenon, see, for example, Roberto Tallarita, *Stockholder Politics*, 73 HASTINGS L.J. (forthcoming 2022) (manuscript at 7–8), <https://ssrn.com/abstract=3798101> [<https://perma.cc/R6JX-2YTF>].

TABLE 6: STATEMENTS IN REQUESTS FOR NO-ACTION LETTERS

Company	Excerpt (<i>emphasis added</i>)
Amazon	[T]he Governance Committee determined that the Company's existing governance and management systems do not need to be altered in order to fully implement the BRT Statement because the Company's policies, actions, and disclosures already are consistent with the BRT Statement.
Apple	Mr. Cook's signing of the [BRT Statement] did not represent a shift in strategy or require management to operate the business any differently than it had previously.
Bank of America	[W]hile we cannot speak for all companies, the commitments articulated in the BRT Statement are essentially the same as the principles that already guide how the Company operates . . . [T]he Company's commitment to all of its stakeholders through the BRT Statement does not represent a paradigm shift . . .
BlackRock, Inc.	As demonstrated by BlackRock's publicly disclosed policies and practices, BlackRock already operates in accordance with the principles set forth in the BRT Statement and has done so for many years As further explained below, there is virtually no difference between the principles espoused in the BRT Statement and those to which BlackRock already adheres.
Citigroup Inc.	[B]ecause the Statement memorialized the Company's current commitment to stakeholders, there were no changes to policy, practices or documents that the Company needed to implement.
Duke Energy Corporation	Ms. Good's signature on the Statement of Purpose was consistent with the Company's own statement of purpose and simply reiterated the commitment the Company had already made to its communities and stakeholders, as evidenced by its own practices, policies, procedures and disclosures.
Goldman Sachs	The framework of good governance and corporate citizenship articulated in the [BRT] Statement is consistent with the Company's long-standing commitment to building long-term value for its shareholders by managing the Company in a responsible way in consideration of a broader group of stakeholders, including its employees and clients as well as the communities in which the Company's people live and work.
Johnson & Johnson	Johnson & Johnson already was operating in accordance with the principles set forth in the BRT Statement prior to their publication, and has done so for many decades
JPMorgan Chase & Co.	[T]he Company operated in accordance with the principles set forth in the BRT Statement before its publication , and continues to do so after its publication. [T]here is virtually no difference between the principles espoused in the BRT Statement and those to which the Company already adheres.
McKesson Corporation	McKesson already operates in accordance with the principles outlined in the BRT Statement.

<i>Target Corporation</i>	<i>[T]he Committee determined that the Company's governance and management systems do not need to be altered in order to fully implement the Statement of Purpose because the Company already operates in accordance with the principles set forth in the Statement of Purpose</i>
---------------------------	---

To illustrate, it is worth elaborating on some examples. JPMorgan Chase, whose CEO Jamie Dimon was chair of the BRT at the time of the issuance of the BRT Statement and played a visible role in this connection,¹⁰⁷ received three proposals about the implementation of the statement, one for the 2020 annual meeting and two for the 2021 annual meeting. In all three cases, JPMorgan sought a no-action letter from the SEC and, in so doing, made clear that the company did not need to change its corporate policies as a consequence of the BRT Statement.

In one request, JPMorgan's counsel wrote that "the Company operated in accordance with the principles set forth in the BRT Statement before its publication, and continues to do so after its publication"¹⁰⁸ and "no alteration of the Company's governance and management systems is necessary."¹⁰⁹ The request went on to point to various of the company's reports and communications, all preceding the BRT Statement, that reflected similar stakeholder-oriented principles. The request concluded that "the BRT Statement presents commitments that the Company has stated and met for years" and "does not subject the Company to any new commitments."¹¹⁰

The second request reiterated the same arguments. It sought to show for several pages, including a four-page chart comparing the BRT Statement to previous versions of the company's public documents, that "there is virtually no difference between the principles espoused in the BRT Statement and those to which the Company already adheres."¹¹¹ Interestingly, in the third request—which responded to a proposal requesting the conversion of JPMorgan into a "public benefit corporation" in order to fully comply with the BRT Statement—JPMorgan argued that directors of conventional Delaware corporations may take into account the interests of stakeholders to the extent they do not conflict with the interests of shareholders. As an example of this principle—which we have referred to as "enlightened shareholder value"

107. See Colvin, *supra* note 30 (reporting that "the BRT's statement was prompted by JPMorgan Chase CEO Jamie Dimon, who was then the BRT's chairman").

108. JPMorgan Chase & Co., SEC Staff No-Action Letter, 2020 WL 255796, at *4 (Feb. 5, 2020).

109. *Id.*

110. *Id.* at *9.

111. JPMorgan Chase & Co., SEC Staff No-Action Letter, 2021 WL 142268, at *18 (Feb. 8, 2021).

and discussed in Section II.A—the letter quoted the BRT Statement, thus suggesting that, according to JPMorgan’s interpretation, the BRT statement does not require the company to improve stakeholder welfare if such improvement comes at the expense of shareholders.¹¹²

Two other telling examples are Johnson & Johnson and Apple. Johnson & Johnson, whose CEO Alex Gorsky was the chair of the BRT’s corporate governance committee when the BRT Statement was issued, argued through its counsel in a no-action letter request that “Johnson & Johnson already was operating in accordance with the principles set forth in the BRT Statement prior to their publication, and has done so for many decades.”¹¹³ In particular, the request referred to the company’s 1943 “Credo,” which mentions the company’s responsibilities to various stakeholders (“the patients, doctors and nurses, to mothers and fathers and all others who use [Johnson & Johnson’s] products and services; Johnson & Johnson’s employees; and the communities in which Johnson & Johnson works”) and asserted that “Johnson & Johnson does not need to take any action whatsoever in order to implement the BRT Statement.”¹¹⁴

Similarly, Apple, the largest signatory of the BRT Statement, sought to exclude a proposal on the implementation of the statement on the grounds that “the Company already operate[d] in accordance with the principles set forth in the [BRT Statement].”¹¹⁵ In particular, Apple argued that “[f]or many years, the Company has been firmly committed to its core values of accessibility, inclusion and diversity, education, privacy and security, protecting the environment, and supplier responsibility” and that “[t]he notion that a business should deliver value to all stakeholders, and not only its shareholders, lies at the heart of Apple’s Values.”¹¹⁶ Apple concluded its request by clarifying that “Mr. Cook’s signing of the Statement of Purpose did not represent a shift in strategy or require management to operate the business any differently than it had previously.”¹¹⁷

In other words, these major signatories of the BRT Statement, as well as many others, explicitly admitted that the BRT Statement was

112. JPMorgan Chase & Co., SEC Staff No-Action Letter, 2021 WL 151305, at *6 (Jan. 15, 2021). Note that, as shown in Section II.B, JPMorgan’s guidelines do not even clear the threshold of “enlightened shareholder value,” as they state, in terms that are quite clear, that “[t]he Board as a whole is responsible for the oversight of management *on behalf of the Firm’s shareholders*.” See *supra* Table 3 and accompanying text.

113. Johnson & Johnson, SEC Staff No-Action Letter, 2020 WL 7419243, at *21 (Jan. 26, 2021).

114. *Id.* at *21–23.

