

The Stakeholder Takeover Plan

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This Essay presents a plan to enable corporate stakeholders to compel corporations to behave socially responsibly. Stakeholders would exercise their control through the markets in which corporations acquire their resources from the stakeholders. Informed by a type of corporate social responsibility (CSR) ranking that does not yet exist, stakeholders would favor highly ranked companies in their transactions as customers, employees, managers, investors, creditors, suppliers, or host communities. To gain favor in those transactions, companies would compete for high rankings by behaving more responsibly.

The new CSR rankings will be novel in five respects. First, the rankings will include substantially all large companies, public and private. Second, the rankings would be based on objectively measurable aspects of CSR, such as greenhouse gas emissions, criminal convictions, workforce diversity, or air and water pollution—not subjective composite rankings. Third, the rankings would be by aspects important to all stakeholders, not just investors. Fourth the rankings would be accessible by brand names as well as corporate names. Lastly, the ranking system would be entirely transparent.

At the core of the plan is an experiment designed to determine whether such rankings enable stakeholder control. In the experiment's first stage, the Stakeholder Takeover Project will distribute a Grocery Store App free to grocery store shoppers. Entering a brand name to the App will return the names and greenhouse gas emissions of the brand's owners and show by a single number—emissions intensity—how the owner's emissions rank against those of its competitors. The App will offer the option to list the user's purchasing decision publicly on the Stakeholder Takeover website. If stakeholder participation and corporate response are sufficient at the first stage, the Project will distribute the Greenhouse Gas App. That App will function the same way but contain data for approximately 5,000 U.S. companies in all industries and cover approximately 46,000 brands.

If the experiment proves stakeholders successful in compelling corporations to report and reduce their greenhouse gas emissions, the rankings would open a new channel of communication. Through that channel, stakeholders could compel corporations to improve on any aspect of CSR of sufficient importance to stakeholders. The improvements could include voluntary reporting of additional aspects of CSR suitable for additional rankings.

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This Essay presents a plan to enable corporate stakeholders¹ to compel large corporations to act socially responsibly. The stakeholders would exercise control through stakeholder markets. Stakeholder markets are the markets in which corporations sell their products and services, acquire materials, hire employees and managers, choose business locations, and acquire financing.²

My hypothesis—to be tested by experimentation—is that stakeholders, provided with the necessary information, can and will compel corporate social responsibility (CSR). For example, ranking companies publicly and credibly, based on their greenhouse gas (GHG) emissions, would cause a reduction in those emissions. CSR is defined here as the corporate behavior stakeholders prefer, in the proportions and to the degrees that stakeholders prefer it, as expressed through the stakeholders’ market transactions. The experiment will be to supply credible, public rankings and observe the stakeholder and corporate responses.

If the experiment demonstrates that stakeholders can control corporations through stakeholder markets, it may not only solve the corporate GHG emissions problem, but also

¹ “Stakeholders” are the companies’ customers, employees, suppliers, managers, shareholders, creditors, the communities in which the companies do business, and the public.

² Lynn M. LoPucki, *Repurposing the Corporation Through Stakeholder Markets*, 55 U.C. DAVIS L. REV. 1445, 1445 (2022) (introducing the concept of “stakeholder markets” and defining them as “the competitive markets in which corporations acquire resources from their potential stakeholders”).

revolutionize corporate governance.³ The law gives shareholders the right to elect directors and thereby control corporations. But if other stakeholders can control corporations through markets, those stakeholders can dictate corporate policy over the shareholders' objections. Stakeholders, not stockholders alone, would effectively control corporations.

The Stakeholder Takeover Project is my effort to conduct the experiment. This Essay contains the experimental design.

I. THE STAKEHOLDER TAKEOVER PROJECT

Conceptually, the mechanism by which ranking will change corporate behavior has three steps. At the first step, the Stakeholder Takeover Project will credibly and publicly rank thousands of corporations and make those rankings readily available to stakeholders. The rankings will be based on the corporations' self-reported GHG emissions and perhaps other aspects of CSR. At the second step, stakeholders will confer benefits (ESG Benefit⁴) on high-ranked corporations at the expense of low-ranked corporations. ESG Benefit includes (1) buying the company's products and services, (2) becoming company employees, (3) investing in the company, (4) extending credit to the company, (5) contracting to supply or otherwise "partner" with the company, (6) providing tax breaks or other government accommodations to the company, and (7) holding the company, its managers, and its employees in high esteem.

At the third step, the corporations will respond by altering their behavior to compete for high rankings. Rankings of universities,⁵ professional schools,⁶ hospitals,⁷ countries,⁸ and corporations⁹ have already demonstrated the ability of public rankings to change those institutions.

³ Judith G. Kelly & Beth A. Simmons, *Governance by other Means: ranking as regulatory systems*, 13 INT'L THEORY 169, 170 (2021) (referring to rankings of countries as a "form of information politics that governs through comparison"); David L. Levy et al., *The Contested Politics of Corporate Governance*, 49 BUS. & SOC'Y, 88, 88 (2010) ("[T]he strategies of NGOs represent a form of power capable of shifting, if not transforming, the field of corporate governance.").

⁴ LoPucki, *supra* note 2, at 1452-53 (introducing the term "ESG Benefit").

⁵ Meredith Davis, *Can College Rankings Be Believed?* 226 SHE JI 2015 (2016) <https://www.sciencedirect.com/science/article/pii/S2405872616300570226> ("In publicized accounts, a number of American universities—including Clemson, Claremont McKenna, Northeastern, Emory, George Washington, Bucknell, Baylor, and Tulane—admitted to revising class sizes, boosting academic salaries, or intentionally supplying incorrect information to USNWR to improve their positions in the rankings.").

⁶ Michael Sauder & Wendy Nelson Espeland, *The Discipline of Rankings: Tight Coupling and Organizational Change*, 74 AM. SOCIO. REV. 63, 64 (2009) ("In this article, we have demonstrated that the USN rankings provide a signal of law school quality that influences the behavior of both outside audiences and law schools.").

⁷ Iris Wallenburg et al., *Making Hospitals Governable: Performativity and Institutional Work in Ranking Practices*, 51 ADMIN. & SOC'Y 637, 656 (2019) ("Hospital rankings, as a relatively new performance measuring practice in health care, spark institutional transformation.").

⁸ Kelly & Simmons, *supra* note 3, at 175 ("Over the past decade, policy makers around the world have spoken and acted as though the [Ease of Doing Business ranking] matters greatly. Countries openly publicize their plans to undertake reforms.").

⁹ Aaron K. Chatterji & Michael W. Toffel, *How Firms Respond to Being Rated*, 31 STRATEGIC MGMT. J. 917, 933 (2010) ("We have found changes in organizational performance to be associated with ratings issued by an independent rating agency."); Ester Clementino & Richard Perkins, *How Do Companies Respond to*

The Project will compile GHG emissions rankings, deliver them to stakeholders, and assess the results. The Project’s thesis is that to enable stakeholder control, the ranking system must have five characteristics. First, the rankings must include substantially all large companies, public and private. Broad coverage is necessary to justify the efforts required of stakeholders to consult it. Second, the rankings must be based on objectively measurable aspects of CSR, such as greenhouse gas emissions, criminal convictions, workforce diversity, or air and water pollution—not subjective composite rankings. Third, the rankings must be by aspects important to all stakeholders, not just investors. Fourth, the rankings must be accessible by brand names as well as corporate names. Stakeholders often have only brand names, while emissions are reported only under company names.¹⁰ Lastly, the ranking system must be entirely transparent.

No system that meets those five requirements yet exists. An estimated six-hundred profit and nonprofit organizations rate or rank large companies based on CSR or some aspect of CSR.¹¹ For-profit raters and rankers include MSCI, CDP, Novata, *Newsweek*, Dow Jones Sustainability Index, Bloomberg ESG Data Service, Sustainalytics Company, and Thomson Reuters ESG Research Data. All purport to measure CSR or various components of CSR.¹² Some of those organizations rank enough companies to achieve the first characteristic.

But none achieve the other four characteristics. Nearly all base their rankings on subjective composites, and nearly all address their information only to investors—shareholders or prospective shareholders. Because stock is sold under company names, not brand names, the ranking organizations have no reason to address the brands problem and do not address it.

As to the fifth characteristic, transparency, nearly all the ranking organizations’ business models require that their ratings, rankings, and data be available only to their customers, each of whom pays thousands of dollars a year for them. The result is limited distribution that precludes use of the ratings, rankings, and data by the corporation’s customers, employees, and other stakeholders. In addition, the ranking organizations’ rankings are not correlated with one another, preventing them from achieving credibility.¹³

Comparing the Stakeholder Takeover Project’s ranking methods to those of two other organization will illustrate their uniqueness. *Newsweek* is a news magazine that ranks the “top 500 companies” on the basis of “corporate social responsibility.”¹⁴ *Newsweek*

Environmental, Social and Governance (ESG) ratings? Evidence from Italy, 171 J. BUS. ETHICS 379, 390 (“The very act of being rated did alter firm behaviour in ways which can be interpreted as conformity to criteria.”).

¹⁰ See *infra* text accompanying note 88.

¹¹ CHRISTINA WONG & ERIKA PETROY, SUSTAINABILITY, RATE THE RATERS 2020: INVESTOR SURVEY AND INTERVIEW Results 6 (2020), <https://www.sustainability.com/globalassets/sustainability.com/thinking/pdfs/sustainability-ratetheraters2020-report.pdf> [<https://perma.cc/472R-JS75>] (“The number of ESG standards and frameworks . . . has expanded, with 600+ ESG ratings and ranking existing globally as of 2018 and continuing to grow since.”).

¹² LoPucki, *supra* note 2, at 1463-65.

¹³ *Id.* at 1464-65 (“None of those rating or ranking systems exerts much influence, however, because their findings are not correlated with one another.”).

¹⁴ *America’s Most Responsible Companies 2023*, NEWSWEEK, Dec. 8, 2022, <https://www.newsweek.com/rankings/americas-most-responsible-companies-2023>.

addresses its rankings to the public and makes them available to subscribers inexpensively. *Newsweek's* rankings are based on the company's ESG score. That score is the average of the company's scores for "the three pillars of ESG: Environment, Social and Corporate Governance"¹⁵ with the scores for each pillar weighted equally.¹⁶ *Newsweek* derives those scores by combining statistics regarding "key performance indicators" (KPI) with the results of a survey of "about 13,000 participants on their opinion of companies on social responsibility."¹⁷ *Newsweek* makes public neither the KPI data, the survey data, nor the method for combining them—instead saying that its method "focuses on a holistic view."¹⁸ *Newsweek* does not identify the brands under which the companies sell their products. Thus, *Newsweek's* ranking system lacks four of the five necessary characteristics. It ranks too few companies, ranks them only on subjective composites, does not solve the brands problem, and is not transparent.

The World Benchmarking Alliance (WBA) is a non-profit organization founded in 2018. The United Nations Foundation was one of its founders¹⁹ and the Carbon Data Project (DCP) is the WBA's research partner.²⁰ The WBA has an annual budget of more than \$8 million.²¹ It seeks to guide the largest companies worldwide to transform themselves in accord with the United Nations' Sustainable Development Goals.²² WBA intends to publicly rank 2,000 of the largest companies worldwide on their human rights, climate change, and other performances. It generates hundreds of numerical evaluations of specific aspects of each company's CSR performances.

The U.S. companies WBA will rank, however, are only a small percentage of large U.S. companies—too few to provide U.S. stakeholders with choices in purchasing. WBA discloses only composite ratings for subjective categories, not the specific aspects of the companies' performances. Thus, despite its massive funding, impressive alliances, and focus on aspects of CSR, WBA's rankings will lack four of the five characteristics necessary to empower stakeholders. It will rank too few companies, it will publish only subjective composites, it will not address the brands problem, and the data in its ranking system will not be transparent.

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 10.

¹⁷ *America's Most Responsible Companies 2023 Methodology*, at 3, NEWSWEEK, Nov. 2022, <https://www.newsweek.com/rankings/americas-most-responsible-companies-2023> (hereinafter *Newsweek Methodology*).

