

RHETORIC OR REALITY? ISOMORPHISM IN CODES OF ETHICS*

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December 3, 2008

*With thanks to Jeffrey Cohen, Mark Covalleski, Theresa Hammond, and workshop participants at the Third Alternative Perspectives Conference at Universite Laval, University College Dublin, and Bentley College for their helpful suggestions on the development of this draft.

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Abstract: Regulatory responses framed the recent business failures and ensuing legitimacy crisis as a failure of governance and ethics, and require firms to provide a Code of Ethics. The combination of rhetoric and institutional pressures promote symbolic responses and decoupling of response from organizational efficiency. A new analysis technique is used to examine Codes of U.S. firms; findings are that content and language converge across organizations and preclude binding constraints. Evidence is more consistent with ceremonial responses than with constraint of conduct. This response was predicted, and suggests that regulatory efforts added layers of ritualistic action instead of inducing substantive organizational change.

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INTRODUCTION

In the last decade, a series of major business failures triggered a legitimacy crisis for several American economic institutions: the markets, the regulation of business reporting, and those tasked with the societal obligation to protect the public interest – auditors, regulators, and the legislative bodies (Bealing and Baker, 2006). Assertive action to re-establish the legitimacy of these institutions was supplied in the form of the Sarbanes-Oxley Act of 2002 (SOX), an act intended to enhance the credibility of financial reporting provided by any company publicly traded in the U.S. (Bealing and Baker, 2006). Legislators chose to frame the business failures as ethical and governance problems; therefore the Act includes numerous provisions intended to increase governance quality and to constrain managers and organizations from unethical conduct. In this latter category is included Section 406, which requires publicly-traded firms to disclose whether they have a Code of Ethics (or Conduct) or to discuss why that disclosure is not provided. The implication of this provision is that having a Code of Ethics (a Code) is assumed likely to constrain unethical behavior (Krawiec, 2005).

The assertive and public framing of the legitimacy crisis in ethical terms gave rise to an increase in ethics-oriented rhetoric in the public arena (Krawiec, 2003).¹ The battle cry for “better ethics” reaches from the boardroom to the classroom, and suggestions have been made that it is now functionally a taboo to call these demands into question (Kallio, 2007). In this paper, I call into question not the rhetoric in support of ethics, but the results of the interplay between rhetoric, regulation, and institutional processes. I suggest that the Codes constitute symbolic responses to the legitimacy-driven regulation and are, in general, unlikely to supply significant ethical guidance or to achieve organizational reform through creating more ethical climates. I also suggest that this response was both predictable and predicted, and question the usefulness of regulatory actions that are more likely to stimulate ritualistic responses rather than to induce substantive change.

The SOX Code requirement triggered an avalanche of piggy-back regulation as the Securities and Exchange Commission (SEC) and regulators of the major U.S. exchanges jumped onto the legitimization bandwagon by issuing more restrictive policies that require all firms, without exception, to disclose a Code of Ethics. The rhetorical line is that the business failures were caused by inadequate attention to ethical matters and governance failures; the implication of the regulation is that having a Code of Ethics will act as a substantive deterrent to unethical behavior on the part of managers and employees (Verschoor, 2002, NYSE, 2004). Academics joined in the rhetorical discourse with numerous articles

¹ In this study I use the term “rhetoric” to refer to the public espousal of values that are considered necessary in order to be seen as a legitimate leader, consistent with Kallio (2007).

dedicated to establishing and maximizing the effectiveness of Codes of Ethics.² Recent evidence on Codes is that they are effective if they are embedded in the corporate culture (Stevens, 2008).