115. Apple Inc., SEC Staff No-Action Letter, 2020 WL 6198175, at *20 (Nov. 17, 2020).

116. *Id.* at *20–21.

117. *Id.* at *21.

not expected to produce any changes in the way companies treat their stakeholders. Hence, stakeholders should expect to be treated in the same way they have been treated for many years or decades.

C. Statements in Opposition to Proposals

Despite the attempts of many companies, most of the proposals at issue went to a vote. Of the forty-two proposals submitted, twenty-seven were ultimately included in the company's proxy statement, either because the company did not seek to exclude the proposal or because the SEC did not grant the company's no-action letter request. In all these cases, however, the board opposed the proposals and recommended that shareholders vote against them.

In opposing the proposals, companies often made the argument, already seen in no-action letter requests, that they already operate in compliance with the BRT Statement and that they did not need to make any changes to their policies and practices. Of the twenty companies with one of these proposals on the ballot, eleven companies explicitly used this argument in their proxy statement. Table 7 reports the relevant excerpts from the opposition statements included in the proxy statements of each of these companies.

TABLE 7: STATEMENTS IN OPPOSITION TO PROPOSALS COMING TO A
VOTE

Company	<i>Excerpt (emphasis added)</i>
<i>3M Company</i>	<i>3M is already carrying on its purpose-driven mission by taking all stakeholders into consideration in our long-term strategies and business operations, and living the five principles of the BRT Statement . . .</i>
<i>Amazon</i>	<i>Our Board believes that our existing, robust corporate governance processes benefit all of our stakeholders, including our employees.</i>
<i>Bank of America</i>	<i>In light of our demonstrated and longstanding commitment to driving the economy in sustainable ways—helping to create jobs, develop communities, foster economic mobility, and address some of society's biggest challenges around the world—. . . we believe that our governance policies and practices are well-aligned with the [BRT] Statement . . .</i>
	<i>In light of our demonstrated commitment to Responsible Growth and the core commitments of the [BRT Statement], the unnecessary need to change our corporate form to continue delivering Responsible Growth, and the lack of precedent and uncertainties around the public benefit corporation model for a company of our size and complexity, we believe that the change in our company's organizational form requested in the proposal is unnecessary.</i>

<i>BlackRock, Inc.</i>	<p><i>The Board . . . believes that the Company already operates in accordance with principles and commitments consistent with the [BRT Statement], and that no changes to the Company's existing governance and management systems are required.</i></p> <p><i>When our CEO signed the BRT Statement, which indicated BlackRock's commitment to serving all stakeholders, BlackRock already operated in accordance with this principle.</i></p>
<i>Caterpillar Inc.</i>	<p><i>The Statement's expressed commitment to benefit all stakeholders of a company, including, shareholders, employees, customers, communities and suppliers is wholly consistent with our Values in Action, our current governance structure and our obligations under Delaware General Corporation Law to maximize shareholder value. Our ability to drive long term profitable growth, thereby maximizing shareholder value, is dependent on how well we serve our clients, manage our employees and support our broader stakeholders, including the communities in which we live and work.</i></p>
<i>Chevron Corporation</i>	<p><i>The Business Roundtable Statement on the Purpose of a Corporation sets forth commitments in five key areas: delivering value to customers; investing in employees; dealing fairly and ethically with suppliers; supporting communities in which we work; and generating long-term value for stockholders. Chevron has a long track record of success in each of these five areas and remains dedicated to these principles because they have always contributed to the long-term, sustainable health of our Company.</i></p>
<i>Citigroup Inc.</i>	<p><i>Citi adopted the Statement because it aligned with how we already view our mission and values . . . Citi did not view the Statement as an overhaul of its corporate purpose, but rather as a document that memorializes the Company's current practices and policies in each of the five areas identified by the Statement.</i></p>
<i>Goldman Sachs</i>	<p><i>We believe that the Statement's expressed commitment for a company to benefit all stakeholders—customers, employees, communities, shareholders and suppliers—is wholly consistent with our long-standing principles and our governance or management systems. Our ability to drive long term shareholder value is dependent upon how well we serve our clients, manage our people and support our broader stakeholders, including the communities in which we live and work.</i></p> <p><i>We are proud to have been a signatory to the Business Roundtable's Statement on the Purpose of a Corporation in 2019, which was a reflection of our long-standing principles and our governance and management framework.</i></p>
<i>McKesson Corporation</i>	<p><i>The Board . . . concluded that, based on the robust nature of the Company's public disclosures regarding its practices and commitment to stakeholders and the Company's focus on the key areas outlined in the BRT Statement, no amendments to our governance and management systems are needed.</i></p>
<i>S&P Global, Inc.</i>	<p><i>Moving away from earlier principles of shareholder primacy, the Statement established a modern standard for corporate responsibility by expanding the role of a corporation to include a fundamental</i></p>

	<i>commitment to benefit all stakeholders—customers, employees, suppliers, communities and shareholders. S&P Global endorsed the Statement because we believe we already represent the stakeholder commitments it memorialized through our values of Relevance, Integrity and Excellence.</i>
<i>UPS</i>	<i>We believe the Statement’s expressed commitment that a company benefit its stakeholders is wholly consistent with UPS’s corporate mission, which expressly includes leading by example, as a caring and sustainable company making a difference in the communities we serve.</i>
<i>Walmart Inc.</i>	<i>We believe our Corporate Governance Guidelines, which are intended to be interpreted in the context of our existing governance documents and applicable laws, and our approach to shared value are aligned with the principles of the BRT Statement.</i>

For example, Bank of America stated that “[the company] ha[s] long operated . . . in pursuit of Responsible Growth, which closely aligns with the [BRT S]tatement’s five core commitments.”¹¹⁸ BlackRock stated that “the Company actions and disclosures already embody the commitments included in the BRT Statement”¹¹⁹ and therefore “no changes to the Company’s existing governance and management systems are required.”¹²⁰ Chevron’s board declared that the company “has a long track record of success in each of the[] five areas” on which the BRT Statement focuses (that is, delivering value to customers, employees, suppliers, communities, and shareholders). Furthermore, the board pointed out that Chevron already “operates in a responsible and sustainable manner, furthering the interests of many stakeholders.”¹²¹

Citigroup candidly commented that it “did not view the [BRT] Statement as an overhaul of its corporate purpose, but rather as a document that memorializes the Company’s current practices and policies.”¹²² And UPS stated that it already “strives to be a caring and sustainable company.”¹²³

118. Bank of Am. Corp., *supra* note 102, at 83.

119. BlackRock, Inc., 2020 Proxy Statement (Form 14A) 94 (Apr. 9, 2020), <https://pcg.law.harvard.edu/data/BRTPurposeArchive/BlackRock4a.pdf> [https://perma.cc/6J8H-NN66].

120. *Id.* at 93.

121. Chevron Corp., 2021 Proxy Statement (Form 14A) 86 (Apr. 8, 2021), <https://pcg.law.harvard.edu/data/BRTPurposeArchive/Chevron4.pdf> [https://perma.cc/D7ZG-5XQP].