¹⁸ *Id.*, at 2.

¹⁹ World Benchmarking Alliance, How it started, <https://www.worldbenchmarkingalliance.org/how-it-started/> (listing the UN Foundation as a "founding partner").

²⁰ World Benchmarking Alliance, New research highlights an urgent need for the transport sector to collaborate and scale sustainable fuels, <https://www.worldbenchmarkingalliance.org/news/transport-benchmark-pr-2022/> ("The research was conducted in partnership with CDP, the non-profit that runs the world's environmental disclosure system.").

²¹ World Benchmarking Alliance, Annual Report 2021 at 72 https://assets.worldbenchmarkingalliance.org/app/uploads/2022/04/WBA2021_AnnualReport_FINAL_web.pdf (reporting total WBA expenditures for 2021 to be €8,357,991) [hereinafter WBA Annual Report].

²² World Benchmarking Alliance, Measuring What Matters Most 45, July 2019, <https://assets.worldbenchmarkingalliance.org/app/uploads/2020/09/WBA-sevensystemstransformations-report.pdf> ("By developing methodologies that guide these keystone companies through the transformations and assessing the progress of thousands of companies, we hope that their aggregate impact will result in systemic change.").

To the extent that organizations do publicly rate or rank enough corporations on objective aspects of CSR, they may contribute to the Stakeholder Takeover Project. Organizations already publicly rating and ranking corporations include Violations Tracker (compliance), Greenpeace (the environment), and CPA-Zicklin (political spending). Aside from Violations Tracker, I am aware of no organizations that publicly rate or rank more than a few hundred companies on any aspect of CSR. As part of this experiment, I will attempt to persuade other organizations to rank more companies, make their raw data public, and share their rankings through the Stakeholder Takeover channels. Their rating and ranking systems complement rather than compete with the Stakeholder Takeover Project.

The Stakeholder Takeover Project will adhere to two basic principles: full transparency and academic research. The transparency principle is that the Project employs only publicly available data and processes that data publicly.²³ The transparency principle requires the preservation of the Project's data sources, which is accomplished through permalinks.²⁴ We have made the protocols we followed in collecting the GHG emissions data public and will continue to do so.²⁵ The Project's planning process is also public. This Essay is the current plan.

If the project is successful, corporate interests may seek to control it, infiltrate it, interfere with it, discredit it, or destroy it. Transparency is the best defense against such efforts. Until the experiment is complete, the Project's status will be as academic research. Legally and normatively, that status provides what is probably the strongest protection against outside interference.

A. Current State of the Project

I have published two articles as part of the Project, and a third has been accepted for publication. The first, *Repurposing the Corporation Through Stakeholder Markets*, argued that credible rankings could enable stakeholder control.²⁶ The second article, *Corporate Greenhouse Gas Disclosures*, focused on the disclosure of GHG emissions.²⁷ Those emissions are the most important and most disclosed CSR metrics. The GHG emissions article explained the system governing voluntary ESG emissions disclosure and presented a method for ranking corporations based on scope 1 and scope 2 emissions.²⁸ To demonstrate the feasibility of that method, the Project compiled and published rankings of the S&P 500 companies based on data for the year 2020.²⁹

²³ See, e.g., Organisation for Economic Co-Operation and Development, OECD Principles and Guidelines for Access to Research Data from Public Funding (2007), <https://www.oecd.org/sti/inno/38500813.pdf>

²⁴ Transparency, THE STAKEHOLDER TAKEOVER PROJECT, <https://www.stakeholdertakeover.org/transparency.html> (downloads by permalinks).

²⁵ Stakeholder Takeover Project, Greenhouse Gas Emissions Rankings <https://www.stakeholdertakeover.org/rankings.html> (last visited Dec. 19, 2022) [<https://perma.cc/GM3N-7J6W>].

²⁶ LoPucki, *supra* note 2, at 1448 (“This Article’s thesis is that credible, publicly available ESG information, together with ratings and rankings based on that information, would enable the corporation’s Potential Stakeholders to repurpose the corporation.”).

²⁷ Lynn M. LoPucki, *Corporate Greenhouse Gas Disclosures*, 56 U.C. DAVIS L. REV. 405 (2022).

²⁸ *Id.* at 454-59 (describing the method for ranking employed).

²⁹ Stakeholder Takeover Project, *supra* note 25 (interactive rankings).

Under the pressures of investor demand,³⁰ imminent regulation,³¹ and European competition,³² voluntary GHG reporting is expanding rapidly and improving in quality. For example, S&P 500 companies that did not timely report 2020 GHG emissions data are reporting them late into 2022.³³ Some companies are reporting 2020 data simultaneously with their 2021 data.

The Project is collecting data for the 2021 GHG emissions rankings. The percentage of companies reporting only part of their emissions has declined from 19% for 2020 to 16% for 2021.³⁴ We expect disclosure sufficient for the compilation of 2021 rankings by March 2023.

A corporate characteristic is suitable for ranking only if the corporations to be ranked are similar and the characteristic is measured in the same or similar ways.³⁵ The instructions for measuring are referred to as “standards.” Numerous governments and nonprofit, nongovernmental organizations (NGOs) promulgate competing CSR reporting standards.³⁶ Corporations can feasibly be ranked only if enough corporations report to the same standard.³⁷ At present, only the reporting of scope 1 and scope 2 GHG emissions to the GHG protocol is sufficiently widespread to support a ranking useful to stakeholders.

“ESG Information System” is the term I use to refer to the not-yet-complete system in which organizations promulgate standards, corporations make disclosures, and other organizations process the disclosures into ratings and rankings and disseminate them to stakeholders and public.³⁸ The Stakeholder Takeover Project is part of that System. It will rank thousands of large U.S. corporations by their GHG emissions and deliver those rankings to stakeholders at the points of stakeholder decision making.

The first stage of the experiment will deliver GHG emissions rankings to grocery shoppers through a Grocery Store App (the App) now in development. The prototype, which is available from the Apple and Android stores,³⁹ contains the names and emissions data for the ten processed food companies in the S&P 500 and links those companies to the 362 brand names under which their products are sold in grocery stores. Users can download the prototype, take their phones to grocery stores, enter the brand names they encounter,

³⁰ LoPucki, *supra* note 2, at 1470-71 (recounting Blackrock’s threat, echoed by State Street, to vote against directors who did not produce effective sustainability disclosures by the end of 2020).

³¹ On March 21, 2022, the SEC proposed a rule requiring public companies to report scope 1 and scope 2 emissions. The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21,334 (proposed Apr. 11, 2022) (to be codified at 17 C.F.R. pts. 210, 229, 232, 239, and 249) [hereinafter SEC Proposed Rule]. The SEC is expected to promulgate the rule in early 2023.

³² European Parliament, Sustainable economy: *Parliament adopts new reporting rules for multinationals*, NEWS, Nov. 11, 2022, <https://www.europarl.europa.eu/news/en/press-room/20221107IPR49611/sustainable-economy-parliament-adopts-new-reporting-rules-for-multinationals> (reporting the European Parliament’s adoption of the Corporate Sustainability Reporting Directive).

³³ As of May 2022, the proportion of S&P 500 companies reporting GHG emissions data to the Corporate Greenhouse Gas Protocol (GHG Protocol) standard for 2020 was 81%. As of November 2022, that rate is 86% for 2020 data.

³⁴ The difference is not statistically significant. Fisher’s exact, two-tailed, $p=0.32$

³⁵ LoPucki, *supra* note 27 at 448-50 (explaining comparability).

³⁶ *Id.* at 425-34 (describing the organizations promulgating GHG emissions standards).

³⁷ LoPucki, *supra* note 2, at 1451-52 (describing need for same-standard reporting).

³⁸ *Id.* at 1456-60 (describing and diagramming the ESG Information System).

³⁹ In the app stores, search for “stpbrandsearch.”

see the emissions data and rankings for the brands' owners, and buy or not buy products accordingly.

In a preliminary test, the prototype identified and ranked an owner for only 4% of the brands entered—too few to be of practical use. Further testing suggests that the Project can increase the identification and ranking rate to 67% by adding (1) about ninety non-S&P 500 processed foods companies, and (2) about 25 grocery store sellers from the household and personal products industry. Seventeen percent of grocery-store product brands are owned by small companies for which GHG reporting is impractical, and another 17% are owned by large companies that choose not to report. The Project will recommend that App users not purchase from the large non-reporting companies but do purchase from the small non-reporting companies. Because voluntary GHG reporting is increasing rapidly, we think App users will be satisfied with the proportion of brands that produce “hits” in the finished Grocery Store App.

My third Project article is *Ending Shareholder Wealth Maximization*.⁴⁰ Some observers are concerned that a stakeholder takeover may interfere with the target companies' efficiency and competitiveness. The *Repurposing* article addressed the issue by explaining that stakeholder takeover is an entirely free-market process that does not require any changes in law, beliefs, or the formal corporate governance process. The ESG Information System will simply improve the functioning of existing stakeholder markets by furnishing those market actors with better information.⁴¹ *Ending Shareholder Wealth Maximization* explains that shareholder wealth maximization, as distinguished from shareholder primacy, is an extreme view that few corporations endorse.⁴² Shareholder wealth maximization is not a determinant of corporate efficiency, so its end could have no effect on corporate efficiency.

The Project is currently conducting research to identify and evaluate other CSR-data collection systems with which the Project could collaborate. They include information systems that currently rank numerous companies on aspects of CSR or that could easily be converted into such systems.

B. Remaining Uncertainties

The Stakeholder Takeover Project's purpose is to determine the degree to which stakeholders can control companies through stakeholder markets. At present, essentially four uncertainties remain. The first is whether CSR can be captured in rankings. That problem can be solved through information system design. The second is whether corporations will make sufficiently comparable disclosures to support valid rankings. The third is whether stakeholders will participate in the Project in numbers sufficient to force significant changes in company behavior. The fourth is how corporations will react to the Project's rankings and the pressures applied by the corporations' stakeholders. The Project will attempt to resolve the latter three uncertainties through experimentation.

⁴⁰ Lynn M. LoPucki, *Ending Shareholder Wealth Maximization*, *forthcoming* 56 U.C. DAVIS L. REV. __ (2023).

⁴¹ See LoPucki, *supra* note 2, at 1454 (“The only difference will be that market participants will be better informed.”).

⁴² LoPucki, *supra* note 40, at 33 (finding that “only three of 128 corporate governance policies (2%) referred to maximization of profits, shareholder wealth, or shareholder value (in those or other words).”).

1. Can CSR be Captured in Rankings?

CSR is a poorly defined aggregate of numerous, poorly specified components.⁴³ To rank companies based on CSR, the ranker must choose components, reduce them to numbers, and combine them into a single, “composite” number. Rankers typically accomplish that by weighting the component numbers and adding them.⁴⁴ Most present the composite number as an evaluation of a single corporate quality—social responsibility. Rankers include different components and weight them differently, resulting in CSR rankings that are not correlated with one another.

The Project’s solution to this problem is to avoid composite rankings to the extent possible. Instead, the Project will publish multiple rankings, each based on a single component of CSR. The Project’s rankings will not be evaluations of social responsibility. Each will be based on a measurable aspect of corporate social performance. Each participating stakeholder will be able to choose which ranking to consider in his or her decision making and identify his or her choice when reporting transactions to the Stakeholder Takeover website.

Initially, the Project will offer only a single ranking based on GHG emissions. When the Project later offers multiple rankings, the Project may provide software that enables stakeholders to combine those rankings into personalized composite rankings according to the stakeholders’ own recipes. The values promoted by such composite rankings will be those of the stakeholder, not the Project.

