

A red rectangular sign with rounded corners and a white border. The sign is mounted on a metal post. The text on the sign is in white, bold, sans-serif capital letters. The top line reads 'WRONG', the middle line reads 'WAY' with a horizontal line underneath it, and the bottom line reads 'GO BACK'. The sign is set against a background of a rural landscape with dry grass, shrubs, and a blue sky with scattered white clouds.

Moving to a Values-Based Approach to Corporate Codes of Conduct

Is your code practical and powerful enough to address today's issues?

BY DOUG RAYMOND

Many larger companies, and virtually all public companies, have adopted a code of conduct. These codes typically are designed and written by lawyers and can be tedious to wade through. As a result, their impact on the day-to-day behavior of corporate employees is questionable. Boards should consider revisiting their approach to these prolix documents in light of the convergence of several current trends — the debate over the proper role of stakeholder versus

shareholder interests; ESG matters; and criticisms of corporate inaction in the face of the many challenges faced by the nation in the past year.

Many companies first adopted detailed and comprehensive codes of conduct in response to changes in federal laws. The United States Federal Sentencing Guidelines, first adopted in the 1990s and amended many times since then, provide for reduced recommended penalties for violations of federal law where a corporation has an effective

compliance and ethics program in place designed to prevent and detect criminal conduct. Similarly, the 2002 Sarbanes-Oxley Act pushed many public companies to adopt a code of ethics, at a minimum, for their principal executive officer, principal financial officer and principal accounting officer, because otherwise they would have to explain why they had not done so. In addition, well-advised boards understand that prudently crafted codes of conduct can help the company's lawyers de-

fend against claims in employment litigation (discrimination, harassment, etc.) and other contexts, by demonstrating that the corporation, at least officially, disapproved of and was not complicit in the challenged conduct.

Generally, these codes cover a broad range of activities, such as the Foreign Corrupt Practices Act, equal employment opportunity, safety regulations, dealing with suppliers, insider trading and conflicts of interest. For the most part, these codes have

been prepared by lawyers and are largely designed to demonstrate, in the event of litigation or a governmental investigation, that the corporation does not condone, and in fact prohibits, illegal activities. However, as the debate over the proper role for the corporation in our society continues to evolve, the code of conduct may be where “the rubber hits the road,” as boards of directors decide to whom their obligations run.

Recent months have seen a significant increase in the debate over the proper role of the corporation. Institutional investors and the SEC are pushing public corporations to be more transparent about their policies toward their employees, including policies related to employee development, recruitment, safety, engagement and retention. This has been accompanied by a significantly heightened focus on the corporation’s position on ESG matters and, in many cases, on the corporation’s role in political and legislative matters. More fundamental is the question of whether boards should focus on the interests of constituencies other than the shareholders, such as employees, custom-

ers, suppliers, communities where they operate and the environment.

As this debate continues, boards may want to consider whether they can articulate the core values of their corporations and, in turn, whether the stated code of conduct aligns with those values. In some instances, this may lead to deeper reflection and difficult discussions. Reflecting this analysis, many corpo-

rations have moved away from a rules-based code of conduct to a values-based approach, designed to encourage and reinforce behaviors and a culture that reflect the role they seek to play in society, and not only as an aid to defending lawsuits. For example, Nordstrom’s code of conduct sets forth “One Rule: Use Good Judgment in All Situations.” The General Electric code of conduct is titled, “The Sprit and the Letter” — and sets out four guiding principles. Both codes still provide detailed explana-

tions of how these principles should be applied in specific situations (the “Letter,” in GE’s case), but unlike many other codes, these rules are derived from and actuate the corporations’ core values.

Adopting a values-based approach to the corporation’s code of conduct can reinforce those values and at the same time signal to all of the corporation’s constituencies that the code of

tion, the focus should shift to articulating a set of rules based on them. Just as the medical profession adopted many rules and regulations derived from the principle expressed by the Hippocratic Oath to “do no harm,” the board can derive a principles-based code of conduct that reflects the core values of the business and is still responsive to the appropriate regulatory and legal considerations.

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conduct is integral to the corporation, and not only a risk-avoidance mechanism. In considering whether to take this approach, boards need first to identify what are — or what should be — the corporation’s core values, and which constituencies deserve the board’s attention. This can itself be a significant undertaking, one that implicates many of the issues currently being debated and may be a daunting challenge for many boards.

Once the board agrees on the core values and principles of the corpora-

A principles-based code, if thoughtfully developed and adopted, is a powerful communications tool that can align the corporation and its employees around the values established by the board of directors. And especially in these days, boards may want to seize on that opportunity. ■

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