122. Citigroup, Inc., 2020 Proxy Statement (Form 14A) 125 (Mar. 11, 2020), <https://pcg.law.harvard.edu/data/BRTPurposeArchive/Citi4a.pdf> [https://perma.cc/Z9XK-JE38].

123. United Parcel Serv., Inc., Notice of 2021 Annual Meeting of Shareowners and Proxy Statement (Form 14A) 84 (Mar. 29, 2021), <https://pcg.law.harvard.edu/data/BRTPurposeArchive/UPS4.pdf> [https://perma.cc/TPV2-WUXB].

Interestingly, some of these companies further played down the significance of the BRT Statement by suggesting that the statement encouraged companies to consider the interests of stakeholders only as long as these interests are compatible with shareholder value maximization. Walmart, for example, argued that they already comply with the BRT Statement because they “maximize long-term value for our shareholders by serving our stakeholders.”¹²⁴ Goldman Sachs stated that the company did not need to take any steps to implement the BRT Statement because the company’s “ability to drive long term shareholder value is dependent upon how well we serve our clients, manage our people and support our broader stakeholders, including the communities in which we live and work.”¹²⁵ In these statements, and in similar ones made by other companies, the board suggested not only that the BRT Statement will not produce any change in the treatment of stakeholders but also that stakeholders matter only to the extent they serve shareholder value.

Thus, the board statements in the companies’ proxy statements, just as the arguments presented in the no-action letter requests, reinforce the picture that emerged from the analysis of the corporate governance guidelines. BRT Companies do not seem to believe that the BRT Statement will produce any significant changes. In fact, many of them explicitly deny that it will. This evidence is, once again, consistent with the PR Hypothesis and incompatible with the Commitment Hypothesis.

IV. BYLAWS AND PROXY STATEMENTS

A. Bylaws

Another governance document worth examining is corporate bylaws, which, unlike corporate governance guidelines, are legally binding and, unlike corporate charters, can be unilaterally amended by the board of directors.¹²⁶ Thus, if the Commitment Hypothesis were valid and the BRT Companies intended to reorient their corporate

124. Walmart, Inc., 2021 Proxy Statement (Form 14A) 97 (Apr. 22, 2021), <https://pcg.law.harvard.edu/data/BRTPurposeArchive/Walmart4.pdf> [<https://perma.cc/LLU6-3CL3>].

125. Goldman Sachs Grp., Inc., Annual Meeting of Shareholders Proxy Statement (Form 14A) 68 (Mar. 20, 2020), <https://pcg.law.harvard.edu/data/BRTPurposeArchive/GS4a.pdf> [<https://perma.cc/4ZV9-AB7A>].

126. † JAMES D. COX & THOMAS LEE HAZEN, TREATISE ON THE LAW OF CORPORATIONS § 3:12, Westlaw LAWOFPCORP (database updated Dec. 2021).

purpose towards stakeholders, we would expect that the bylaws of many BRT Companies would contain language aimed at including stakeholder interests in the consideration of corporate decisionmakers.

Indeed, one prominent corporate lawyer suggested that companies might follow through on their stakeholderist commitments by adopting a stakeholder-oriented bylaw.¹²⁷ Under the proposed bylaw, the primary goal of the board would still be the maximization of (long-term) shareholder value, consistent with current Delaware law, but the board would be required to consider the interests of other stakeholders in support of this goal. According to the proposal's advocate, the explicit recognition of stakeholder interests would enable corporate leaders to give de facto independent weight to the interests of stakeholders under the protection of the business judgment rule.¹²⁸ Regardless of this specific proposal, BRT Companies could have amended their bylaws to support stakeholders in decisionmaking—in an official and legally binding way—to the fullest extent permitted by law to formalize the commitment made in the BRT Statement.

Therefore, to examine whether the signatories of the BRT Statement have implemented stakeholderism into their bylaws, we manually collected from EDGAR or institutional websites all the bylaws of the BRT Companies in force at the end of the Two-Year Period, for a total of 128 bylaws. For each company's bylaws, we conducted a textual search for various terms used to refer to shareholders and stakeholders.¹²⁹

We found that the terms shareholders, stockholders, and shareowners typically appeared dozens or even hundreds of times in each company's bylaws.¹³⁰ The ubiquitous mention of shareholders reflects the central role that shareholders have in corporate bylaws. By

127. Neil Whoriskey, *Outlaws of the Roundtable? Adopting a Long-Term Value Bylaw*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Oct. 24, 2019), <https://corpgov.law.harvard.edu/2019/10/24/outlaws-of-the-roundtable-adopting-a-long-term-value-bylaw> [<https://perma.cc/6TBQ-J6W3>]. The proposed bylaw would read: "The primary objective of the board is to build long-term stockholder value, and, in support of this objective, the board shall consider the interests of customers, suppliers, and the communities in which the corporation operates to the extent such interests align with the creation of long-term stockholder value."

128. *Id.*

129. Our textual search was based on the following keywords. For shareholders: "shareholder(s)," "stockholder(s)," and "shareowner(s)"; for stakeholders in general: "stakeholder(s)," "constituency," "constituencies," "society," and "social"; for particular stakeholder groups or interests: "employee(s)," "supplier(s)," "customer(s)," "environment," "community," and "communities."

130. For example, AECOM's bylaws have 378 occurrences of the terms "shareholder(s)," "shareowner(s)," or "stockholder(s)"; AES Corporation's bylaws have 347 occurrences; American Airlines' bylaws have 328 occurrences; and so forth.

contrast, we found very few references to stakeholders and stakeholder interests: a reader of these bylaws would find no evidence of the revised corporate purpose announced in the BRT Statement or a commitment to deliver value to all stakeholders.

In particular, we found no relevant mention of “stakeholders” or “constituencies” in general. We found no mention of suppliers, only one mention of “community,”¹³¹ and only two mentions of “customers,” neither of which appeared in the context of corporate purpose.¹³²

We also found terms related to social or environmental issues in the bylaws of less than four percent of the 128 BRT Companies. Even in these five cases, however, the mention of these terms does not reflect or indicate a stakeholderist purpose. The bylaws of Dow Chemical establish an “Environment, Health, Safety and Technology Committee,” which would “advise the Board on matters impacting corporate social responsibility” on the grounds that “positive perceptions of the Company’s policies and practices are valuable assets.”¹³³ The bylaws of Ford Motor Company establish a similar committee.¹³⁴ Lastly, the bylaws of Telephone & Data Systems and of The Travelers Companies, in describing the oversight duties of the board and the responsibilities of the CEO, respectively, mention the company’s social responsibility activities, but do not provide any instructions or guiding principles in this respect.

Finally, we found many occurrences of the term “employee/s” but, with one exception, they all refer to high-ranking officeholders, or deal with issues such as powers of attorney within the firm, indemnification, and forum selection—and do not relate to attending to the interests of the company’s labor force. The only exception is the bylaws of Procter & Gamble, which provide that the company “recognize[s] that its interests and those of its employees are inseparable” and therefore that the board

131. *Restated Bylaws*, TEL. & DATA SYS., INC. 22 (May 23, 2019), <https://pcg.law.harvard.edu/wp-content/uploads/brtpurposearchive/Bylaws/TDS5.pdf> [<https://perma.cc/6J3Q-EHU7>] (“The major responsibilities of the Board of Directors shall include . . . contribution to communities served and society.”).