Composite variables cannot be entirely avoided. The Project’s measure of GHG emissions is itself a composite. Scope 1 emissions are actual emissions of seven gasses from combustion and other chemical processes within the company.⁴⁵ The company measures its emissions of each gas, weights the quantities for each in accord with the IPCC assessments referenced in the GHG Protocol,⁴⁶ converts them into CO₂ equivalencies (CO₂-e), and adds the equivalencies to obtain the single number the company reports as its scope 1 emissions.⁴⁷

Scope 2 emissions are indirect responsibility for the scope 1 emissions of companies that generated and sold electricity, steam, or heating/cooling.⁴⁸ The company that uses the energy reports scope 2 emissions in an amount equal to the energy generator’s corresponding scope 1 emissions.⁴⁹ Scope 2 emissions are also a composite. The GHG Protocol requires disclosure of scope 2 emissions calculated both by the location-based

⁴³ Alexander Dahlsrud, *How Corporate Social Responsibility Is Defined: An Analysis of 37 Definitions*, 15 CORP. SOC. RESP. & ENV’T MGMT. 1 (2008) (providing an empirical analysis of various CSR definitions). A set of reporting standards typically specifies hundreds of data to report, most of which are considered part of corporate social responsibility. See, for example, the GRI Standards which can be downloaded from the GRI website. *25 years of empowering sustainable decisions*, GRI, <https://www.globalreporting.org>.

⁴⁴ *Supra* text accompanying notes 14-16 (describing *Newsweek*’s calculation of composite numbers).

⁴⁵ LoPucki, *supra* note 27, at 421-23 (explaining GHG equivalencies)

⁴⁶ *Id.* at 421-23 (explaining GHG equivalencies).

⁴⁷ *Id.*

⁴⁸ *Id.* at 418.

⁴⁹ *Id.* at 418-19 (explaining scope 2 emissions).

method and by the market-based method.⁵⁰ Some companies disclose both numbers as required. Others disclose only a location-based number or only a market-based number. Some report only one number and do not say which it is.⁵¹ The Project treats the lowest of those three measures as the company's scope 2 emissions.⁵²

The Project combines that scope 2 composite with the scope 1 composite by adding the two numbers. The Project bases its rankings on the total. The composite qualifies as a credible fact because the underlying measures are measures of actual emissions combined in scientifically validated and widely accepted ways. They are not the ranker's subjective assessment.

A company's scope 3 emissions are the scope 1 and scope 2 emissions of companies in the reporting company's supply chain (upstream emissions) and the scope 1 and scope 2 emissions of customers and ultimate users of the company's products (downstream emissions).⁵³ Scope 3 emissions are relevant in evaluating a company's contributions to global warming because first, they exist due to the company's operations and second, they are typically far larger than the company's scope 1 and scope 2 emissions.⁵⁴ But only 290 of the S&P 500 companies report even one of the fifteen categories of scope 3 emissions defined in the Greenhouse Gas Protocol.⁵⁵ At current levels of reporting, corporations cannot be ranked by scope 3 emissions.

The Project rejected two other commonly used measures of GHG emissions for lack of validity. Reductions in emissions from one year to the next lack validity because the worst emitters have the greatest opportunity for improvement. Net-zero target rates are not actions, but mere promises that the companies may not keep.⁵⁶

In summary, CSR cannot be captured in a single meaningful number, so companies cannot be meaningfully ranked based on "corporation social responsibility." Instead, rankings should be based on objective aspects of CSR on which there is widespread agreement.

⁵⁰ MARY SOTOS, WORLD RES. INST., GHG PROTOCOL SCOPE 2 GUIDANCE: AN AMENDMENT TO THE GHG PROTOCOL CORPORATE STANDARD 3 (2015) https://ghgprotocol.org/sites/default/files/standards/Scope%20%20Guidance_Final_Sept26.pdf [<https://perma.cc/XU75-GY9E>] ("For most companies, scope 2 is no longer one number—it is two.").

⁵¹ LoPucki, *supra* note 27, at 435 (table showing the variety of scope 2 reporting).

⁵² *Id.*, at 454-55.

⁵³ See LoPucki, *supra* note – at 420-21 (explaining scope 3 emissions).

⁵⁴ See, e.g., Paul Griffin, CDP, The Carbon Majors Database: CDP Carbon Majors Report 2017, at 10 (2017), <https://cdn.cdp.net/cdp-production/cms/reports/documents/000/002/327/original/Carbon-Majors-Report-2017.pdf?1501833772> [<https://perma.cc/4SKR-U3LH>] (graph of top 50 fossil fuel companies showing scope 3 emissions far exceeding scope 1 and scope 2 emissions).

⁵⁵ Transparency, *supra* note 24 (table showing whether companies reported at least one category of scope 3 emissions).

⁵⁶ Science Based Targets, Science-Based Net-Zero: Scaling Urgent Corporate Climate Action Worldwide: Science Based Targets Initiative Annual Progress Report, 2021, at 7 ("For 28% of companies, no public information on progress against their targets was found, highlighting the need for harmonized reporting against science-based targets."); Net Zero Company Benchmark: Structure and Methodologies, Climate Action 100+, <https://www.climateaction100.org/net-zero-company-benchmark/methodology/> (describing the calculation by which Climate Action 100+ ranks companies).

2. Will Corporations Make Sufficiently Comparable Disclosures?

GHG emissions are currently the principal focus of CSR reporting. A single set of reporting standards for GHG emissions—the Greenhouse Gas Protocol—is dominant throughout the world.⁵⁷ At the point where 81% of S&P 500 companies had reported 2020 data, the Project was able to rank the companies plausibly.⁵⁸ By December 2022, 86% of S&P500 companies had reported their scope 1 and scope 2 emissions for 2020. The rate at which those companies are reporting 2021 emissions suggests that the reporting rate for 2021 data will be 92%. The questionable practice of excluding identified, but not quantified, emissions from companies' reporting appears on the decline.⁵⁹ The use of independent third-party audits is increasing.⁶⁰ Both the SEC and the European Parliament are about to make GHG emissions reporting mandatory.⁶¹ Thus, with respect to the most important aspect of CSR, the question has already been answered affirmatively. Large public companies will make sufficiently comparable scope 1 and scope 2 GHG emissions disclosures.

With respect to other GHG disclosure issues—such as scope 3 GHG emissions—and other CSR disclosure issues—such as air and water pollution, water usage, legal compliance, diversity, human rights, labor conditions, and compensation paid executives and workers—substantial uncertainty remains. The producers of CSR reporting standards are split between those who would limit disclosure to information material to investors for valuing stock (“single materiality”) and those who would expand disclosure to also include information material to all stakeholders (“double materiality”). To illustrate the difference, the Sustainability Accounting Standards Board (SASB), a single materiality advocate, issued standards that required only companies in 22 of 77 industries to report scope 1 emissions and did not require the reporting of scope 2 emissions at all.⁶² Had SASB's standards prevailed, ranking corporations by scope 1 and scope 2 emissions would have been impossible.⁶³ SASB abandoned its stance on GHG emissions only when it became clear that the SEC would require all public companies to disclose scope 1 and scope 2 emissions.⁶⁴ SASB became part of the International Financial Reporting Standard (IFRS) on August 1, 2022, and SASB's standards were “transitioned” to IFRS's new International Sustainability Standards Board (ISSB).⁶⁵ IFRS is now the leading advocate for single materiality.⁶⁶

⁵⁷ LoPucki, *supra* note 27, at 425-34 (documenting the GHG Protocol's dominance).

⁵⁸ *Id.* at 464-66 (showing rankings).

⁵⁹ *Id.* at 443-44 (explaining the exclusions practice).

⁶⁰ *Id.* at 437-38 (explaining third-party assurances).

⁶¹ *Supra* notes 31 and 32 and accompanying text.

⁶² *E.g.*, LoPucki, *supra* note 27, at 427-29.

⁶³ *Id.*, at 429.

⁶⁴ *Id.*, at 410.

⁶⁵ *Answering your top five questions about the ISSB and SASB Standards*, SASB STANDARDS: NOW PART OF IFRS FOUNDATION, July 28, 2022, <https://www.sasb.org/blog/answering-your-top-five-questions-about-the-issb-and-sasb-standards/#:~:text=All%20open%20SASB%20Standards%20projects,the%20IFRS%20Foundation's%20due%20process.>

⁶⁶ The recently adopted IFRS Constitution provides: “Information arising from the application of IFRS Standards is designed to meet the needs of investors and other capital market participants; however, other parties may also find the information useful.” IFRS Foundation, *Constitution*, Nov. 2021,

The leading advocates of double materiality are the Global Reporting Initiative (GRI) and the European Union.⁶⁷ The effect of this dispute over standards has been to split reporting among several standard sets, making ranking impossible by any of them.

By 2020, efforts to align the GRI, SASB, and other standards had failed.⁶⁸ Resolution of the battle over materiality will likely take years. In the interim, the Project's best path forward is to (1) roll out GHG emissions rankings to as many companies as possible, (2) apply the stakeholders' leverage to forcing voluntary double materiality reporting, and (3) support the single-issue rating and ranking systems other organizations have constructed from available data.

3. Will Stakeholders Participate?

Consumers want to engage with CSR issues.⁶⁹ They already take CSR into account when purchasing products.⁷⁰ To control corporations through product markets, consumers will have to take the additional step of consulting the rankings before purchasing. How likely they are to consult and act on them will depend on the stakeholder's costs,⁷¹ convenience, and motivation. A threshold issue, however, is whether stakeholders will be aware of the Project's existence. That will depend on the amount of publicity the Project can generate.

Costs: Commentators often assume that socially responsible companies will have higher costs and pass those costs along to customers in the form of higher prices.⁷² A substantial literature addresses the issue of how much more consumers are willing to pay

<https://www.ifrs.org/content/dam/ifrs/about-us/legal-and-governance/constitution-docs/ifrs-foundation-constitution-2021.pdf>.

IFRS Foundation, Constitution, Nov. 2021, <https://www.ifrs.org/content/dam/ifrs/about-us/legal-and-governance/constitution-docs/ifrs-foundation-constitution-2021.pdf>.

⁶⁷ European Commission, *Sustainable Finance*, NEWSROOM July 26, 2022, <https://ec.europa.eu/newsroom/fisma/items/754701/en> (“The CSRD incorporates the concept of ‘double materiality.’ This means that companies have to report not only on how sustainability issues might create financial risks for the company (financial materiality), but also on the company’s own impacts on people and the environment (impact materiality).”).

⁶⁸ LoPucki, *supra* note 2, at 1466-69 (describing the failure).

⁶⁹ Cone Communications/EBIQuity, *Global CSR Study* (2015) at 20, https://www.porternovelli.com/wp-content/uploads/2021/01/20_2015-Cone-Communications-Ebiquity-Global-CSR-Study.pdf (inferring from survey answers to six questions that “consumers want to get engaged with corporate social responsibility efforts”).

⁷⁰ See, e.g., Pradeep Bhardwaj et al., *When and how is corporate social responsibility profitable?* 84 J. BUS. RSCH. 206 (2018) (“The literature suggests that consumers take into consideration firms' CSR activities when making purchase decisions, noting that doing so may either increase their purchase intention or make them willing to pay higher prices for the firms' products and services.”); Mary Jo Goedeke & Christine Fogliasso, *Is CSR Becoming a Corporate Requirement?* 32 J. MANAGERIAL ISSUES 162, 166 (2020) (“Customers consider the product (including its price) when making a purchase, but also consider the corporation’s behavior as a corporate citizen.”).

⁷¹ Oliver Hart et al., Private Sanctions, SSRN, Nov. 2022 at 3, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4299614 (survey finding that “the willingness [of hypothetical stakeholders] to boycott is greatly influenced by the cost: 66% of respondents are willing to boycott if the cost is zero, 55% if the cost is \$100, and 43% if the cost is \$500”).

⁷² See Bhardwaj et al., *supra* note 70.

for the products of green companies. Most studies find that most consumers are willing to pay substantially higher prices.⁷³

Socially responsible companies may not, however, have higher costs.⁷⁴ First, stakeholders will confer benefits on highly ranked companies. That will reduce the companies' costs. More customers will buy their products. The best employees will prefer to work for them. Communities will seek to attract them. Investors will prefer them, thus lowering their costs of capital.

Second, social responsibility is in many respects efficient. Recent studies estimate the private savings (that is, price reductions) to energy purchasers from substituting renewable energy sources for fossil fuels worldwide at \$11.2 trillion⁷⁵ and \$12 trillion per year.⁷⁶ If social costs (that is, harms to third parties) are considered in addition to private savings, the point becomes intuitively obvious. The continued burning of fossil fuels may render the planet uninhabitable.