Regulatory intent notwithstanding, prior research finds a lack of organization-specific content in Codes (Murphy, 2005). This suggests a divide between the widely espoused rhetoric in support of “better” ethics and “more effective” Codes, and the actual practice of drafting and deploying a Code. While Stevens (2008) notes that Codes can be effective if integrated into the corporate culture, it is possible that managers neither intend nor desire to promote organizational or behavioral change through the development and promulgation of a Code of Ethics. The Hampel Report (Hampel, 1998) suggests a typical managerial response to regulatory actions such as Section 406: complying with the letter of the law rather than with the spirit, or engaging in “box-ticking”. Upon passage of the new Code regulations, the Harvard Law Review (HLR) (2003) suggested precisely this response, arguing also that the expected convergence upon the rules would create a disincentive to managers who wished to provide a firm-specific Code incorporating authentic guidance. The effectiveness of the regulation can be seen as a function of the degree to which managers comply with the spirit – drafting meaningful Codes designed to improve the particular firm’s ethical climate – versus ticking the box – providing a Code tailored to satisfying the regulations only. Compliance with minimum standards and convergence upon the “boxes” provided by the regulators is thus suggestive of failed regulation – that which accomplishes only superficial or cosmetic alterations, neither encouraging positive change nor discouraging undesirable behavior.

In this paper I evaluate the products of compliance with the spirit rather than the letter of this regulation through an analysis of the similarity in content of the Codes of Ethics across a size- and industry-stratified sample of publicly-traded U.S. firms. Institutional theory provides an explanation for observed convergence in the content of Codes of Ethics; this convergence is consistent with a ceremonial or ritualistic response to isomorphic pressures and has resulted in the widespread promulgation of Codes drafted for form rather than for substance.³ I provide empirical evidence on the convergence in content and language that is consistent with a response to these isomorphic pressures and conclude with a discussion of the implications of the study for regulation and for academic research.

² See Adams, Tashchian, and Shore (2001), Cetindamar and Husoy (2007), Coughlan (2005), Cressey and Moore (1983), Dobson (2005), Kerkow, Martens, and Schmitt (2003), Lefebvre and Singh (1992), Lere and Gaumnitz (2007), Mathews (1987), Murphy (2005), O’Dwyer and Madden (2006), Schwartz (2002, 2004), Svensson and Wood (2004, 2007), Svensson, Wood, and Callaghan (2006), Thompson (2007), and Wood (2002). Also see a comprehensive review of the recent literature in this area offered by Stevens (2008).

³ This study focuses only on an observable output that yields information about the behavior across the entire institutional field, rather than on the processes used by any given organization to develop a specific Code or the specific means by which the isomorphic content is transmitted. The examination of these factors is of practical and academic interest and is addressed in the final section of the paper.

THEORETICAL DEVELOPMENT AND HYPOTHESES

Legitimacy is a key element in the organization's access to necessary resources (Elsbach, 1994; Meyer and Rowan, 1977; Pfeffer and Salancik, 1978) and is conferred upon organizations that are effective in demonstrating dedication to social norms, values, or beliefs (Handelman and Arnold 1999; Suchman 1995). Actions that demonstrate the organizations' support for these norms or acts of cultural allegiance are rewarded with access to financial or human capital (Elsbach 1994) as well as other forms of stakeholder support. Legitimacy, therefore, represents a strategic element necessary for the success of the organization.⁴

When law is ambiguous or vague – such as the case of the Code regulation – the possibility for managers to construct the meaning of compliance with the law is great (Edelman 1992). Hampel (1998) discusses the responsiveness of organizations to the law – and to lawmakers' understanding and anticipation of those responses – and notes that both parties understand the likelihood of compliance with the letter and simultaneous flouting of the spirit, but also notes that no acceptable or effective solutions to this quandary have been advanced. The relative freedom of managers to interpret the law, the predilection for box-ticking behavior, and the understanding on all sides that box-ticking is a likely response to regulation lead to a scenario ripe for ritualistic responses that emphasize form over substance.

Meyer and Rowan (1977) describe such ritualistic actions, reflecting that they are useful in conferring legitimacy to the actors through the presumption that these activities are rational and effective, from legal mandates, from convergence with other legitimate institutions, or from isomorphic behavior wherein the optimum behavior is to do exactly as everyone else is doing. In this sense, the use of formalized content in a Code is consistent with an effort to develop legitimacy in the eyes of regulators and providers of financial capital.