132. *By-Laws*, BOEING CO. 11 (June 29, 2021), <https://pcg.law.harvard.edu/wp-content/uploads/brtpurposearchive/Bylaws/Boeing5.pdf> [<https://perma.cc/66MY-AZ7N>]; TEL. & DATA SYS., INC., *supra* note 131, at 22.

133. *Bylaws*, DOW CHEM. CO. § 4.5(b), at 8 (Feb. 10, 2010), <https://www.sec.gov/Archives/edgar/data/29915/000119312510030701/dex31.htm> [<https://perma.cc/BK8Q-YC3P>].

134. *By-Laws*, FORD MOTOR CO. 4 (Mar. 2015), <https://pcg.law.harvard.edu/wp-content/uploads/brtpurposearchive/A.Corporate-Governance-Guidelines/Ford%20Motor%20Company.pdf> [<https://perma.cc/VXV6-F4WY>] (establishing an “Environmental and Public Policy Committee”)

“is authorized, in its discretion, to inaugurate and maintain a profit-sharing or other similar plan, an adequate pension and benefit plan, and to grant to the employees such voice in the conduct of the business as may seem to the Board to be right and proper.”¹³⁵ This is the only case, out of 128 bylaws, in which one of the aforementioned keywords is used in a way that directs corporate leaders to take into account the interests of stakeholders.

The analysis of corporate bylaws thus reinforces the conclusion drawn from the review of the governance guidelines and the reactions to shareholder proposals. Consistent with the PR Hypothesis, the bylaws of BRT Companies largely do not reflect a stakeholderist corporate purpose.

B. Proxy Statements

Another important corporate document where we would expect to find evidence that the BRT Companies took the signing of the BRT Statement seriously is the annual proxy statement. In addition to providing information on the agenda of the annual meeting and other information required by statute and regulation, the proxy statement is the most important means of communication between the company and its shareholders on matters of corporate governance and corporate social responsibility.¹³⁶ If, following the Commitment Hypothesis, the signing of the BRT Statement should be considered the harbinger of a transformation of corporate purpose, we would expect companies to explain such a major governance change in their annual proxy statements.

We therefore reviewed the proxy statements of all BRT Companies in the year following the issuance of the Statement in order to identify instances in which the companies chose to discuss the signing of the BRT Statement and its implications for corporate governance. We excluded from this particular analysis the mentions of the BRT Statement that companies were forced to include in the proxy statement

135. *Structure & Governance: Code of Regulations*, PROCTOR & GAMBLE CO., art. VII, § 1, <https://pcg.law.harvard.edu/wp-content/uploads/brtpurposearchive/Bylaws/P5.pdf> (last visited Mar. 30, 2022) [<https://perma.cc/GF4Z-8APG>].

136. See, e.g., Zachary Cochran, Alana Griffin & Jeffrey Stein, *Is it Proxy Season Already? Lessons Learned from the 2018 Season*, KING & SPALDING (Oct. 29, 2018), <https://www.jdsupra.com/legalnews/is-it-proxy-season-already-lessons-87800> [<https://perma.cc/68FP-L8BC>].

Proxy statements have moved beyond pure compliance documents and in many cases now serve as a company's annual report on corporate governance. . . . In addition to content, public companies are increasingly using enhanced design features in their proxy statements to highlight key governance practices and environmental and social policies and provide information to shareholders to address particular areas of focus.

as a result of the inclusion of a shareholder proposal on the subject and a statement in opposition to it from the board of directors. We looked for and focused exclusively on cases in which the company elected to include in the proxy statement a mention of the company's joining the BRT Statement.

To this end, we conducted a textual search for any mention of the BRT Statement, and we examined the context of such mentions. Our findings are telling. Of the 128 BRT Companies, 109 (eighty-five percent) did not include even a single mention in their proxy statement of their joining the BRT Statement (except when forced to do so to respond to a shareholder proposal). Such complete absence of references to the BRT Statement is consistent with the PR Hypothesis and inconsistent with the Commitment Hypothesis. To the extent that companies viewed their joining the BRT Statement as taking on a meaningful commitment that could subsequently require material steps or changes, one would expect the companies to at least mention their endorsement of the BRT Statement in the company's proxy statement.

Furthermore, the small minority of nineteen companies that mentioned the signing of the BRT Statement merely reported this fact or reproduced some of the language used in it. In fact, of these nineteen companies, ten even stated that they already had a long-standing adherence to the principles of the BRT Statement, implying that no changes to their policies and practices were necessary.

Importantly, none of the BRT Companies presented the signing of the BRT Statement as a step towards a change in its governance or an alteration of its practices regarding stakeholders. Thus, the review of the proxy statements corroborates the findings that emerged from the analysis of the corporate governance guidelines, the reactions to the shareholder proposals, and the corporate bylaws. Consistent with the PR Hypothesis, and contrary to the Commitment Hypothesis, BRT Companies do not plan to make any significant changes to the way they treat their stakeholders.

V. DIRECTOR COMPENSATION

Last, but not least, our empirical investigation turns to the principles and actual practices of the BRT Companies with respect to director compensation. The structure of director compensation is important for assessing the objectives that companies want directors to pursue for two reasons. First, the structure of compensation shapes the incentives of directors and thus has considerable influence on the objectives that directors actually pursue. Second, and importantly, the

design of compensation sends a strong signal as to what goals are viewed as important by the company and the directors who set their own pay. Thus, the structure of compensation can be quite instructive for our purposes.¹³⁷

If the Commitment Hypothesis were valid, we would expect to find that the principles and actual structure of director compensation in the BRT Companies would be designed to promote the interests of shareholders and stakeholders. By contrast, if the PR Hypothesis were valid, we would expect to find that director compensation would continue to incentivize shareholder value maximization, with little or no concern for advancing stakeholder interests. To investigate this aspect, we examine in turn the principles of director compensation contained in the corporate governance guidelines of the BRT Companies, and the actual structure and criteria of the compensation paid to directors of the BRT Companies in 2020, the year following the BRT Statement.

A. Principles of Director Compensation

We analyzed the corporate governance guidelines of the BRT Companies in order to identify principles and requirements regarding director compensation and the alignment of director interests with some specific goals or objectives. We found that the governance guidelines of a majority (seventy of the 128) of BRT Companies contain such principles and requirements, and they all aim to align the interests of directors with the interests of shareholders. None of the guidelines contain any prescriptions or recommendations regarding the alignment of director interests with the interests of stakeholders.

In particular, governance guidelines provide two different tools to incentivize directors to increase shareholder value. Some guidelines require or recommend that directors own a minimum amount of stock in the company in order to have a financial stake in the business and be economically aligned with the company's shareholders. Other guidelines prescribe that director compensation should align the directors' interests with those of shareholders by design (typically by having a significant portion of the compensation in the form of restricted stock). Many guidelines contain both prescriptions.