Other aspects of CSR are also efficient. Not polluting the air and water is cheaper than polluting the air and water and then cleaning it up. The economy would operate more efficiently if corporations complied with the law; much of the cost of enforcement, litigation, and sanctions could be eliminated. Over the long run, stakeholder-imposed CSR will be a cost saving, not a cost.

Those cost savings may not prevent price increases in the short run. For example, the cost of conversion to renewable energy worldwide is estimated at \$61.5 trillion.⁷⁷ Even though renewable energy would be far cheaper than fossil fuel energy after the conversion, the costs of conversion must be paid at the time of conversion. Those costs might force electric utility companies to raise prices. But if the electric utility companies can finance their conversions at a sufficiently low interest rates, conversion might lower the utilities' costs and their prices immediately.

The cost of being green—defined here as voluntarily reporting GHG emissions and taking action to reduce those emissions—is lower than generally thought. The SEC estimates the annual cost of compliance with its proposed GHG reporting rules to be \$530,000 per public company.⁷⁸ In a study of 39 corporations with market capitalizations

⁷³ LoPucki, *supra* note 2, at 1481-82 (citing studies).

⁷⁴ *Id.* at 1477-79 (arguing that CSR will reduce corporate costs).

⁷⁵ Mark Z. Jacobson, et al., *Low-cost solutions to global warming, air pollution, and energy insecurity for 145 countries*, 15 ENERGY ENVIRON. SCI. 3343 (2022) (“Across 145 countries, a transition to 100% [wind-water-solar] reduces the annual base-case private energy cost by 62.7% (from \$17.8 down to \$6.6 trillion per year in 2020 USD) compared with [business-as-usual].”).

⁷⁶ Rupert Way, et al., *Empirically grounded technology forecasts and the energy transition*, 6 JOULE 2057 (2022), <https://www.sciencedirect.com/science/article/pii/S254243512200410X> (“Using the 1.4% social discount rate recommended in the Stern Review, for example, the expected net present saving is roughly \$12 trillion.”).

⁷⁷ Jacobson, et al., *supra* note 75, at 3350 (“The net present value of the capital cost to transition all 145 countries while keeping the grid stable is \$61.5 trillion (USD 2020), with new electricity and heat generators comprising \$45.7 trillion of this.”)

⁷⁸ SEC Proposed Rule, *supra* note 31, at 21439 (“For non-SRC registrants, the costs in the first year of compliance are estimated to be \$640,000 (\$180,000 for internal costs and \$460,000 for outside professional costs), while annual costs in subsequent years are estimated to be \$530,000 (\$150,000 for internal costs and

of \$1 billion to \$200 billion,⁷⁹ the Sustainability Institute by ERM (ERM) found that the average total cost of climate-related disclosure in four categories of reporting expenses that approximated those used in the SEC estimates was \$533,000—almost identical to the SEC’s estimate.⁸⁰ When ERM added the cost of “climate-related analysis and/or disclosures and proxy responses to climate-related proposals,” the total increased to \$677,000. Using that larger total, for each \$100 of product sold by the median S&P 500 company, the total cost of GHG reporting would add six tenths of a penny to the price—an insignificant amount.⁸¹

For most companies, reducing emissions is more expensive than reporting, but not by much. Companies can reduce their scope 2 emissions by purchasing renewable electricity certificates (RECs). RECs entitle the purchaser of electricity through the grid to purchase the electricity the grid obtained from renewable sources as opposed to the electricity the grid obtained from burning fossil fuels.⁸² The EPA states that “RECs are the accepted legal instrument through which renewable energy generation and use claims are substantiated in the U.S. renewable electricity market.”⁸³ By purchasing RECs for all the electricity the company consumes, the median S&P 500 company could reduce its scope 2 GHG emissions from grid energy usage to zero. That would cost about \$3.5 million—0.035% of its annual revenues.⁸⁴ This inexpensive reduction is available to nearly all S&P 500 companies. Only four of those companies reported zero scope 2 emissions for 2020.⁸⁵

In some industries, GHG emissions may not be high enough for the expenses incurred in reducing them to have a material effect on prices. For example, all seventeen S&P 500 insurance companies that reported their GHG emissions ranked in the best 101

\$380,000 for outside professional costs.”). An SRC is a “smaller reporting company.”). Scope 1 and scope 2 are only a few of many data points required by the Rule.

⁷⁹ The Sustainability Institute by ERM, *Costs and Benefits of Climate Related Disclosure Activities by Corporate Issuers and Institutional Investors*, May 17, 2022, <https://www.sustainability.com/globalassets/sustainability.com/thinking/pdfs/2022/costs-and-benefits-of-climate-related-disclosure-activities-by-corporate-issuers-and-institutional-investors-17-may-22.pdf>.

⁸⁰ ERM is a consulting firm and a frequent provider of assurances regarding GHG disclosures.

⁸¹ Companies opposing disclosure, however, assert that the costs of reporting to the SEC’s proposed rule will be much higher. *E.g.*, ExxonMobil letter to the Securities and Exchange Commission, June 17, 2022, <https://www.sec.gov/comments/s7-10-22/s71022-20132323-302882.pdf> (“[W]e estimate the required one-time costs to rework our accounting and financial reporting systems and processes to allow tagging and aggregated reporting of climate-related effects, by line-item, to be a multiple of the combined costs required to implement two recent FASB Standards . . . both of which were multi-year projects that cost tens of millions of dollars and were significantly simpler than the Proposal.”).

⁸² United States Environmental Protection Agency, *Renewable Energy Certificates (RECs)*, Feb. 25, 2022, <https://www.epa.gov/green-power-markets/renewable-energy-certificates-recs>.

⁸³ *Id.*

⁸⁴ Of the 74 S&P 500 companies that reported their energy usage in mega-watt hours (MWh), the median company (Viacom CBS) used 634,264 MWh. Viacom CBS could purchase REC certificates reducing its electricity consumption—and so its scope 2 emissions—to zero for \$5.50 per MWh, a total cost of \$3,488,452. *RECs Are Expensive. Now What? Alternatives to Meeting Your Sustainability Metrics*, USOURCE, Sept. 23, 2021, <https://www.usourceenergy.com/blog/recs-are-expensive-now-what-alternatives-to-meeting-your-sustainability-metrics/> (reporting the \$5.50 price).

⁸⁵ SP500 2020 data (database), SP500 2020 data (table), Scope 2Total (field) (on file with the author).

of 500.⁸⁶ Customers can rarely consider the prices of all insurers. Excluding the highest emitter from consideration is unlikely to have any effect on the price a customer pays.

Convenience. Under the current information system, using CSR data to decide between products or jobs is highly inconvenient. Most companies do not report most data points of interest to stakeholders, so any given search is unlikely to be successful. The data reported are often not comparable across companies. Only a few websites offer free ratings or rankings of significant numbers of companies. Thus, stakeholders seeking to purchase from, or work for, green sellers are guided principally by public relations images, not data.

The biggest problem for consumers who try to use CSR data is linking the product under consideration to the company selling it. Companies report CSR data under the companies' names and logos but often sell products under apparently unrelated brand names and brand logos. The S&P 500 companies, for example, sell their products and services under about 10,000 brands.⁸⁷

The Stakeholder Takeover Project will make CSR rankings and data available through cell phone apps so that users will have them at the point of decision making—whether that is on Amazon, at a grocery store, at work, or at home. The user will enter a brand name. The program will return the brand owner's name, data, and GHG emissions ranking among companies in the industry.⁸⁸ Thus, a stakeholder will be able to use the App to purchase groceries based on brand owners' GHG emissions, workforce diversity, or corporate compliance with the law. The number of parameters from which stakeholders will be able to choose will depend on data availability and Stakeholder Takeover funding. The data will be available in the App in the form of single-parameter rankings, with company logos, brand logos, and raw scores beside the rankings. Part IV.A.1, below, describes the Grocery Store App in more detail.

Motivation. With credible data conveniently available, stakeholder response will depend on the level of stakeholder motivation. Numerous studies show that a large portion of stakeholders and the public are concerned about global warming.⁸⁹ Whether that expressed concern will produce high levels of response can only be determined by providing GHG emissions rankings and recording the response. The first evidence will come from the Grocery Store App's release.

4. Will Corporations React?

The literature on organizational rankings reports high levels of reactivity.⁹⁰ Many of the approximately six hundred organizations that rank corporations on CSR performance

⁸⁶ Stakeholder Takeover Project, *supra* note 25. Enter “insurance” in the search box and the program returns 22 entries. The Ranks of reporting insurance companies listed under Intensity Ranking range from 2 to 101.

⁸⁷ See Table 1, *infra*.

⁸⁸ *Infra* Part IV.A.1.

⁸⁹ Anthony Leiserowitz et al., Dramatic increase in public beliefs and worries about climate change, Yale Program on Climate Change Communication, Sep. 27, 2021, <https://climatecommunication.yale.edu/publications/dramatic-increase-in-public-beliefs-and-worries-about-climate-change/> (survey results showing 35% of Americans “very worried” and an additional 35% “somewhat worried” about global warming).

⁹⁰ *Infra*, notes 98-107 and accompanying text.

are regularly in communication with the ranked corporations.⁹¹ The rankers ask for information and the corporations furnish it.⁹² At substantially every large corporation there is a person or department that responds to the requests.

Most rankings are, however, published by large organizations that have substantial resources. Those resources sometimes include magazines or newspapers in which the organizations can publish their rankings.⁹³ By contrast, I am an academic conducting research with limited resources. Even corporations that routinely react to rankings may feel no need to react to mine.

My advantage is that the Project's rankings have no competitors. The Project provides the only free ranking of more than one hundred companies based on GHG emissions.⁹⁴ The Project's rankings are likely to be the only means by which the millions of consumers and job seekers who want to transact with low GHG emitters can do so.

The Project may be able to compel corporate attention three ways:

1. By obtaining publicity from publication of the Grocery Store App sufficient to threaten corporate revenues. Even small shifts in annual revenues may be enough to trigger a reaction because corporations must protect the capital values of their brands.⁹⁵ The cost of updating the Grocery Store App is modest, so corporations will have no assurance that ignoring the App will cause it to go away.

2. By obtaining grants or gifts that would provide the Project the stature of a larger organization.

3. By allying with one or more larger organizations.

Ultimately, the quality of the plan presented in this Essay will determine whether the Project succeeds. The world has a climate change problem for which it has no apparent solution. This Stakeholder Takeover Plan offers one. Once this Plan is published, anyone with the resources could implement it. The likelihood that no one will seems small.

⁹¹ Neil Pollock et al., *Conforming or transforming? How organizations respond to multiple rankings*, 64 *ACCT., ORGS. & SOC'Y* 55, 61 (2017) (“[Ranked organizations] have created new forms of expertise . . . the so-called ‘analyst relations’ specialist approach (hereafter ‘AR’). The role of AR (or ‘influencer relations’ as they are also known) appears primarily to be about making sense of, interfacing with, and at times ‘confronting’ or ‘countering’ industry analysts and other influential rankers.”).

⁹² *How Companies can take action*, CDP, <https://www.cdp.net/en/companies> (noting that “18,700+ companies worth over half of global market capitalization disclosed through CDP in 2022.”). To “disclose through CDP,” the corporation fills out a lengthy questionnaire. Tyson Foods’s 2022 completed questionnaire is fifty pages in length. *Tyson Foods CDP Reports*, ESG HUB (2022) <https://www.tysonsustainability.com/cdp/>.

⁹³ Examples of magazines that founded rankings include *U.S. New & World Report*, *Newsweek*, and *Times Higher Education*.

⁹⁴ POL. ECON. RSCH. INST., COMBINED TOXIC 100 / GREENHOUSE 100 INDEXES (2021REPORT, BASED ON 2019 DATA) (2021), <https://peri.umass.edu/greenhouse-100-polluters-index-current>.