Institutional Theory and Isomorphism

DiMaggio and Powell (1983) develop a theory whereby entire organizational fields may obtain legitimacy by engaging in convergent, or isomorphic, behavior.⁵ Within organizational fields, they

⁴ Warren (2003) in discussing the pressures to achieve and maintain organizational legitimacy, notes that political and social factors can become more important in shaping the organization than economic ones, and demonstrates that is the case when the legitimacy of business institutions is called into question.

⁵ While the population of publicly-traded firms in the U.S. exchanges represents a substantially larger organizational field than that discussed by DiMaggio and Powell (1983), it possesses the necessary characteristics of “connectedness” and “structural equivalence”. “Connectedness” arises from transactions tying organizations together, such as contractual relationships, participation in common enterprises, and informal organization-level ties. Publicly-traded firms in the U.S. are collectively subject to a common set of regulations and are soliciting an identical resource (financial capital) from a collective pool of providers (equity investors); these elements tie the organizations together in common pursuits under common institutions, and demonstrate a degree of connectedness. “Structural equivalence” pertains to the existence of the same kind of ties to the same set of other organizations. As with the “connectedness”, the body of publicly-traded firms in the U.S. possesses structural equivalence in that they collectively possess an identical obligation to adhere to government regulation (the same kind of ties to the same set

suggest, there exists a process of institutional isomorphism that leads over time to a convergence, and ultimately, to a homogeneity among organizations within the field. As suggested by Meyer and Rowan (1977), this isomorphism has as a goal the function of conferring power, legitimacy, and access to resources for the isomorphic organization. DiMaggio and Powell (1983) identify three pressures that lead to isomorphic behavior: coercive pressures, where isomorphism is induced through formal or informal pressures on the organization through regulation, mandate, or focused cultural expectations; normative pressures, where isomorphism is induced through the proliferation of professionals who have been inculcated collectively in the belief that certain types of behavior are desirable through their professional educations; and mimetic pressures, where isomorphism is induced through the joint presence of a high degree of uncertainty in the environment and a first-mover that provides an action template for other organizations to follow. Consistent with the ceremonial and ritualistic arguments advanced by Meyer and Rowan (1977), isomorphic actions are undertaken with the goal of attaining legitimacy rather than with the goal of enhancing organizational efficiency or control.

Codes of Ethics

SOX defines a Code as “such standards as are reasonably necessary to promote – (1) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships; (2) full, fair, accurate, timely, and understandable disclosure in the periodic reports required to be filed by the issuer; and (3) compliance with applicable governmental rules and regulations.”⁶ The SEC promptly elaborated upon SOX 406 by expanding the rule to require disclosure of the internal reporting of violations of the Code to designated parties and accountability for adherence to the Code (SEC, 2003). However, the SEC did not dictate the content, language, procedures, or other details of an acceptable Code, instead encouraging each organization to determine the specifics of its Code (Harvard Law Review [HLR] 2003). The New York Stock Exchange (NYSE, 2004) and the National Association of Securities Dealers Automated Quotations (NASDAQ, 2003) both subsequently issued regulations mandating that companies listed on these exchanges *must* have and provide to the

of regulatory agencies). Therefore, for the purposes of this study, I define the population of publicly-traded firms in the U.S. as an organizational field.

⁶ Survey research indicates that prior to 2002, 94 out of the 100 largest trans-national corporations had published codes of conduct (OECD, 2001). Another study conducted prior to the issuance of SOX found that more than 500 companies in the USA adhered to some kind of codes of conduct (Kerkow, et al., 2003). These studies suggest that codes were in wide but not universal use prior to the legal mandate to provide them. One potential reason for providing a code before SOX came from an earlier Congressional initiative that made having *proof* of an *effective* code of ethics a mitigating factor under the Federal Sentencing Guidelines for Organizations (HLR, 2003). However, the notion of “effectiveness” was not well-defined.

public a Code of ethics starting in fiscal year 2004.⁷ They also elaborated upon the SEC action by providing a checklist of minimum coverage for a Code (discussed below).