To illustrate, Table 8 reports excerpts of the principles of director compensation for the companies included in the BRT Board Sample. The governance guidelines of a majority of these companies (fifty-nine percent) require that directors own stock in the company or receive

137. For a survey of recent research on director compensation and director incentives, see Ronald W. Masulis, *A Survey of Recent Evidence on Boards of Directors and CEO Incentives*, 49 ASIA-PAC. J. FIN. STUD. 7 (2020).

equity compensation in order to align their interests with the interests of shareholders.

For example, AT&T's guidelines provide that "in order to align the interests of Directors and stockholders, Directors should have a significant financial stake in the Company;"¹³⁸ Cisco Systems' guidelines require directors to "own shares of the Company's common stock having a value equal to at least five times [their] regular annual cash retainer;"¹³⁹ and Boeing's guidelines provide that "nonemployee director compensation should align directors' interests with the long-term interests of shareholders."¹⁴⁰

TABLE 8: PRINCIPLES OF DIRECTOR COMPENSATION IN THE BRT BOARD
SAMPLE

Company	Excerpt (emphasis added)
AT&T	<i>The Board believes that, in order to align the interests of Directors and stockholders, Directors should have a significant financial stake in the Company.</i>
Cisco Systems	<i>To further align the interests of non-employee directors and shareholders, each non-employee director is required to own shares of the Company's common stock having a value equal to at least five times the non-employee director's regular annual cash retainer.</i>
Cummins	<i>The Board believes in the importance of requiring that all Directors and senior level officers beneficially own a sufficient amount of the Company's common stock so that their economic interests are aligned with those of the Company's shareholders.</i>
CVS Health	<i>The Board believes that directors and executive officers should hold meaningful equity ownership positions in the Company in order to demonstrate the alignment of the interests of the Company's directors and officers with those of the Company's stockholders.</i>
Dow Chemical	<i>Requiring Directors and executive officers to have an appropriate equity ownership in the Company helps to more closely align their economic interests with those of other stockholders.</i>
Eastman Chemical Company	<i>Directors should be fairly compensated for serving as a director of a company of Eastman's size, nature, and complexity, and their compensation should align directors' interest with the long-term interests of stockholders.</i>

138. *Corporate Governance Guidelines*, AT&T, INC. (June 26, 2020), <https://pcg.law.harvard.edu/wp-content/uploads/brtpurposearchive/A.Corporate-Governance-Guidelines/AT&T%20Inc..pdf> [<https://perma.cc/8y87-Q2Q6>].

139. *Corporate Governance Policies*, CISCO SYS., INC. 5 (Aug. 20, 2020), <https://pcg.law.harvard.edu/data/BRTPurposeArchive/Cisco1.pdf> [<https://perma.cc/QZ3W-AARZ>].

140. *Corporate Governance Principles*, BOEING CO. 6 (June 22, 2020), <https://pcg.law.harvard.edu/data/BRTPurposeArchive/Boeing1.pdf> [<https://perma.cc/X6JQ-84GR>].

<i>General Motors</i>	<i>The Board believes that it is important for each director to have a financial stake in the Company to help align the director's interests with those of the Company's shareholders</i>
<i>IBM</i>	<i>The Committee's objectives include ensuring that the Company's nonmanagement directors have a proprietary stake in the Company and that the interests of the directors continue to be closely aligned with the interests of the Company's stockholders.</i>
<i>Johnson & Johnson</i>	<i>[C]ompensation should align the Directors' interests with the long-term interests of shareholders . . . To further align the interests of the Company's Directors and senior management with shareholders, the Board has established minimum share ownership guidelines that apply to all Non-Employee Directors and designated members of senior management.</i>
<i>Lockheed Martin</i>	<i>The Corporation's director compensation program is structured to align the interests of Board members and stockholders; to attract and retain high quality director talent; and to focus on stewardship rather than attendance. . . . To further encourage a link between director and stockholder interests, the Board has adopted stock ownership guidelines for directors.</i>
<i>Marriott International</i>	<i>[D]irectors should be fairly paid for work required in a company of Marriott's size and scope, and director compensation should align directors' interests with the long-term interests of shareholders.</i>
<i>Procter & Gamble</i>	<i>Board member compensation should align Board members' interests with the long-term interests of the Company's shareholders.</i>
<i>Progressive</i>	<i>The Board believes that each director should have a meaningful interest in Progressive Common Shares.</i>
<i>Stryker</i>	<i>All non-employee directors are expected to have a meaningful share ownership position in the Company to reinforce the alignment of the interests of the Board and shareholders.</i>
<i>The Boeing Company</i>	<i>[N]onemployee director compensation should align directors' interests with the long-term interests of shareholders . . . In order to further align the interests of nonemployee directors with the long-term interests of shareholders, each nonemployee director should beneficially own by the end of his or her third year as a director stock or stock equivalents with a value equal to three times the annual board cash retainer fee and by the end of his or her sixth year as a director stock or stock equivalents with a value equal to five times the annual board cash retainer fee.</i>
<i>Raytheon Technologies</i>	<i>Each member of the Board should be a long-term Company shareowner or holder of Company stock units. Toward that end, a majority of each non-management director's annual retainer is paid in Company stock units. To further encourage the alignment of management and shareowner interests, the Board will, from time to time, adopt stock ownership requirements for non-management directors and the Company's Executive Leadership Group.</i>

Similarly, a majority of the guidelines of the companies in the Large Companies Sample (fifty-six percent) contain requirements or

recommendations about director stock ownership or director equity compensation. Table 9 reports the relevant excerpts. For example, Bank of America’s guidelines provide that “[a] portion of compensation should be in the form of company common stock in order to further align the interests of non-management directors with those of the stockholders”;¹⁴¹ Chevron’s guidelines require that director compensation should “link[] rewards to business results and stockholder returns”;¹⁴² and Mastercard’s guidelines provide that “compensation should align directors’ interests with the long-term interests of stockholders.”¹⁴³

TABLE 9: PRINCIPLES OF DIRECTOR COMPENSATION IN THE LARGE COMPANIES SAMPLE

Company	Excerpt (<i>emphasis added</i>)
American Express	In order to align the directors’ interests with the long-term interests of shareholders , a portion of the directors’ compensation will be in the form of cash retainers and a portion will be in the form of stock grants or share equivalent units.
American Tower	The Board believes it is important to align the interests of the Company’s executive officers and Directors with those of its stockholders . Accordingly, each executive officer and Director is expected to beneficially own Company stock equal in market value to a specified multiple of his or her annual base salary or annual cash retainer, as applicable.
Bank of America	A portion of compensation should be in the form of company common stock in order to further align the interests of non-management directors with those of the stockholders In order to demonstrate the alignment of the interests of the Company’s executive officers and directors with those of the Company’s stockholders, the Board has adopted . . . stock ownership requirements
Bristol-Myers Squibb	[T]he Committee on Directors and Corporate Governance shall be guided by the following factors, among others: . . . compensation should align directors’ interests with the long-term interests of shareholders .
Chevron Corporation	Non-employee Directors receive compensation that is competitive, links rewards to business results and stockholder returns , and

141. *Corporate Governance Guidelines*, BANK OF AM. CORP. 9 (Sept. 23, 2020), <https://pcg.law.harvard.edu/data/BRTPurposeArchive/BankofAmerica1.pdf> [<https://perma.cc/K34S-64QV>].