⁹⁵ CSR rankings affect brand values with a lead time of one to three years. Maretno Agus Harjoto & Jim Salas, *Strategic and institutional sustainability: corporate social responsibility, brand value, and Interbrand listing*, 26 *J. PROD. & BRAND MGMT.*, 545, 551 (2017) (“[W]e find evidence to support H2 that CSR concerns, which represent firms’ neglect and harmful reactions (ex-post) to their broader stakeholders, adversely affect the incremental increase in their brand value.”).

II. THE RANKINGS LITERATURE

A substantial literature examines the rankings of organizations. This Part explores that literature and its implications for the Stakeholder Takeover Project. The literature models organizational rankings as a three-party relationship in which ranking organizations rank targeted organizations for the benefit of an audience.⁹⁶ The audience may be real but is often imagined.⁹⁷ The Project’s audience will be real, and the Project will attempt to communicate with them.

The literature focuses on ranked organizations’ “reactivity” to their rankings.⁹⁸ Those reactions include resistance,⁹⁹ seeking changes in the ranking criteria,¹⁰⁰ choosing which ranking systems to respond to,¹⁰¹ changing themselves to improve their rankings,¹⁰² strategizing to improve their rankings without changing themselves,¹⁰³ and trying to limit their reputational damage.¹⁰⁴ Ranked organizations respond to both positive and negative rankings but devote more attention to negative rankings.¹⁰⁵ Negative rankings are rankings closest to the bottom. It follows that ranked organizations will tend to react more to a ranking of all organizations—such as the Stakeholder Takeover Project rankings¹⁰⁶—than

⁹⁶ E.g., Rush Doshi et al., *The Power of Ranking: The Ease of Doing Business Indicator and Global Regulatory Behavior*, 73 INT’L ORG. 611 (2019) (Global performance indicators “are intended to package information to influence the views of an audience important to the target, such as foreign investors or voters, thus generating pressures that induce a change in the target’s behavior.”).

⁹⁷ Jelena Brankovic et al., *How Rankings Produce Competition: The Case of Global University Rankings*, 47 ZEITSCHRIFT FÜR SOZIOLOGIE 270, 272 (2018) (noting that the supposed competitors and their audiences “cannot directly observe the actual behavior of their competitors and their audiences.”).

⁹⁸ Espeland & Sauder, *Rankings and Reactivity: How Public Measures Recreate Social World*, 113 AM. J. SOCIO. 1 (2007) (defining reactivity as “the idea that people change their behavior in reaction to being evaluated, observed, or measured.”).

⁹⁹ Rieneke Slager & Jean-Pascal Gond, *The Politics of Reactivity: Ambivalence in corporate responses to corporate social responsibility ratings*, 43 ORG. STUD. 59 (2020) (“We analytically induce four modes of managerial engagement with CSR ratings – *grumbling*, *contestation*, *cherrypicking* and *microstatactivism* – which we categorize as involving different levels of resistance and mobilization.”).

¹⁰⁰ Neil Pollock et al., *supra* note 91, at 61 (describing corporate use of “analyst relations” specialists to interface with influential rankers).

¹⁰¹ *Id.* at 56 (“We present evidence that organisations are now able to exercise greater choice about which rankings they respond to.”)

¹⁰² *Id.*

¹⁰³ Kyle Siler, *Who games metrics and rankings? Institutional niches and journal impact factor inflation*, 51 RSCH. POL’Y 1, 1 (2021) (“As quantitative evaluation systems become increasingly widespread in academia, metrics gaming is prevalent in contemporary academic careers and institutions.”).

¹⁰⁴ Bomi Kim & Olav Velthuis, *From reactivity to reputation management: online consumer review systems in the restaurant industry*, 14 J. CULTURAL ECON. 684-85 (2021) (stating in the context of online restaurant customer reviews that “[w]e, in contrast, find that . . . reactive conformity to OCRs is limited to reputation management.”).

¹⁰⁵ Michael L. Barnett & Sohvi Leih, *Sorry to (Not) Burst Your Bubble: The Influence of Reputation Rankings on Perceptions of Firms*, 57 BUS. & SOC’Y 962 (2018) (“[W]e find that perceptions are influenced by reputation rankings, particularly when these rankings are negative and congruent with other information about the firm.”). Chatterji & Toffel, *supra* note 9 (“We find that firms that initially received poor . . . ratings subsequently improved their environmental performance more than other firms.”).

¹⁰⁶ See, e.g., Stakeholder Takeover Project, *supra* note 25 (ranking all S&P 500 companies).

to a ranking of only the top-performing organizations—such as the *Newsweek* rankings¹⁰⁷ or the CDP A-list.¹⁰⁸

Audience reactivity contributes to ranked organization reactivity by raising the stakes for the organization. Audience reactivity receives less attention than ranked organization reactivity in the literature, but numerous studies show strong audience reaction to rankings.¹⁰⁹ As discussed in Part I.B.3 and 4 above, the Stakeholder Takeover Project faces uncertainty with respect to both ranked organization reactivity and audience reactivity.

Rankings play three roles.¹¹⁰ First, rankings are an information intermediary, furnishing basic information about organizations to the audience quickly and easily.¹¹¹ Second, they provide a comparative ordering of the ranked organizations,¹¹² which facilitates ranked organization and audience decision making. Third, they are a system for surveillance and control of the ranked organizations.¹¹³

Although some ranking systems are created for profit, others are created for the purpose of changing the ranked organizations' behavior.¹¹⁴ Examples include the World

¹⁰⁷ See, e.g., *Newsweek Methodology*, *supra* note 17, at 3 (stating that the “candidate pool” for its ranking of 500 companies is the “[t]op 2,000 public companies by revenues with headquarters in the U.S.”). Thus, the negatively ranked companies do not appear in *Newsweek*'s rankings.

¹⁰⁸ See, e.g., *The A List 2021*, CDP, <https://www.cdp.net/en/companies/companies-scores> (listing only companies that received A grades).

¹⁰⁹ Devin G. Pope, *Reacting to rankings: Evidence from “America’s Best Hospitals,”* 28 J. HEALTH ECON. 1154, 1154 (2009) (“[T]he average hospital in my sample experiences a 5% change in patient volume from year to year due to rank changes.”); Michael Sauder & Ryon Lancaster, *Do Rankings Matter? The Effects of U.S. News & World Report Rankings on the Admissions Process of Law Schools*, 40 L. & SOC’Y REV. 105, 129 (finding that the “[US News] ranks have a consistent and independent impact on which schools students apply to, where they can hope to be accepted, and where they eventually matriculate.”); Juan M. Murguia & Sergio H. Lence, *Investors’ Reaction to Environmental Performance: A Global Perspective of the Newsweek’s “Green Rankings,”* 60 ENV’T RES. ECON. 583, 583 (“[G]etting one position closer to the top of *Newsweek*'s “Global 100 Green Rankings” increases the value of an average firm in the list by eleven million dollars.”).

¹¹⁰ Violina P. Rindova et al., *The Good, the Bad, and the Ugly of Organizational Rankings: A Multidisciplinary Review of the Literature and Directions for Future Research*, 44 J. MGMT. 2175, 2176 (2018) (“[P]rior research examined rankings from one of three perspectives—as a form of information intermediation, as comparative orderings, or as a means to exercise surveillance and control.”).

¹¹¹ Slager & Gond, *supra* note 99, at 60 (“Ratings can be viewed as alleviating information asymmetries about aspects of performance that are difficult for outsiders to observe, thereby aiding organizations’ reputations and enhancing market transparency.”).

¹¹² Giuseppe Labianca, *Striving toward the future: aspiration–performance discrepancies and planned organizational change*, 7 STRATEGIC ORG. 433, 456 (2009) (“Organizational reputations, whether transmitted through formal means such as rankings published in magazines or more informal means such as through discussions within an industry, can motivate organizational members to want others to view their organizations more favorably.”).

¹¹³ Deborah S. Yokoe et al., *Reporting Surgical Site Infections Following Total Hip and Knee Arthroplasty: Impact of Limiting Surveillance to the Operative Hospital*, 57 CLINICAL INFECTIOUS DISEASES 1282, 1282 (2013) (referring to the data gathering for a ranking of hospitals as “surveillance”).

¹¹⁴ Kelly & Simmons, *supra* note 3, at 170 (“[Global performance indicators] GPIs are not simply data in the neutral sense; they are deployed to set standards, establish policy agendas, and ultimately to influence legislation, regulations, behavior, and outcomes.”); e.g., Christopher Dorn, *When reactivity fails: The limited effects of hospital rankings*, 58 SOC. SCI. INFO. 327, 329 (2019) (“[T]he rankings are also supposed to induce

Bank's highly successful Ease of Doing Business index,¹¹⁵ the World Benchmarking Alliance's benchmarks,¹¹⁶ and the Stakeholder Takeover Project.

To change the ranked organizations' behavior, rankers have expanded along three dimensions. First, they publish continually.¹¹⁷ Second, they rank more organizations on more bases, including composite rankings. Third, they seek to reach wider audiences that have less expertise.¹¹⁸ This Stakeholder Takeover Plan provides for continual publication,¹¹⁹ the ranking of large numbers of companies,¹²⁰ and the reaching of wide audiences.¹²¹ It differs from the norm, however, in that it ranks organizations on narrower bases and minimizes the use of composite rankings.

Composite rankings have three serious shortcomings. First, they add complexity. For example, the CDP composite ranking is nightmarishly complex.¹²² The CDP method calculates scores for disclosure, awareness, management, and leadership by awarding points at each "level" and then combines those scores to determine whether the company qualifies for its "A list."¹²³—the only rating the CDP publishes. Second, composite variables distort the data through arbitrary weighting that the human mind cannot easily undo.¹²⁴ For the audience, the ranking system becomes a black box.¹²⁵ Third, the weightings enable the ranker to impose its own values—thus displacing not only the audience's values but also the ranked organizations' values. The latter displacement is illustrated by the complaints of top-ranked laws schools that recently "withdrew" from the U.S. News rankings. The law schools complained that U.S. News methodology penalized

competition between the providers; thus, forcing them to change towards higher quality and lower costs of service.").

¹¹⁵ Kelly & Simmons, *supra* note 3, at 170 ("[International Organizations] have long produced data, but in the recent past they have promulgated overtly strategic rating and ranking systems that package and deploy information intentionally to advocate policy and to influence its implementation.").

¹¹⁶ World Benchmarking Alliance, *supra* note 22, at 4 ("The WBA "aims to drive the private sector's engagement in the [United Nation's Sustainable Development Goals] through its benchmarks, envisioning a future where companies, investors, governments, civil society and individuals can quickly and easily compare businesses and motivate a 'race to the top'.").

¹¹⁷ Brankovic et al., *supra* note 97 at 275 ("A crucial element of the effective institutionalization of rankings in a field is thus that they are not published once or twice but continually.").

¹¹⁸ Leopold Ringel et al., *The Organizational Engine of Rankings: Connecting "New" and "Old" Institutionalism*, 8 POL. & GOVERNANCE 36, 39 (2020) (explaining the three dimensions).

¹¹⁹ Part V, below.

¹²⁰ Part III.B, below.

¹²¹ *Id.*

¹²² CDP, Scoring Introduction 2022, https://cdn.cdp.net/cdp-production/cms/guidance_docs/pdfs/000/000/233/original/Scoring-Introduction.pdf?; Ting Guo et al., *Does corporate green ranking reflect carbon-mitigation performance?* 277 J. CLEANER PROD. 1, 2 (2020) (summarizing the method).

¹²³ *Id.*

¹²⁴ Bernard Longden, *Ranking Indicators and Weights in JUNG CHEOL SHIN, UNIVERSITY RANKINGS* (2011) ("In simple terms, the weightings adopted by compilers are idiosyncratic and devoid of a theoretical underpinning.").

¹²⁵ *Id.* ("The mathematical and statistical complexity embedded within the black box would demand too much valuable time and effort to unpick, leaving the reader of the rankings [to] depend on a trust in those who construct the rankings.").

them for recruiting more diverse students who had lower grades and LSAT scores.¹²⁶ The Project's rankings will have none of those three problems.