HLR (2003) suggests that in the ideal world, as investors become more accustomed to seeing Codes, they (the investors) will become more skilled at identifying firms with effective Codes and will create market pressures that induce firms to provide more substantive Codes. Institutional theory, however, suggests that these items are more ceremonial than substantive by design, and that instead of enhancing organizational efficiency, they provide a focus for isomorphic forces geared towards enhancing legitimacy without substance. While Krawiec (2003) does not discuss the matter in terms of isomorphism, she does suggest that this type of compliance-based deterrent represents a “window-dressing” that offers legitimacy with the market and the possibility of reduced exposure to legal liability without actually deterring wrong-doing.

Isomorphic Forces on the Content of Codes of Ethics

With respect to the current study, the primary motivators for isomorphic change are coercive and mimetic in nature.⁸ The presence of an overt coercive force resulting from regulatory pressures does not imply that mimetic forces are not also at work. The regulation simply indicates that a Code must be provided. The NYSE and NASDAQ regulations provide guidance in terms of content, but do not in fact mandate the content itself. Coercive forces result in all companies providing a Code, and may influence the content of the Codes; mimetic forces, however, lead to convergence both in content and in the language that is used to convey the content. When the regulatory bodies conveyed guidance on the minimum required content, they did so with the expectation that this would provide a basis for drafting Codes rather than an exhaustive and inclusive list of what must be included. Hampel (1998), however, notes that the provision of guidelines by the regulators carries the risk that organizations will simply engage in box-ticking behavior. Nevertheless, Edelman, Uggem, and Erlanger (1999) suggest that even the box-ticking may ultimately confer legitimacy to the extent that convergence with the stated regulatory guidelines becomes a legally-supportable managerial response. Edelman, et al. (1999) also indicate that if the uniform response is perceived as legally supportable, it becomes a matter of efficiency: if market participants consider the guidance to be authoritative in nature, they will expect Codes of ethics to comply with the suggested content whether or not that content is appropriate and/or applicable to any given

⁷ Verschoor (2002), in an analysis of the content of the regulations, indicates that the intent of the NYSE rules is that codes should be value-based, not simple or legalistic prescriptions of prohibited acts.

⁸ Prior to the passage of the Sarbanes-Oxley Act of 2002, firms were permitted to develop and provide codes of ethics at will. The leniency under the Federal Sentencing Guidelines for Organizations available to companies who possessed codes argues for some coercive element; however, the leniency was contingent upon proof of effectiveness, a nebulous quality that promotes the sort of uncertainty that generates mimetic pressures.

individual organization. Code content, therefore, is likely to converge on the minimum standards promulgated by the regulators. This leads to Hypothesis 1:

H1: Codes of Ethics are convergent in content.

Ambiguity in the law leads to a state of uncertainty that can foster mimetic forces for isomorphism (DiMaggio and Powell, 1983) as well as providing space for managerial construction of law and of the meaning of compliance with laws and rules. It is thus associated with a convergence in behavior that takes on authority as the convergent behavior becomes seen as sufficiently compliant with the rules. Section 406 of the Sarbanes-Oxley Act creates an air of uncertainty with respect to activity (firms must provide a Code *or* a reason why they don't have one) *and* with respect to goals (given that firms such as Enron possessed an extensive Code and still exhibited catastrophic ethical failures, there can only be uncertainty as to what means these Codes were intended to accomplish). This environment is also characterized by constraining pressures: firms are obliged to deliver Codes, but they are also operating in a highly litigious environment (in general) - a litigation environment now itself characterized by an emphatic focus on ethical failures.⁹

DiMaggio and Powell (1983) suggest that when this type of goal uncertainty exists, firms will model themselves on other firms that they perceive to be successful. In light of the significant litigation-based constraints faced by U.S. firms, "successfulness" in this context must be defined not in terms of how "ethical" the corporation has become, but how well the corporation has been able to avoid lawsuits and minimize litigation-related costs.¹⁰ This notion is borne out by Meyer and Rowan (1977), who indicate that the use of externally legitimated accounts enables management to argue rationally that failures did not occur because of negligence; adherence to legitimated myths provides evidence that management behaved in accordance with the definitions of prudence, rationality, and negligence. Legal risk, as a function of language as much as of intent, suggests the rise of a uniform format for Codes of Ethics that is designed to minimize litigation risk while still complying with the regulations.