142. *Corporate Governance Guidelines*, CHEVRON CORP. 5 (Sept. 30, 2020), <https://pcg.law.harvard.edu/data/BRTPurposeArchive/Chevron1.pdf> [<https://perma.cc/WV4S-RSC6>].

143. *Corporate Governance Guidelines*, MASTERCARD INC. (Sept. 2019), <https://pcg.law.harvard.edu/data/BRTPurposeArchive/Mastercard1.pdf> [<https://perma.cc/A3NH-MHM3>].

	<i>facilitates increased ownership of the Corporation's stock . . . The Board expects all Directors and executive officers to display confidence in the Corporation by ownership of a significant amount of stock.</i>
<i>Goldman Sachs</i>	<i>To create a direct linkage with corporate performance, the Board believes that a meaningful portion of the total compensation of non-employee directors should be provided and held in common stock, restricted stock units, or other types of equity-based compensation.</i>
<i>Honeywell</i>	<i>In general, the Corporate Governance and Responsibility Committee believes that annual compensation for outside directors should consist of both a cash component designed to compensate members for their service on the Board and its Committees and an equity component designed to align the interests of the directors and the shareowners.</i>
<i>Mastercard</i>	<i>The Board believes that. . . compensation should align directors' interests with the long-term interests of stockholders . . . The Board has adopted stock ownership guidelines for non-employee directors for the purpose of aligning their interest with the interests of stockholders.</i>
<i>Morgan Stanley</i>	<i>[C]ompensation should align directors' interests with the long-term interests of shareholders . . . The Board believes that total compensation should include a significant equity component because it believes that this more closely aligns the long-term interests of directors with those of shareholders and provides a continuing incentive for directors to foster the Company's success. . . These equity ownership opportunities and requirements help align non-management directors' interests with shareholders' interests.</i>
<i>PepsiCo</i>	<i>Directors and executive officers are expected to own a meaningful number of shares of stock in the Corporation to more closely align their economic interests with those of other shareholders.</i>
<i>Salesforce</i>	<i>[C]ompensation should align the directors' interests with the long-term interests of stockholders[.] . . . The Board believes that directors should be stockholders in order to align their interests with the long-term interests of the Company's stockholders.</i>
<i>The Home Depot</i>	<i>In order to align the interests of non-management directors with shareholders, the Company requires that each non-management director's annual retainer shall be two-thirds Company equity. . . The Company also utilizes restricted stock to provide long-term benefits that align the interests of the Company's senior leadership with those of shareholders.</i>
<i>UPS</i>	<i>To further align the interests of management and directors with those of the Company's shareowners, the Board has adopted stock ownership guidelines that extend to most levels of management and to members of the Board.</i>
<i>Visa</i>	<i>The Board believes that to best align the interests of directors and stockholders, directors should have a financial stake in the Company.</i>

We found similar provisions in the majority of guidelines in the Other Companies Sample (fifty-three percent). Almost all of these

provisions explicitly recognize that the function of stock ownership and equity compensation is to incentivize directors to maximize shareholder value. Consistent with the PR Hypothesis and contrary to the Commitment Hypothesis, however, nowhere in these guidelines did we find a similar concern for director incentives to consider stakeholder interests.

B. Actual Director Compensation

The principles for director equity compensation contained in the governance guidelines express only a general standard, which companies may implement in different ways or even supplement with additional rules and criteria designed to benefit other constituencies. Therefore, in order to analyze the actual choices of the BRT Companies with respect to director compensation, we reviewed the 2021 proxy statements of all BRT Companies. These statements provide a detailed account of director compensation during 2020, the year that followed the issuance of the BRT Statement.

We found that the BRT Companies, in line with a practice that is virtually universal among large public companies, tied a significant fraction of director compensation to shareholder value by means of stock grants or other equity instruments. By contrast, we found no metrics or criteria linking part of director compensation to the interests of stakeholders.

Table 10 reports our findings with respect to the BRT Board Sample. Directors of all the companies in the BRT Board Sample received a substantial part of their compensation in the form of stock grants or other equity instruments. With the only exception of Eastman and Lockheed Martin, the equity component represented more than fifty percent of the total compensation, with a mean of 62.5 percent and a median of sixty percent. By contrast, we found no metrics or mechanisms to link director compensation to stakeholder welfare.

TABLE 10: ACTUAL DIRECTOR COMPENSATION IN THE BRT BOARD SAMPLE

Company	Cash	Equity	Stakeholder Metrics
<i>AECOM</i>	46.7%	53.3%	0%
<i>Apple</i>	37.2%	62.8%	0%
<i>AT&T</i>	41.2%	58.8%	0%
<i>Best Buy</i>	36.3%	63.7%	0%
<i>Cisco Systems</i>	36.1%	63.9%	0%
<i>Cummins</i>	47.6%	52.4%	0%
<i>CVS Health</i>	15.7%	84.3%	0%
<i>Dow Chemical</i>	43.8%	56.2%	0%
<i>Duke Energy</i>	47.0%	53.0%	0%
<i>Eastman Chemical Company</i>	57.5%	42.5%	0%
<i>General Motors</i>	46.2%	53.8%	0%
<i>IBM</i>	40.0%	60.0%	0%
<i>International Paper Co.</i>	9.3%	90.7%	0%
<i>Johnson & Johnson</i>	41.5%	58.5%	0%
<i>JPMorgan Chase</i>	39.8%	60.2%	0%
<i>Lockheed Martin Corporation</i>	52.4%	47.6%	0%
<i>Marriott International</i>	0.0%*	100.0%	0%
<i>Oracle</i>	21.1%	78.9%	0%
<i>Procter & Gamble</i>	38.8%	61.2%	0%
<i>Progressive</i>	13.4%	86.6%	0%
<i>S&P Global</i>	45.3%	54.7%	0%
<i>Steelcase</i>	33.0%	67.0%	0%
<i>Stryker</i>	37.5%	62.5%	0%
<i>The Boeing Company</i>	42.5%	57.5%	0%
<i>Union Pacific</i>	42.9%	57.1%	0%
<i>Raytheon Technologies</i>	26.3%	73.7%	0%
<i>Walmart</i>	40.2%	59.8%	0%
Mean	37.5%	62.5%	0%
Median	40.0%	60.0%	0%

* Due to Covid-19, the cash fee payable to directors was reduced to zero. The standard compensation for a board member without special assignments would have been 34% cash and 66% equity.

Similarly, all the companies in the Large Companies Sample paid a significant fraction of director compensation in equity. Table 11 reports the relevant data. In almost all cases, equity compensation accounted for the largest part of director compensation, with a mean of

63.5 percent and a median of sixty percent. In some cases, equity represented the totality (Amazon) or almost the totality (Salesforce) of the entire compensation. By contrast, we found no metrics or mechanisms to link director compensation to stakeholder welfare.