Rankings have an emotional appeal that makes them a powerful instrument for social control.¹²⁷ As one commentator put it, “[q]uantification in itself . . . lacks the excitement triggered by zero-sum comparisons.”¹²⁸ Another noted that “once you start keeping score, everyone wants to win.”¹²⁹ Rankings impose economic and emotional pressures on organizations to change themselves to improve their rankings.¹³⁰

Rankings are so powerful they can corrupt both the rankers and the ranked. The World Bank's Ease of Doing Business Index is perhaps the most successful of all rankings. In September of 2021, a scandal caused the Bank to “pause” the Index's publication. An independent investigation by Wilmer Hale concluded that pressures on employees brought by senior World Bank officials resulted in an unjustified last-minute increase in China's 2018 Doing business ranking from 85 to 78. That occurred while the World Bank was seeking China's support regarding the Bank's financing.¹³¹ The Bank's reputation was badly tarnished, and publication of the Index has not yet resumed.

Numerous universities, including most recently Columbia University, and several law schools have misrepresented their data to U.S. News.¹³² In some cases, the

¹²⁶ Heather Gerken, *Why Yale Law School Is Leaving the U.S. News & World Report Rankings*, YALE LAW SCHOOL, Nov. 16, 2022 (“[US News] continues to take data . . . and applies a misguided formula that discourages law schools from doing what is best for legal education.”); Russell Korobkin, *UCLA Law will not participate in U.S. News & World Report rankings*, UCLA LAW, Nov. 22, 2022 (“The rankings disincentivize schools from supporting public service careers for their graduates, building a diverse student population, and awarding need-based financial aid.”).

¹²⁷ Kelly & Simmons, *supra* note 3, at 175 (describing the competition among states to ease doing business that was precipitated by publication of the World Bank's Ease of Doing Business index); Nicholas A. Bowman & Michael N. Bastedo, *Getting on the Front Page: Organizational Reputation, Status Signals, and the Impact of U.S. News and World Report on Student Decisions*, RES. HIGH. EDUC. DOI 10.1007/s11162-009-9129-8 (2009) (“[M]oving up one spot in the rankings yields a 1.2-point increase in average SAT scores.”).

¹²⁸ Brankovic et al., *supra* note 97, at 275.

¹²⁹ Simeon Djankov, *Doing Business Indicators: Why aggregate, and how to do it*, Doing Business Project. World Bank Group 1 (2005).

¹³⁰ Maretno Agus Harjoto & Jim Salas, *Strategic and institutional sustainability: corporate social responsibility, brand value, and interbrand listing*, 26 J. PROD. & BRAND MGMT. 545, 545 (2017) (“[O]ne-, two- and three-year lagged CSR strengths positively affect the level of brand value. . . . CSR concerns adversely affect changes in brand value and brand ranking.”); Sharon Muli, *Sustainability Rankings: Impacts on Corporate Sustainability* (2013) MASTER OF ENVIRONMENTAL STUDIES CAPSTONE PROJECTS 54, at 30-31, https://repository.upenn.edu/mes_capstones/54/?utm_source=repository.upenn.edu%2Fmes_capstones%2F54&utm_medium=PDF&utm_campaign=PDFCoverPages (describing General Electric employees' emotional identification with General Electric's rankings).

¹³¹ WilmerHale, *Investigation of Data Irregularities in Doing Business 2018 and Doing Business 2020*, THE WORLD BANK, Sep. 15, 2021, <https://thedocs.worldbank.org/en/doc/84a922cc9273b7b120d49ad3b9e9d3f9-0090012021/original/DB-Investigation-Findings-and-Report-to-the-Board-of-Executive-Directors-September-15-2021.pdf> at 5-6.

¹³² Chris McGreal, *Columbia whistleblower on exposing college rankings: 'They are worthless'*, THE GUARDIAN, Sept. 16, 2022, <https://www.theguardian.com/us-news/2022/sep/16/columbia-whistleblower-us-news-rankings-michael-thaddeus> (reporting that U.S. News & World Report reduced Columbia University's ranking from second to eighteenth because Columbia had reporting false data for several years); Robert Morse, *U.S. News Rankings Updates*, U.S. NEWS, Aug. 11, 2022 (listing sixty-one schools that misrepresented data for the period 2019-22).

misrepresentations have been fraudulent.¹³³ If the Project’s rankings are successful, corporations may falsify the data they furnish or pressure Stakeholder Takeover to improve their rankings. Stakeholder Takeover integrity is addressed in Part IV.D, below.

Much of the literature is critical of ranking—particularly the ranking of academic institutions. Professor Ulrich Teichler concludes that “the lower the quality and the more biased the normative basis, the higher the popularity of a ranking study is likely to be.”¹³⁴ Professor Meredith Davis states that “[College r]anking systems . . . are never objective.”¹³⁵ Professor Hugh Willmott complains that through academic journal rankings “we are pressured, incentivised and/or (self)-disciplined to squeeze our research activity and scholarly work into the constricted mould of the journals accorded the highest ranking.”¹³⁶ Professor Bernard Longden protests that the reduction of a university to a single metric “remains the single most disconcerting aspect of the whole process of creating a ranking, one that defies logic and one that is so patently wrong.”¹³⁷

Educational rankings’ strongest influence is on those within academia.¹³⁸ When non-educational organizations are ranked, scholars consider systems otherwise similar to university rankings benign.¹³⁹ The difference in attitude may be attributable in part to the dual role scholars play as the producers of the rankings literature and participants in the ranked organizations. That, together with the avoidance of composite variables, suggests that the Stakeholder Takeover rankings will not face the harsh criticisms leveled at educational rankings.

Rankings can have unintended consequences.¹⁴⁰ For example, U.S. News includes in its ranking criteria the amount of debt students accumulate during law school.¹⁴¹ The intent is to favor schools where students will have lower costs of attendance or receive

¹³³ See, e.g., Lindsay Ellis, *Former Temple Business-School Dean Gets Prison Term in Rankings Scandal*, WALL. ST. J., Mar. 11, 2022, <https://www.wsj.com/articles/former-temple-business-school-dean-gets-prison-term-in-rankings-scandal-11647053211> (“The former dean of Temple University’s business school was sentenced to more than a year in prison Friday, several months after he was convicted on fraud charges for his role in a scheme to bolster the school’s M.B.A. rankings with falsified data.”); Elie Mystal, *University of Illinois Law School Fined and Censured for Inflated LSAT Scandal*, ABOVE THE LAW, July 24, 2012, <https://abovethelaw.com/2012/07/university-of-illinois-law-school-fined-and-censured-for-inflated-lsat-scandal/> (reporting that the American Bar Association fined the University of Illinois Law School \$250,000 for reporting false LSAT statistics to the Association).

¹³⁴ Ulrich Teichler, Social Contexts and Systemic Consequence of University Rankings: A Meta-Analysis of the Ranking Literature in JUNG CHEOL SHIN, UNIVERSITY RANKINGS (2011).

¹³⁵ Davis, *supra* note 5, at 225.

¹³⁶ Hugh Willmott, *Journal list fetishism and the perversion of scholarship: reactivity and the ABS list*, 18 ORGANIZATION 429, 429 (2011).

¹³⁷ Longden, *supra* note 124.

¹³⁸ Michael N. Bastedo & Nicholas A. Bowman, *College Rankings as an Interorganizational Dependency: Establishing the Foundation for Strategic and Institutional Accounts*, 52 RES. HIGH. EDUC. 3 (2011) (“Although rankings are designed largely for stakeholders outside of higher education, their strongest influence is on those within the higher education field.”).

¹³⁹ E.g., Kelly & Simmons, *supra* note 3, at 174 (describing the mild reaction to the initial publication of the World Bank’s Ease of Doing Business Index).

¹⁴⁰ Dorn, *supra* note 114, at 343 n.1 (“[T]he contradictory and unintended consequences of rankings have been widely noted in the literature.”).

¹⁴¹ Gherken, *supra* note 126 (“[W]hen law schools devote resources to encouraging students to pursue public interest careers, U.S. News mischaracterizes them as low-employment schools with high debt loads.”).

more grant aid. But some law schools complain that criterion discourages them from admitting financially disadvantaged students who would have to borrow the costs of attending.¹⁴²

Ranking companies by GHG emissions arguably has the unintended consequence of encouraging responsible companies to sell their GHG-emitting facilities to independent, irresponsible companies.¹⁴³ By divestment, however, politically powerful companies reduce their conflict of interest regarding GHG emissions regulation. That may make the companies more willing to support regulation. In addition, if the divested facility emits more than 25,000 tons of GHG emissions annually, EPA regulations require that the new owner report the facility's emissions.¹⁴⁴

III. THE EXPERIMENT

The Stakeholder Takeover Project is an experiment designed to determine whether an effective ESG information system can enable stakeholders to control two aspects of corporate decision making: the decision to report standardized CSR data and the decision to improve CSR performance. The experiment will have three stages: proof-of-concept, rollout, and assessment. At the proof-of-concept stage, the Project will (1) distribute the Grocery Store App through the Apple and Android stores (2) receive purchase reports on the Project website, and (3) seek data collection partners. If the concept is proven, at the second stage the Project will roll the concept out to companies in all industries. At the third stage, the Project will evaluate empirically the ESG Information System's effect on the corporations' social responsibility.

A. Proof-of-Concept Stage

The Project's concept is that providing corporate rankings by aspects of CSR to stakeholders at the point of stakeholder decision making will enable stakeholders to control those aspects. To prove the concept, the Project will publish the Grocery Store App and assess the effect.

The concept will be proven if substantial numbers of grocery shoppers participate, and substantial numbers of corporations react to the Project's rankings by reporting their GHG emissions or taking action to reduce their GHG emissions. At the proof-of-concept stage, the Project will also seek to recruit at least two data collection partners. Proof of the concept will provide the basis for a grant application to finance the rollout stage.

1. The Grocery Store App

The Grocery Store App will provide grocery store shoppers, whether in person or online, with GHG emissions rankings of corporations that sell products through grocery stores. Nearly all the ranked corporations will be in the processed foods or household and personal products industries. The App will invite shoppers to enter a brand's name. Upon

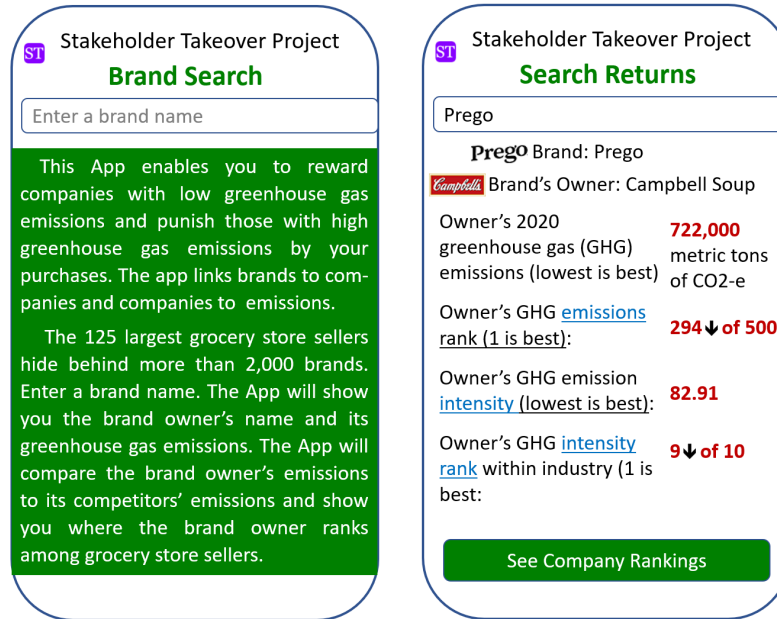
¹⁴² *Id.*

¹⁴³ LoPucki, *supra* note 2, at 1485-86 (describing the divestment problem).

¹⁴⁴ LoPucki, *supra* note 27, at 414 (describing the requirement and its effect).

entry, the App will return the brand owner’s (1) name, (2) GHG emissions, (3) rank among grocery store sellers based on GHG emissions, (4) GHG intensity (emissions divided by revenues), and (5) rank among grocery store sellers based on GHG intensity. The left panel of Figure 1 shows the Brand Search screen. The right panel of Figure 1 shows the information returned on a search for the Prego brand.