Meyer and Rowan (1977) note several difficulties with using institutionalized rules and myths to provide legitimacy. First, formalized structures built on ceremony differ from those built on efficiency and efforts to pursue both simultaneously may lead to conflict within the organization (situations where Code-based constraints on behavior conflict with the mandate to maximize shareholder wealth). Second, ceremonies and myths arise from different parts of the environment (including within and without the

⁹ See Seetharaman et al. 2002, Baginski, et al. 2002, and Macey 2007 for a discussion of the relative litigation-riskiness of the U.S.

¹⁰ HLR (2003), in reviewing the usefulness of regulation pertaining to Codes of Ethics, notes that strong compliance programs (including Codes of conduct and ethics) may produce "incriminating information" that could lead to civil or criminal liability. They conclude that significant incentives exist to draft Codes that are full of vague or nebulous provisions, couched in legalese language, that are difficult to understand and impossible to enforce.

boundaries of the firm) and that this gives rise to the potential for conflict between institutionalized rules (such as the pressure to provide a substantive Code competing with the pressure to minimize litigation risk). Third, institutionalized rules such as the mandate to provide a Code are produced with a very high level of generality, whereas organization-specific activities take place within unique conditions. In all situations, institutionalized rules must be reconciled with potentially incompatible technical activities. Meyer and Rowan (1977) describe a method for resolving these conflicts through decoupling structure from activity – reducing formal evaluation, inspection and control of activities and reassigning coordination to the informal organizational structure. This may be done through couching goals in ambiguous terms; when goals are not measurable or otherwise subject to evaluation, inspection and evaluation procedures are rendered ceremonial. This theoretical perspective is consistent with the concerns articulated by HLR (2003) in respect to the content of Codes.

Thus, organizations that pursue an isomorphic strategy have incentives to discourage direct evaluation of organizational practices – preferring instead to take refuge in the assertion that adherence to environmentally legitimated forms constitutes a necessary degree of care, that they are behaving in a proper and adequate manner, and that this behavior protects the organization from questions about its legitimacy (that is, formal evaluation procedures become unnecessary). Rules are couched in deliberately vague language, and explicit goals are not included. HLR (2003) suggests that managers were likely to create vague documents loaded with nebulous, legalistic language that contravene the intentions of the authors of SOX and the regulators mandating disclosure of Codes. “Companies will include only the bare minimum needed to comply with the SEC’s suggested topics for a Code, and the public filing of Codes will not matter because investors will be unable to distinguish one vague, boilerplate Code from another” (p. 2140).¹¹ The litigious nature of the U.S. environment and the institutional pressures discussed above lead to Hypothesis 2:

H2: Codes of Ethics are convergent in the language used to convey the content.

Thus, this study hypothesizes both that the content of Codes of ethics is convergent across organizations and that the convergence is on vague, nebulous, and legalistic language common to many or all participants in the organizational field. The use of this boilerplate is presumed to confer a degree of legitimacy on organizational participants that stems from its widespread use and thus constitutes a reduction in a firm’s risk of being accused of negligent or imprudent conduct. In keeping with established organizational theory and findings (DiMaggio and Powell, 1983; Elsbach, 1994; Krawiec, 2003; Meyer and Rowan, 1977; and Suchman, 1995) this is of benefit in that it permits the firm to access necessary

¹¹ “Boilerplate” is defined by the American Heritage Dictionary of the English Language as “inconsequential, formulaic, or stereotypical language”. It is the formulaic attribute that provides the focus of the HLR (2003) critique and the second set of analyses of this paper.

resources through the enhanced stakeholder confidence in the legitimacy of the organization. The next section describes the sample and the research method, after which the empirical findings are discussed.