TABLE 11: DIRECTOR COMPENSATION IN THE LARGE COMPANIES SAMPLE

Company	Cash	Equity	Stakeholder Metrics
<i>Abbott</i>	42.3%	57.7%	0%
<i>Amazon</i>	0.0%	100.0%	0%
<i>American Express</i>	41.6%	58.4%	0%
<i>American Tower Corp.</i>	40.5%	59.5%	0%
<i>Bank of America</i>	30.4%	69.6%	0%
<i>Blackrock</i>	34.7%	65.3%	0%
<i>Bristol-Myers Squibb</i>	42.8%	57.2%	0%
<i>Chevron</i>	34.5%	65.5%	0%
<i>Citigroup</i>	61.4%	38.6%	0%
<i>Comcast</i>	38.7%	61.3%	0%
<i>Exxon</i>	40.0%	60.0%	0%
<i>Goldman Sachs</i>	22.2%	77.8%	0%
<i>Honeywell</i>	50.2%	49.8%	0%
<i>Mastercard</i>	36.6%	63.4%	0%
<i>Morgan Stanley</i>	31.9%	68.1%	0%
<i>PepsiCo</i>	41.9%	58.1%	0%
<i>Pfizer</i>	46.0%	54.0%	0%
<i>Qualcomm</i>	41.9%	58.1%	0%
<i>Salesforce</i>	4.8%	95.2%	0%
<i>Texas Instruments</i>	37.8%	62.2%	0%
<i>The Coca-Cola Company</i>	34.3%	65.7%	0%
<i>The Home Depot</i>	22.0%	78.0%	0%
<i>Target</i>	29.0%	71.0%	0%
<i>UPS</i>	41.0%	59.0%	0%
<i>Visa</i>	42.2%	57.8%	0%
Mean	35.6%	64.4%	0%
Median	38.7%	61.3%	0%

The findings presented in this Part are consistent with the PR Hypothesis and are incompatible with the Commitment Hypothesis. Despite the ostensible pledge to advance stakeholder interests, BRT Companies retained governance principles aimed at aligning the interests of directors with the interests of shareholders, and they chose

to incentivize directors to maximize shareholder value. By contrast, BRT Companies did not introduce any requirements or tools to incentivize directors to take into account stakeholder interests and stakeholder welfare. Our analysis of director compensation reinforces the conclusions presented in the previous Parts: in spite of the stakeholderist rhetoric of the BRT Statement, BRT Companies are not planning to deliver value to all stakeholders.

CONCLUSIONS

Stakeholderism supports harnessing the discretion of corporate leaders to protect stakeholders and relies on the widely-expressed support of corporate leaders to do so. Should stakeholderism be expected to deliver its purported benefits to stakeholders? To shed empirical light on this question, this Article has investigated the aftermath of the most celebrated and visible pledge by corporate leaders: the signing of the BRT Statement by BRT Companies expressing their commitment to deliver value to all stakeholders.

With BRT Companies expressing their commitment in such a highly publicized fashion, these companies could be viewed as especially likely to follow through on their pledge to serve stakeholders. We therefore set out to examine whether the BRT Statement represented a meaningful commitment by signatory companies that was expected to bring about material improvements in the treatment of stakeholders.

Our analysis manually collected and conducted a detailed review of a wide array of corporate documents—corporate governance guidelines, reactions to shareholder proposals regarding corporate purpose, bylaws, proxy statements, director compensation principles, and actual director compensation practices of BRT Companies. Overall, our findings support the view that the BRT Statement did not represent a meaningful commitment and was not planned or expected to bring about meaningful improvements in the treatment of stakeholders.

Our findings should inform the heated debate on the promise of stakeholder capitalism. They support skepticism about the potential benefits of pledges by corporate leaders and their companies to use their discretion to serve stakeholders. Rather than produce material benefits to stakeholders, the main impact of such pledges might be to insulate corporate leaders from shareholders or to deflect outside pressures to adopt governmental measures that would truly serve stakeholders. Reliance on the discretion of corporate leaders to serve stakeholders, as supporters of stakeholder governance advocate, would be an ineffective and counterproductive approach to the protection of stakeholders.

APPENDIX

TABLE A1: BRT COMPANIES WITH SHAREHOLDER PRIMACY GUIDELINES
IN THE OTHER COMPANIES SAMPLE

<i>Company</i>	<i>Excerpt (emphasis added)</i>
<i>3M*</i>	<i>The Board of Directors serves as elected representatives of the shareholders, acts as an advisor and counselor to the CEO and senior management, and oversees management performance on behalf of shareholders.</i>
<i>American Airlines*</i>	<i>The primary responsibility of the Board is to oversee the affairs of the Company for the benefit of all stockholders, in accordance with the corporate laws of the State of Delaware.</i>
<i>American Electric Power*</i>	<i>Directors should possess the highest personal and professional ethics, integrity and values, and be committed to representing the long-term interests of the shareholders.</i>
<i>Ameriprise Financial</i>	<i>The basic responsibility of the directors is to exercise their business judgment in good faith to act in what they reasonably believe to be the best interests of the Company and its shareholders.</i>
<i>Aramark*</i>	<i>It is the basic responsibility of the directors to exercise their business judgment to act in what they reasonably believe to be in the best interests of Aramark and its stockholders.</i>
<i>Caterpillar*</i>	<i>These Guidelines reflect the Board's commitment to oversee the effectiveness of policy and decision-making both at the Board and management level, with a view to enhancing shareholder value over the long-term.</i>
<i>CBRE Group</i>	<i>The Board acts as the ultimate decision-making body of the Company and advises and oversees management, who are responsible for the day-to-day operations and management of the Company. In fulfilling these roles, each director must act in what he or she reasonably believes to be in the best interests of the Company and its stockholders and must exercise his or her business judgment.</i>
<i>CF Industries*</i>	<i>The Board's goal is to build long-term value for the Company's shareholders and to assure the vitality of the Company for its customers and employees and the other individuals and organizations who depend on the Company.</i>
<i>Cigna</i>	<i>Directors must represent all shareholders, demonstrate good judgment and act with ethics and integrity, be free of conflicts of interest, possess the ability to analyze complex business and public policy issues and provide relevant input regarding the Company's business strategy, demonstrate a high degree of achievement in their respective field, and contribute to the overall diversity of the Board including diversity of age, gender and ethnicity as well as a range of tenure to ensure continuity and fresh perspective.</i>
<i>Cognizant*</i>	<i>The Board believes that directors should be incentivized to focus on long-term stockholder value. Including equity as</i>