Figure 1: Grocery Store App (1) Brand Search and (2) Search Returns. The ranks shown on the right panel are only among the ten S&P 500 companies. The completed App will rank more than one hundred twenty-five companies.



Based on the Project’s testing, enough grocery store sellers disclose their GHG emissions and brands to produce a hit-rate of 67% on the Grocery Store App. We think that hit rate will be sufficient to sustain user interest in the App.




As shown in the left panel of Figure 2, the Owner’s Rank in Industry page will list the grocery store sellers in rank order by GHG intensity showing each brand owner’s (1) logo (2) rank, (3) name, and (4) GHG emissions intensity. The owner of the brand entered by the shopper will be highlighted and the searched brand name will appear below the brand owner’s name. Tapping on any brand owner’s name will display a list of brands that company owns. As shown in the right panel of Figure 2, the App’s Purchase Report page will enable shoppers to file reports indicating that they did or did not purchase a product based on the seller’s GHG emissions ranking.

The App will be free. Neither the Project nor the app store will record or retain any identifying information regarding the person to whom the App was distributed. Each copy of the App will have a unique number that identifies the copy (ID#). The App automatically fills in that ID# on the report and does not allow the user to change it. The ID#’s purpose is to enable users of the purchase reports (1) to determine the total number of Apps filing reports and (2) to group reports from the same copy of the App.

Figure 2: Grocery Store App (1) Owner’s Rank in Industry and (2) Purchase Report. The ranks shown on the left panel are only among the ten S&P 500 companies. The completed App will rank more than one hundred twenty-five companies.

Owner’s Rank in Industry

Best is rank 1, emission [intensity](#) lowest

	1. McCormick & Company	20.32
	2. General Mills	30.01
	3. Hershey Company	34.59
	4. J.M. Smucker	41.04
	5. Kraft Heinz	49.09
	6. Mondelez International	56.33
	7. Kellogg	64.84
	8. Conagra Brands	
	9. Campbell Soup Co.	82.91
Prego Prego		
	10. Lamb Weston	No report

Send a Purchase Report

Purchase Report

If you bought or didn’t buy a product because of the sellers’ GHG emissions ranking, please send us this report. The report will not identify you. We will make it publicly available on the Stakeholder Takeover [website](#).

My App’s ID#

Brand I didn’t buy

Brand I bought

Transaction price

Transaction date

Send Report

To send a report, the shopper need only enter the name of a brand the shopper bought or did not buy based on the seller’s GHG emissions ranking. The shopper has the option to enter the other brand, the price of the item purchased or not purchased, the date of the transaction, or more than one of those. Entering optional items will enhance the report’s credibility by making it less likely that the report is fictitious. Inclusion of the price will also help corporations determine the amounts of their gains and losses.

As shown in Figure 3, purchase reports sent by the App will be listed on the Stakeholder Takeover website’s Purchase Reports page in the order received. If the App is successful, corporations will monitor the website for mentions of their brands.

Figure 3. Purchase Reports Page

The Stakeholder Takeover Project Humanizing corporations through the market power of people

Home | Rankings | Transparency | [Definitions](#)

Purchase Reports The transactions below were reported to the Stakeholder Takeover Project through the Grocery Store App. For a free copy of the App, enter “stpbrandsearch” in the Apple or Android stores.

App ID #	Brand not bought	Price	Date event	Date report	Brand bought	Zip
Z65GGJ37YX	Archway	\$13.95	01-05-2023	01-05-2023	Cookie Crisp	32603
AF56YUE309	Prego		01-05-2023	01-05-2023	Progresso	90067
AF56YUE309	Special K	\$3.99	01-05-2023	01-05-2023	Cheerios	90067
GV68WOB2Y	Sweet Things	\$12.95	01-05-2023	01-05-2023	Cherry Blossom	63104
ZA99VBXM2	Bisquick	\$2.98	01-05-2023	01-05-2023		45904
PE5GGJ3723	Archway	\$13.95	01-05-2023	01-05-2023	Cookie Crisp	31143
AF56YUE309	Prego		01-05-2023	01-05-2023	Progresso	90067
AF56YUE309	Special K	\$3.99	01-05-2023	01-05-2023	Wheaties	90067
AV68WEB2S	Bertolli	\$12.95	01-05-2023	01-05-2023	Classico	63104
AB99VBXM2	Birds Eye	\$2.98	01-05-2023	01-05-2023	Sno Pac	02138

2. Data Collection Partners

Two conditions constrain the use of rankings to compel corporate social responsibility. First, ranking requires comparable (standardized) data on a substantial number of companies. As of this writing, GHG emissions are the only important standardized metric on which a substantial majority of large corporations voluntarily report. Second, data collection is costly. The Project estimates that collecting GHG emissions along with the company and brand logos for 5,000 companies and disseminating them through the website and App will cost about a million dollars.

To compel CSR, Stakeholder Takeover will need to rank corporations based on several metrics and pose a credible threat to rank them on several more. Data collection at that scale will require the cooperation of several organizations. In addition to collecting the necessary GHG emissions data, the Stakeholder Takeover Project will provide a structure for cooperation among organizations collecting various CSR metrics.

That structure will include a contract for the cross-posting of relevant rankings. To be eligible, an organization must collect data on some objective aspect of CSR sufficient to rank substantial numbers of companies. The organization's data must be from publicly available sources and the organization must make both the data and the data collection protocols public. Pursuant to agreement with the organization and with appropriate attribution, Stakeholder Takeover (1) will include the organization's rankings on the Stakeholder Takeover website and (2) will allow the organization to include the Stakeholder Takeover data on the organization's website. The agreement will be terminable by either party upon reasonable notice to the other.

B. Rollout Stage

At the rollout stage, the Project will expand the Grocery Store App and website to include GHG emissions for all large companies in all industries. "Large" will be defined based on the likelihood of GHG reporting among companies of the size, as it was for the Grocery Store App. The expanded app will be called the Greenhouse Gas App.

The Greenhouse Gas App will contain GHG emissions data on an estimated 5,000 U.S. companies. Those companies own an estimated 46,000 brands. Those estimates are based on the actual numbers of large companies and brands in the processed food and personal/householder products industries and a study of the number of brands owned by the twenty-three S&P 500 companies in the electric utilities industry.

Table 1 shows how the Project made those estimates. As shown in column (1), ten S&P 500 companies were in the processed foods industry. Those ten companies had 362 brands, an average of 36 per company. As also shown in column (1) the one hundred largest companies in the processed foods industry had 1,680 brands, an average of 16.8 per company. That is, smaller companies have fewer brands. Column (2) shows that if companies in other industries have the same average numbers of brands as processed food companies—36 for S&P 500 companies and 16.8 for all large companies—the S&P 500 companies will have 18,100 brands and all large companies will have 84,000 brands.

Table 1. Projected Number of Brands in the Greenhouse Gas App

	(1) Processed foods	(2) Projected to all industries	(3) Electric utilities	(4) Projected to all industries	(5) Average of (2) and (4)
S&P 500 companies	10	500	23	500	
S&P 500 brands	362	18,100	81	1,761	9,930
Average number of brands per S&P 500 company	36.2	36.2	3.5	3.5	
All large companies	100	5,000	230	5,000	
All large brands	1,680	84,000	376	8,172	46,086
Average number of brands per large company	16.8	16.8	1.6	1.6	

To probe for differences in brand intensity by industry, the Project researched the number of brands employed by the twenty-three electric utilities in the S&P 500. The Project chose that industry because it expected the industry to have relatively few brands.¹⁴⁵ As shown in column (3), those twenty-three companies had only eighty-one brands, an average of 3.5 brands per company. Column (4) shows that if companies in other industries had 3.5 brands per company, the S&P 500 companies would have only 1,761 brands and all large companies would have only 8,172 brands. Column (5) shows the average of the projections to be 9,930 S&P 500 brands and 46,086 large company brands.

Thus, the estimated quantity of data that must be collected for the Greenhouse Gas App includes (1) names, GHG emissions reports, and logos for 5,000 companies, and (2) names and logos for 46,086 brands. The Project plans to finance data collection for the Greenhouse Gas App through grants.

C. Assessment Stage

The Project's final stage will assessment of the experiment's results. The assessment will be in the form of a journal article. The two most important assessments will measure (1) the extent to which stakeholders participated by downloading apps and filing purchase reports, and (2) the extent to which companies reacted by increasing their GHG emissions reporting and reducing their GHG emissions.

Even in the Project's absence, numerous pressures would have caused corporate GHG emissions to decline over the coming years. To assess the Project's impact will require a method that separates the Project's impact from the impact of those other pressures. One way to address this concern is to compare the grocery store suppliers included in the App with comparable corporations that are not included in the App using the statistical analysis of propensity score matching.¹⁴⁶

The assessment will be based in part on the ranked corporations' acknowledgement of the Project's role, either in express statements or in actions directed at the Project. The assessment will also identify any unexpected consequences, whether positive or negative.

¹⁴⁵ Regulated electric utilities have captive customers and may sell only one product—electricity.

¹⁴⁶ Marco Caliendo & Sabine Kopeinig, *Some practical guidance for the implementation of propensity score matching*, 22 J. ECON. SURVEYS 31 (2008) (describing the method).

The assessment will enable future researchers to benefit from and build on the stakeholder takeover experiment.

Assessing the reactivity of stakeholders to rankings based on GHG emissions will contribute to the literature on the amounts that consumers are willing to sacrifice to purchase “green” products and services. The contribution will include a finding on how many consumers downloaded and used the Grocery Store App and the Greenhouse Gas App. That may enable the creation and distribution of other systems that enable consumers worldwide to express their views on other aspects of corporate governance.

Assessing the reactivity of the ranked corporations will contribute to the literature on ranking organizations. The contribution will include findings on the levels of corporate reactivity to varying levels of consumer participation. Customers are the stakeholders best positioned to control corporations through markets.¹⁴⁷ If, as I anticipate, corporations react to small, but principled shifts of consumer purchasing, the experiment may give rise to a new form of consumer activism.

The Project will make all data gathered public. Both for profit and not-for-profit rankers have traditionally kept this kind of data secret to protect their competitive positions. The Project will be able to reveal it because no competing systems exist, and the Project’s funding will be from grants. Any new, transparent ranking system would further the Project’s work by providing stakeholders with alternative ways to control aspects of corporate governance.

IV. OPERATION AFTER PROJECT COMPLETION

The Stakeholder Takeover Project is an academic experiment. The Project will be a success if (1) it ranks approximately 5,000 corporations based on their GHG emissions, (2) most of those corporations become aware of their Stakeholder Takeover rankings and react to them by improving their CSR performances, and (3) the Project completes its self-assessment. The Project will then create a permanent organization named Stakeholder Takeover to continue ranking companies based on aspects of CSR and to expand the aspects included. The expectation that such an organization will continue the Project’s rankings may be a prerequisite to the Project’s success. Corporations might ignore rankings that were not expected to continue.¹⁴⁸ This Part describes how Stakeholder Takeover will operate.

A. Governance

Upon the experiment’s completion, the Project will transfer the task of coordinating the ESG Information System to Stakeholder Takeover. Stakeholder Takeover will be a non-profit corporation, qualified to receive tax deductible donations under §503(c)(3) of the Internal Revenue Code. The corporation’s charter will require it to maintain and

¹⁴⁷ Hart et al., *supra* note 71, at 25 (“[C]ustomers seem to have the greatest leverage on companies since they can impose large losses on their suppliers at a low personal cost.”).

¹⁴⁸ Brankovic et al., *supra* note 97 at 275 (“A crucial element of the effective institutionalization of rankings in a field is thus that they are not published once or twice but continually.”).

improve the ESG Information System in a manner that facilitates continued stakeholder control of corporations.

To assure that Stakeholder Takeover remains a loyal stakeholder representative, its charter will commit the corporation to complete transparency, including the identities of donors, the beneficial owners of corporate donors, and members. Donors and participants will be eligible for membership. To insulate the corporation from takeover by interests hostile to its mission (1) the charter will define the mission, (2) the board will be staggered, (3) both the board and the membership will participate in the selection of directors, and (4) candidates for director will disclose their backgrounds, qualifications, and material affiliations to for-profit and not-for-profit organizations—as board members, employees, agents, shareholders, or members.