THE DATA

The Sample Firms

This study employs a stratified random sampling design based on size and industry in order to gain an understanding of a cross-section of the population of publicly-traded firms in the U.S. and to permit analysis of Code content within sub-fields of the larger organizational field.¹² The industry sampling frame was limited to publicly-traded U.S. firms listed on Compustat, excluding those engaged primarily in providing financial services, investment funds, and trusts.¹³ Based on the general SIC and NAICS categories represented by these firms, the largest general industry sector is manufacturing (39%), followed by firms engaged in production of intellectual property, including software and publishing (13%), those working with extractive natural resources, including agriculture, forestry, and extractive activities (12%), and those engaged primarily in sales, including wholesalers and retailers (11%). No other general industry sector yielded more than 5% of the sampling frame during 2004. Due to the significant share of the market represented by manufacturing enterprises, the category was subdivided into those engaged primarily in straightforward manufacturing and those engaged in manufacturing pursuant to significant research and development activities. This process yielded five industry sectors: manufacturing (without significant R&D), manufacturing (R&D intensive), extractive natural resources, intellectual property generation, and sales. Each of these categories is further divided into homogenous groups defined by 4-digit SIC codes. The largest group of similar industries within each major industry group was chosen as the representative sample (thus permitting random sampling from within size strata). This process yielded the five industries examined in this paper: manufacturers of surgical equipment; (MFG), pharmaceutical preparation and manufacturing firms (PHARMA); crude petroleum and natural gas extractors (OIL); software publishers (SOFTWARE); and supermarkets and other grocery stores (RETAIL).

All firms within each industry were ranked by size (total assets and sales) and stratified into quintiles according to their relative position in the rankings by these measures.¹⁴ Three firms were chosen

¹² With stratified random sampling, researchers control the relative quantity of each stratum, rather than letting random processes control it. This guarantees the proportion of different strata within a sample and therefore produces a final sample that has more equal representation of each sub-group from the population than simple random methods provide (Neuman, 2005).

¹³ These entities operate under substantially different reporting requirements and may not have active operations, and therefore represent a population that may be subject to different institutional pressures than those faced by operating entities.

¹⁴ The identification of quintiles and position within quintiles was qualitatively unaffected by the choice of variable (total assets or sales) as proxy for firm size.

from each industry-based size quintile, for a total sample size of 75 firms. Table 1 provides descriptive statistics pertaining to the sample firms. All firms were traded on either the NYSE or the NASDAQ and thus fell under the requirements to provide a Code of Ethics in 2004.

 Insert Table 1 about here

The Codes

The NYSE (2004) and the NASDAQ (2003) both required that listed firms must have and provide to the public a Code starting in fiscal year 2004. Despite this, six of the sample firms either did not provide a Code or provided an incorrect address for the Code; thus, Codes were not available for these firms. For another three of the firms that did provide a Code, the electronic document provided consisted of graphic scans of typewritten documents instead of PDFs converted from word-processed documents, and thus were not machine-readable and impossible to analyze with the software. Therefore, the final sample of available, machine-readable Codes consisted of 66 firms.

The Analysis Technique

The study makes use of multiple approaches to content analysis, an accepted method for exploring narrative disclosures (see Gray, Kouhy, and Lavers, 1995; Deegan and Gordon, 1996; Milne and Adler 1999; Campbell 2000). Hypothesis 1 asks about convergence in content, irrespective of the language used to convey that content, and requires an evaluation of the structure of each document in order to ascertain the degree to which similarities exist across firms. Hypothesis 2 asks about convergence in the language used to convey content, and requires an evaluation not of the structure of the documents, but of the volume of unoriginal content. This latter issue presents a challenge for the research design. Generally, content analysis requires development of a rubric by which content will be evaluated and measured. Hypothesis 2, however, requires a substantially different approach in that the primary question to be answered is not “what is the content?” but rather “how much unoriginal content does this document contain, and what is it?” The issue of unoriginal content is one that is faced by every educator who assigns written work to students: in the classroom setting, the incorporation of unoriginal material into a document is known as plagiarism.

