



Unlocking Codes

Online database makes it simple to review and compare corporate conduct rules. **BY MICHAEL KOZUBEK**

QUICK READ

Fortune 500 companies' codes can be accessed
 Many codes share common shortcomings
 Simplicity and clarity are key best practices

Accessing the codes of conduct of other companies just became a lot easier. ¶ The Ethisphere Institute, a think tank that focuses on best practices in business ethics and corporate social responsibility, released a free online searchable database of codes of conduct in November 2011. The database is designed to aid in-house counsel and governance, risk and compliance (GRC) officers in developing and improving their companies' codes. It allows users to quickly locate 42 content areas within codes of conduct ranging from conflict of interest to export controls

and insider trading.

The Code of Conduct Dataset includes codes from all Fortune 500 companies, sorted by industry. Ethisphere plans to gather more than 2,500 additional codes and include them in the tool, as well as regularly publish statistics and best practices by industry.

A team of attorneys at Haynes and Boone compiled the content in the dataset and says it will be a useful tool for legal departments.

"[It] provides transparency for [in-

house] counsel to see what others are doing in their compliance programs," says Haynes and Boone Partner Ryan McConnell.

Preparing Policies

As of December 2011, 768 users had registered to view the dataset, including a host of inside counsel, who are often responsible for drafting codes of conduct. One user, Jay Martin, chief compliance officer and senior deputy general counsel at Baker Hughes, an oil industry services

company, says the database provides the opportunity to review not only the codes of companies in the same industry, but also those of other recognized, well-run companies.

"Most [in-house counsel and GRC officers] wouldn't have the time and resources to gather up all the published codes of conduct and load them in a database," Martin says. "Now you can slice and dice this information in several different ways."

While codes of conduct have become crucial tools in avoiding and defending

against government prosecution (see “Message to the Feds”), an analysis of the codes in the Ethisphere dataset has revealed some common shortcomings. For example, most codes don’t address export control policies, even though those policies are a national security priority.

Conducting Searches

Among Fortune 500 companies, only 19 of those with public codes prohibit their employees from making “facilitation payments” to foreign officials—a common practice in many countries to speed government approval for a project which, although ethically questionable, is allowed under the Foreign Corrupt Practices Act (FCPA). And 373 companies don’t mention such payments at all in their codes, McConnell says. Searching the codes of petroleum refining companies for a policy on gifts to foreign officials prohibited under the FCPA, however, shows that 12 had included such a policy.

Other findings reveal that 22 percent of Fortune 500 companies in industries ranging from refining to transportation fail to address health, safety and environmental protection issues in their codes.

Message to the Feds

WHILE A COMPANY MAY HAVE MANY POLICIES NOT INCLUDED IN ITS code of conduct, what is included is a strong indicator of what matters to a company, says Haynes and Boone Partner Ryan McConnell. “A company may have 200 policies, but only put their most important in their code of conduct,” he explains. “These indicate what issues companies are most worried about.”

Some important elements in a code vary by industry, McConnell says, but a comprehensive approach is key to avoiding risk. A code that contains ambiguities, or is silent regarding certain policies can influence employee perceptions of what senior officials regard as acceptable practices and lead to illegal or unethical actions.

Consequently, a company’s code also sends a strong message to federal investigators. In fact, one of the first tasks for federal agents in a corporate investigation is to look at a company’s website and review the code of conduct, says McConnell, a former federal prosecutor. What government investigators find may determine whether they choose to levy a fine or press criminal charges. Adequate compliance policies can help provide a defense if charges are brought.

The tool allows a user searching for comparisons among company codes to select an industry and then enter up to three of the 42 code categories per search. The tool is fast and easy to use, but it does not allow a user to search for terms other than the 42 categories, nor is it possible to search by company name.

Although the industry categories conform to Securities and Exchange Commission industrial classifications based on company securities filings, searching for a company by industry is not always self-evident. Google Inc., for example, is listed under “Services - Computer Programming” and appears to be the only company in that category. McKesson Corp. is listed under “Wholesale - Drugs Proprietarys & Druggists’ Sundries.”

An Ethisphere spokesperson says the organization will review possible future improvements to the dataset to make it more user-friendly.

Best Practices

In a prior benchmarking analysis of 50 company codes completed in 2008 and also available free online, Ethisphere focused on eight elements of an effective

code of conduct. A key best practice it identifies is “the tone from the top, the level at which the leadership of the organization is visibly committed to the values and topics covered in the Code.” Other important elements include whether the code addresses key risk areas, a commitment to nonretaliation and a method for employees to report code violations, and the use of learning aides such as “Q&A documents, dos and don’ts checklists, examples and case studies to help employees and other stakeholders understand key concepts.”

Codes should be simple enough to provide clear guidance to employees on what they should and should not be doing.

“An ideal code should be written in plain English in fewer than 25 pages and use graphics to explain concepts well,” McConnell says. “Not all companies do that. Some companies have codes that run 75 pages, which is a terrible idea.”

Ethisphere’s “50 Codes of Conduct Benchmarked” grades the codes on the eight benchmarking criteria in a report card format, and contains critiques that squarely hit the mark. Regarding the best practice of readability, the report card says of one company’s code: “Memo to code writer: this is not a 10-K SEC filing. We regret printing this monster.” It describes another as “legal mumbo jumbo.” It identifies another code as unnecessarily defining “You,” “Your,” “We” and “Us.”

A code should also be up-to-date and relevant. Ethisphere says of one company’s code: “The world has changed since 2001. Your code has not.”

In combination with the dataset, the benchmarking report card offers in-house counsel tools for compiling or updating codes of conduct that meet or exceed industry standards. A complementary baseline diagnostic, providing possible areas of improvement in a company’s code, also can be requested online at Ethisphere.com. ■