B. Standardized Reporting

Stakeholder Takeover’s mission will be to coordinate the ESG Information System. Standardized reporting will be at the heart of that system. Corporations can be ranked by a metric only if comparable measurements of that metric are available for all the ranked companies. Some metrics can be collected from government data or other sources, but most of the metrics used will be reported by the ranked companies. With respect to a metric, reporting may be standardized by voluntary compliance with a reporting standard or by government imposition of a reporting standard.

At present, scope 1 and scope 2 GHG emissions are the only examples of standardized voluntary reporting by U.S. companies of CSR data suitable for ranking. No examples exist of government-mandated, standardized CSR reporting suitable for ranking. By the time the Project is complete, however, examples will likely exist.¹⁴⁹

To the extent that stakeholders need rankings by additional metrics to control the aspects of corporate decision making they choose, Stakeholder Takeover should rank companies by their transparency to compel companies to report the additional metrics. For example, stakeholders would find scope 3 GHG emissions rankings useful. Stakeholder Takeover could rank companies based on the degree of completeness of their scope 3 emissions reporting.¹⁵⁰ That would enable stakeholders to favor the companies with the most complete scope 3 reporting. When the quality and extent of scope 3 reporting has become sufficient to support scope 3 rankings, Stakeholder Takeover could provide those rankings.

C. Compilation of Rankings

Stakeholder Takeover’s primary function will be to conceive, compile, and distribute corporate rankings to stakeholders and the public. The bases for rankings will depend on stakeholder demand and data availability.

¹⁴⁹ Jeff Harrington & Michael Ferullo, *SEC Climate Rules Pushed Back Amid Bureaucratic, Legal Woes*, BLOOMBERG LAW, Oct. 19, 2022, <https://news.bloomberglaw.com/securities-law/sec-climate-rules-pushed-back-amid-bureaucratic-legal-woes> (“The SEC is months away from finalizing expansive new climate disclosure requirements.”).

¹⁵⁰ Transparency, *supra* note 24 (field showing whether each S&P 500 company reported at least one category of scope 3 emissions).

Rankings will be based on aspects of CSR or on CSR transparency. The aspects in demand will change over time as CSR problems are solved and new CSR problems arise. Stakeholder Takeover will address those problems about which stakeholder are then most concerned. For example, as of this writing, GHG emissions is the CSR problem that has attracted the most attention. Some members of the public are intensely concerned; some believe the problem is exaggerated or misunderstood; and some do not care.¹⁵¹ Stakeholder Takeover's role will not be to decide who is right. It will be to operationally define the issue—GHG emissions—and provide the opportunity for stakeholders and the public to express their preferences to the corporations through stakeholder markets.

To provide as many stakeholders as possible with the opportunity to participate in the stakeholder takeover, the Project should provide rankings by several aspects. That might include, for example, emissions of various pollutants, corporate criminal convictions, political spending, diversity of corporate leadership, diversity of corporate workforce, corporate abuse of power over consumers, or human rights violations. Stakeholder Takeover might also provide free software for stakeholders who wish to combine single-metric rankings into composite rankings.¹⁵²

Stakeholder Takeover should not, however, produce its own composite CSR ranking. CSR is not a single concept, and its components are not fungible. Stakeholders must combine them in some way to decide whether to deal with a corporation. But that combination is personal. Stakeholder Takeover cannot and should not try to decide how many metric tons of GHG emissions reduction offsets a poor record on human rights.

As previously noted, a large, mostly for-profit industry already produces composite CSR ratings and rankings. They are not credible because (1) the ratings and rankings are not correlated with one another, (2) they are subjective composites, and (3) the producers cannot publish their data, ratings, or and rankings. For those reasons, proprietary data, ratings, or rankings will not compete with Stakeholder Takeover data, ratings, and rankings.

As also previously noted, a few non-profits produce ratings or rankings based on single aspects of CSR and make their data, ratings, and rankings publicly available free of charge. Stakeholder Takeover should view such rankings as complimentary to its own. If those organizations can rank enough corporations to enable stakeholders to confer ESG Benefit, they should participate in the stakeholder takeover. Stakeholder Takeover should seek collaboration agreements with as many producers of high-quality data, ratings, or rankings as are willing.

D. Information Dissemination

Stakeholder Takeover will collect standardized CSR information, process it into ratings and rankings, and disseminate the data, ratings, and rankings as widely as possible. During the Project, dissemination will be principally of GHG emissions rankings. If its funding permits, Stakeholder Takeover would expand the aspects of CSR included.

¹⁵¹ See, e.g., Leiserowitz et al., *supra* note 89.

¹⁵² Longden, *supra* note 124, at 100 (“A recent development made possible through the web is the development of an interactive approach, leaving it to the reader to select key indicators in the creation of an overall score.”).

During the Project, it will be important to obtain feedback from Stakeholders who use the rankings. Feedback in the form of purchase reports will provide evidence to corporations that Project rankings are affecting the corporations' revenues, their relationships with stakeholders, and their public images.

At some point after Project completion, it may become clear to the ranked corporations that the Project's rankings have these effects. When purchase reports are no longer necessary to confer credibility on Stakeholder Takeover, Stakeholder Takeover will decide whether they serve other purposes. Possibilities include: (1) enabling stakeholders and the public to express their opinions publicly, (2) involving stakeholders and the public in Stakeholder Takeover in a manner that builds name recognition and loyalty and encourages donations, and (3) defining a group of people who should be entitled to participate in governance of the Stakeholder Takeover corporation.

E. Rankings Integrity

CSR rankings are based mainly on data reported by the ranked companies. The integrity of the Stakeholder Takeover's rankings will depend on the accuracy of those data. Some companies retain auditors to provide "assurances" regarding the accuracy of their disclosures. The assurances can be at two levels: reasonable/high or limited/moderate. At present, assurances are voluntary. Fifty-nine percent of the S&P 500 companies that reported GHG emissions for 2020 provided independent, third-party assurances.¹⁵³ Eighty-five percent of those assurances were "limited" or "moderate."¹⁵⁴ Stakeholder Takeover should use market pressures to compel more and higher assurances. The SEC's proposed mandatory reporting rule would require assurances that, within a few years, would be reasonable/high. The adoption of such a rule would solve the assurances problem.¹⁵⁵

Even with auditing, some corporations will cheat. To deter cheating, Stakeholder Takeover can and should impose sanctions. The appropriate sanctions are to make the corporation's offenses public. That might include a notation on subsequent rankings that the corporation cheated on prior rankings.

F. Financing

The Stakeholder Takeover Project will collect a data set and report a single metric for about 5,000 companies. The Project estimates the direct cost of that data set collection at about \$120,000 and the total cost of collecting, vetting, and disseminating the data to be about \$1 million. Expanding the collection to five variable sets and the reporting to seven variables would increase the direct cost to about \$600,000. At that level of collection and dissemination, the Stakeholder Takeover corporation would need about ten full- or part-time employees, including: (1) a CEO, (2) a data collection manager, (3) a programmer, (4) a publicist, (5) a CFO, (6) a fund raiser, and (7) an office manager. The total budget

¹⁵³ LoPucki, *supra* note 27, at 437 (reporting that 59% of companies disclosing scope 1 and scope 2 emissions obtained third party assurances).

¹⁵⁴ LoPucki, *supra* note 27, at 437.

¹⁵⁵ The rule would mandate reporting only by public companies. The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21,334, 21335 (proposed Apr. 11, 2022) (to be codified at 17 C.F.R. pts. 210, 229, 232, 239, and 249) ("We are proposing to require registrants to provide certain climate-related information in their registration statements and annual reports.").

would be at least \$2 million a year. By contrast, the WBA had 65 employees and total expenses of €7,259,751 (\$7,698,603) for 2020,¹⁵⁶ while CDP North America had 57 employees and total expenses of \$10.5 million for its year ending March 2020.¹⁵⁷ Stakeholder Takeover will be funded through charitable contributions and volunteer work.

V. CONCLUSIONS

The world is grappling with a climate change problem. Corporate GHG emissions are a major contributor. Governments have not been able to compel corporations to reduce them quickly enough.¹⁵⁸ The SEC is poised to issue a rule mandating GHG emissions disclosure,¹⁵⁹ but the United States Supreme Court is poised to invalidate it.¹⁶⁰ Disclosure is only the first stage of a regulatory solution. Time to avoid a climate catastrophe is running out.

This Essay presented a detailed plan for corporate stakeholders to use existing data to compel the necessary reductions through stakeholder markets. The Stakeholder Takeover Project would provide the information stakeholders need for stakeholder markets to function. That information is corporate rankings by GHG emissions, accessible from brand names.

Rankings are a powerful method for altering corporate behavior. But hundreds of for-profit and not-for profit organizations have ranked corporations by various measures of CSR for years without managing to empower non-shareholder stakeholders. The explanation for that failure is that nearly all those rankings were based on “single materiality” reporting. That is, they provided only the information relevant to investors, whose sole interest was incorrectly assumed to be maximizing the investors’ own wealth.¹⁶¹

Most corporate law scholars writing today believe non-shareholder stakeholders should share formal control of corporations.¹⁶² No scholars have objected to stakeholders informally controlling corporations through stakeholder markets. Stakeholders should have control because they provide all the corporations’ resources.

The Stakeholder Takeover Project’s unique rankings will enable stakeholders to gain control. Those rankings will be unique in five respects. First, the Stakeholder Takeover Project will be fully transparent—as to rankings, data, process, and even the Project’s strategy. As a result, its rankings will be credible. Second, the Project will address

¹⁵⁶ WBA Annual Report, *supra* note 19, at 3, 78.

¹⁵⁷ CDP North America Annual Report 2019-20, at 7, 9. https://cdn.cdp.net/cdp-production/cms/reports/documents/000/005/234/original/CDP_NA_2019-20_Annual_Report.pdf?1591886351.

¹⁵⁸ Jonathan R. Macey, *Esg Investing: Why Here? Why Now?* 19 BERKELEY BUS. L.J. 258, 258 (2022) (“The emergence of ESG investing and governance demonstrates a consensus that government lacks credibility and is not viewed by rational citizens as a likely source of solutions to these broad problems.”).

¹⁵⁹ *See, e.g.*, Harrington & Ferullo, *supra* note 149 (SEC mandatory reporting rule).

¹⁶⁰ *Id.* (“[T]he SEC also must factor in the Supreme Court’s decision in *West Virginia v. Environmental Protection Agency*, which SEC Chair Gary Gensler said this month was “significant and meaningful.”).

¹⁶¹ *See* LYNN A. STOUT, THE SHAREHOLDER VALUE MYTH 86-94 (2012) (explaining the concept of the “universal investor,” a shareholder whose interests extend beyond maximizing the value of his or her shares).

¹⁶² LoPucki, *supra* note 40 at 5, n.13, n.14 (collecting the articles).

its rankings to all stakeholders and deliver them at the point of stakeholder decision making. Customers will be able to shop based on seller GHG emissions in addition to price and quality. Third, to make that shopping feasible, the Project will link brand names to the brand owners' GHG emissions. Fourth, publicly disclosed GHG emissions—measurable facts rather than subjective opinions merged by arbitrary formulae—will provide the basis for the Project's rankings. Fifth, the Project will rank all corporations that disclose GHG emissions and their non-disclosing competitors, thus deploying the negative as well as the positive power of rankings. The Stakeholder Takeover project is an experiment designed to determine whether such an information system can accomplish what prior rankings could not—compel corporations to report and reduce their emissions with the urgency required.

Uncertainties remain. The Plan requires the participation of sufficient numbers of stakeholders to compel a corporate response. In responding to their stakeholders, corporations have options besides reporting and reducing their emissions. But if stakeholders can compel reporting and reduction of GHG emissions, stakeholders can compel other socially responsible corporate behaviors. Stakeholders and the public might then determine the nature and levels of corporate social responsibility.