Therefore, I make use of content analysis software designed to detect plagiarism, or to discriminate between original and unoriginal material in a document. The program used is a commercial web-based artificial intelligence that interprets text both for the use of direct quotations and for poorly paraphrased material.¹⁵ The assessment of documents is based on a comparison of the given document

¹⁵ The system defines poor paraphrases as the use of text wherein the original author’s method of expression and sentence structure have been retained and minimal word substitution has been provided, where large

with a database comprised of internet documents indexed by MSN Search Index, the body of literature indexed by ProQuest/ABI Inform, the FindArticles database, internet paper mills, and all other documents submitted by members of the same educational institution. The sample firm Codes were thus compared against all other Codes indexed by these sources, as well as the Codes that were submitted for all other sample firms. The software returns a summary evaluation of the percentage of unoriginal content included in the document based on the direct and paraphrased material. It also returns a copy of the document that is marked and cross-referenced so that the suspect content can be instantly compared with the “match” located in the service’s databases. Only one match is identified per block of text, regardless of how many matches may have been available.

The 66 machine-readable Codes provide the basis for the following analyses. Company names, company contact information, and names of individuals or positions responsible for compliance reporting were disregarded for purposes of establishing the originality or lack thereof in the content. The drafters of these Codes generally subdivide the documents into sections covering major topical areas. For the analysis of Hypothesis 1, each topical section was scrutinized individually for the number of unique concepts, thoughts, or statements contained in the section, using the sentence as the unit of analysis. Through this process, a listing of all unique ideas was developed for each section of each document. Listings were combined across documents to derive frequency counts of topical coverage by major section as well as itemized coverage within each section.

For the tests of Hypothesis 2, words, phrases, and sentences form the units of analysis. Each document was passed through the content analysis software. Where entire sections appeared to have been copied, the section provides an additional unit of analysis. Each piece of text in each document was then classified as original or unoriginal. Word counts for the entire document were obtained and used to determine the density of copied material.

The two aspects of institutional isomorphism – coercive and mimetic – are expected to drive similarities in the Codes on different levels. The existence of regulatory requirements pertaining to minimum coverage represents a coercive element and should lead to convergence in content. The mimetic elements associated with the uncertainty in the organizational environment and litigation risks should lead to convergence in language.¹⁶ To preserve clarity of exposition, the content and language will be discussed as separate matters through the remainder of the paper. However, because of the co-

portions of text have been retained and rearranged in a patchwork style, or where material has been directly quoted and rearranged by clause switching, or simple substitution of common synonyms.

¹⁶ A source who spoke under conditions of anonymity shed light on the construction of the Code at her organization. When the Code became mandatory, the instruction given by the CEO was to “go and find out what others are doing, and then put something together that looks like that.” This pragmatic example yields the conclusion that for isomorphic firms, the content and language may well be co-determined.

determination it is difficult to entirely separate the matters; therefore, the discussion will necessarily refer to other sections of the paper from time to time.

CONVERGENCE IN CONTENT

The minimum coverage suggested by the NYSE (2004) and the NASDAQ (2003) includes several categories: conflicts of interest should be prohibited, and procedures for identifying and communicating conflicts should be established so that they may be avoided; corporate opportunities should be pursued for the benefit of the firm, not of the private individual; corporate property should not be used for personal gain; sensitive information about the company should be kept confidential unless disclosure is mandatory or is officially authorized; stakeholders (employees, customers, suppliers, competitors) should be subject to fair dealing; the company should comply with all applicable laws, rules, and regulations; ethical behavior should be actively promoted, and channels for communicating violations of the Code should be established. The regulators intended managers to extend beyond these minimum requirements in their development of a Code (Verschoor 2002) ; however, institutional theory suggests that the regulatory origin of the list of minimum topics covered infuses that list with legitimacy and thus provides an anchoring point for organizations concerned primarily with establishing legitimacy. That is, isomorphic pressures suggest a convergence on the regulator's list rather than deviations – even if the deviations are made in the interest of developing an effective and authentic Code.