	<i>part of director compensation helps align the interests of directors with those of the Company's stockholders.</i>
ConocoPhillips*	<i>The basic responsibility of the directors is to exercise their business judgment to act in what they reasonably believe to be the best interests of the Company and its stockholders.</i>
Corning*	<i>Specifically, the directors' duty is to: exercise their business judgment in good faith; act in what they reasonably believe to be the best interest of all shareholders; become and remain well-informed about Corning Incorporated's business and operations and general business and economic trends affecting Corning Incorporated; and ensure that Corning Incorporated's business is conducted so as to further the long-term interests of its shareholders.</i>
Dell Technologies*	<i>The Board of Directors (the "Board") of Dell Technologies Inc. (the "Company") is committed to the achievement of business success and the enhancement of long-term stockholder value with the highest standards of integrity and ethics.</i>
FedEx*	<i>The Board of Directors has adopted these Guidelines to further its longstanding goal of providing effective governance of the Company's business and affairs for the long-term benefit of the Company's stockholders.</i>
Fluor*	<i>As a whole, the Board of Directors should include individuals with a diverse range of educational, business and cultural backgrounds and experience to give the Board of Directors depth and breadth in the mix of skills represented for the benefit of the Company's shareholders.</i>
Ford Motor Company	<i>The Board of Directors of the Company is elected by and responsible to the shareholders. Ford's business is conducted by its employees, managers and officers, under the direction of the chief executive officer (the CEO) and the oversight of the Board, to enhance the long-term value of the Company for its shareholders. The Board of Directors monitors the performance of the CEO and senior management to assure that the long-term interests of the shareholders are being served.</i>
Fox*	<i>The Board establishes broad corporate policies for the Company and its controlled entities (referred to collectively as the "Group"), sets the strategic direction for the Group and oversees management with a focus on enhancing the interests of stockholders.</i>
Freeport-McMoRan*	<i>We are committed to effective corporate governance that is informed by our stockholders, promotes the long-term interests of our stockholders, strengthens Board and management accountability, and engenders public trust in our Company.</i>
General Dynamics Corporation*	<i>General Dynamics' compensation program is designed to reward individual and Company-wide performance and to create incentives for both strong operational performance in the current year and for the long-term benefit of the Company, thereby closely aligning the interests of management with the interests of shareholders.</i>
Interpublic Group*	<i>The fundamental responsibility of the members of the Company's Board of Directors is to promote the best interests of the</i>

	<i>Company and its stockholders</i> by overseeing the management of the Company's business and affairs.
<i>KeyCorp*</i>	Members of the Board of Directors are expected to exercise their business judgment to act in what they believe to be in the best interests of the Corporation and its shareholders.
<i>L3Harris Technologies*</i>	The Board's policy is to encourage the selection of directors and director nominees who will contribute to the Company's overall corporate goals, including: responsibility to its shareholders , industry leadership, customer success, positive working environment, and integrity in financial reporting and business conduct.
<i>Macy's</i>	Criteria. In recommending director nominees, the NCG Committee shall take into consideration the following criteria and additionally, in the case of independent director nominees, the independence standards adopted by the Board, which comply with the requirement of the NYSE listing standards: . . . The fit of the individual's skills and personality with those of other directors and potential directors in building a Board that is effective, collegial and responsive to the needs of the Company and its shareholders [.]
<i>Marathon Oil*</i>	The business and affairs of the Company are managed by or under the direction of the Board for the benefit of the shareholders. The directors are expected to fulfill their fiduciary and due care duties under Delaware law.
<i>Marathon Petroleum*</i>	The business and affairs of Marathon Petroleum Corporation (the "Company") are managed under the direction of the Board of Directors (the "Board") for the benefit of the stockholders. The members of the Board (the "Directors") are expected to fulfill their fiduciary duties under Delaware law, to act with integrity, to demonstrate a commitment to the Company and its strategies and to build long-term stockholder value.
<i>MetLife*</i>	In performing their general oversight responsibility, Directors apply their business judgment to assure that the Company's executive officers manage in the best long-term interests of the Company and its shareholders.
<i>Micron Technology*</i>	Each director shall exercise due care in making decisions of the Board. Each director also owes a duty of loyalty to the Company and is expected to act in the best interest of the Company and its stockholders as a whole.
<i>Moelis & Company</i>	The Board's primary goal is to build long-term value for the Company's stockholders. To achieve this goal the Board will monitor both the performance of the Company (in relation to its goals, strategy and competitors) and the performance of the Chief Executive Officer, and offer him constructive advice and feedback.
<i>Motorola Solutions*</i>	The Board is elected by and responsible to the shareholders. The Company's business is conducted by its employees, managers and officers, under the direction of the chief executive officer (the "CEO") to enhance the long-term value of the Company for its shareholders. The Board oversees the business of the Company, including CEO and senior management performance

	<i>and risk management to assure that the long-term interests of the shareholders are being served.</i>
<i>NRG Energy</i>	<i>The Board's goals are to build long-term value for the Company's stockholders, and to assure the vitality of the Company for its customers, suppliers, employees and other stakeholders.</i>
<i>Phillips 66</i>	<i>The Board places a premium on aligning the interests of executives, as well as directors, with those of the Company's stockholders. The Human Resources and Compensation Committee shall adopt, and annually monitor compliance with, stock ownership guidelines applicable to senior executives.</i>
<i>Pitney Bowes</i>	<i>The Board of Directors is elected by the Company's stockholders to oversee the management and conduct of the Company's businesses by its chief executive officer and other officers and employees, to enhance the long-term value of the Company for the benefit of its stockholders.</i>
<i>Principal Financial Group*</i>	<i>Directors must be willing to devote the required amount of time to prepare for, attend and actively participate in Board and Board Committee meetings and to represent the interests of all shareholders.</i>
<i>Rockwell Automation*</i>	<i>The basic responsibility of the directors is to exercise their business judgment to act in what they reasonably believe to be in the best interests of the Corporation and its shareowners.</i>
<i>Sempra Energy*</i>	<i>The board expects that each director will: . . . (vi) Generally support the Board's policy and business decisions and management in carrying out these decisions and demonstrate a strong commitment to the corporation, its business plans and values and creating and sustaining long-term shareholder value.</i>
<i>The Carlyle Group*</i>	<i>The Board of Directors is responsible for reviewing and approving the strategy and guiding its implementation in the context of the overall scope of the business and the interests of its stockholders. Management is responsible for operating the Company in an effective and ethical manner in order to produce long-term value for stockholders.</i>
<i>United Airlines*</i>	<i>The Board is elected by the stockholders to oversee the Company's management and ensure that the long-term interests of the stockholders are served.</i>
<i>Vistra Energy*</i>	<i>The Board is elected by the stockholders to oversee the Company's management and ensure that the long-term interests of the stockholders are served.</i>
<i>Walgreens Boots Alliance*</i>	<i>These Corporate Governance Guidelines (these "Guidelines") have been adopted by the Board of Directors (the "Board") of Walgreens Boots Alliance, Inc. (the "Company") to assist the Board in the exercise of its responsibilities on behalf of the Company and its stockholders.</i>
<i>Western Union*</i>	<i>The primary function of the Board of Directors is therefore oversight—defining and enforcing standards of accountability that enable executive management to execute their responsibilities fully and in the interests of shareholders.</i>

<i>World Fuel Services</i>	<i>The board of directors is elected by the shareholders to select and monitor the performance of management to assure that the long-term interests of the shareholders are being served.</i>
<i>Xerox *</i>	<i>These Corporate Governance Guidelines reflect the Board's commitment to monitor the effectiveness of policy and decision making both at the Board and management level, with a view to enhancing long-term shareholder value.</i>
<i>Zebra Technologies*</i>	<i>Zebra's primary objective is to optimize stockholder value over the long term. Zebra's business is managed under the direction of its Board of Directors, which is elected by the stockholders. The basic responsibility of the Board is to exercise its business judgment to act in what it believes to be the best interests of Zebra and its stockholders.</i>

*Guidelines updated after the publication of the BRT Statement (August 19, 2019).