Structural analysis yields the finding that there are two basic templates (hereafter, Template 1 and Template 2 for convenience). Nine firms provided Template 1 Codes. Template 1 is featured in Appendix A and is an extremely brief document that advances the minimum required material as a cursory checklist. Documents in this category are no more than a single page long. In some documents, multiple items are subsumed into a single section of the Code (treating business opportunities or confidential information as a type of asset and including these and the physical assets of the firm as items that must be protected and not used for personal gain, for example). All but two of the authors of these Template 1 Codes forthrightly acknowledge that their Code is provided for no other reason than compliance with the regulation.

The text that appears in Appendix A is the entire contents of that firm's Code of Ethics –provided in explicit response to the regulatory requirements – a document that the company (a grocer) indicates applies generally to the members of the firm.¹⁷ It offers the regulators' minimum content as a checklist and makes no effort to elaborate upon the elements, to provide any substantive guidance, or to tailor the document to the specific needs of the firm. Indeed, we may understand from this document that the stocking clerks, the cashiers, and the shopping-cart valets have guaranteed to the public that they will

¹⁷ While an extreme example, the Code in Appendix A is identical to the Codes of at least fifty other publicly-traded U.S. companies, and cannot be considered to represent an unusual phenomenon.

provide us with full, fair, accurate, timely, and understandable [financial] information and make every effort to avoid conflicts of interest with competing grocers. Even should this firm, as several others do, restrict the use of this Code format and content to apply only to the very senior executives, the lack of local consideration exhibits a nearly total disregard for the substance of the regulation in favor of the form of compliance.¹⁸ It is not only an obviously symbolic gesture, but is delivered with slight regard for the legitimacy potentially conferred by the symbol. This type of response to the frictions introduced by adherence to symbolic responses that are fundamentally inconsistent with organizational practices is discussed by Meyer and Rowan (1977) who note that such “cynical” responses drain the potential for accumulating legitimacy from the symbolic response.¹⁹

Template 2 (represented in Appendix B) is the standardized approach employed by the remaining sample firms. Of the 57 firms that provided more than a checklist of items in compliance with the minimum standards, 53 provided Codes that complied with all minimum requirements. Of the four Codes (7% of Template 2 firms) not in compliance with minimum standards, three neglected to discuss confidentiality of company information, two did not discuss fair dealing, and one did not provide any discussion about how compliance with the Code was to be enforced (including a discussion of how violations of the Code were to be reported). Of the 53 complying firms, six provided Codes limited to the laundry-list provided by the regulators.

Other Institutional Pressures

Regulatory minimum standards and Section 406 of SOX are not the only significant institutional pressures likely to generate convergence. An incentive to provide a Code prior to the recent mandate was the availability of reduced criminal penalties available to firms under the Federal Sentencing Guidelines for Organizations (HLR 2003). The primary crimes for which organizations can be convicted through the actions of their employees are bribery, insider trading, and trade violations. Consequently, the convergence in content should extend to coverage of these three topics for firms susceptible to legal risks.²⁰ Anti-bribery provisions and insider trading prohibitions were provided by 37 (65%) and 42 (74%)

¹⁸ In many cases the company does not provide a statement about which employees are covered by the Code. Five Codes in the sample indicate that they pertain only to the top executives and those with financial management responsibilities. Another 25 indicate clearly that they pertain to all employees of the firm. The remaining Codes do not explicitly discuss coverage.

¹⁹ Of the nine sample firms that have chosen this route, one is an oil firm, two are pharmaceuticals, three are software publishers, and three are grocers. Three of the firms are in the smallest quintile within their industry, one each in the second and third quintiles, two in the fourth, and two in the largest industry quintiles. There is no evident industry or size trends in terms of which organizations choose this route.

²⁰ The risk-management angle of this isomorphic behavior suggests isomorphism by risk group rather than across the entire sample. Bribery, corruption, and insider trading are risk factors for all sample firms. Trade restrictions would pertain only to firms that engage in global trade, and members of certain industries for whom there exist special trade restrictions (i.e., software publishers [Toedt 1997] and producers of medical equipment and drugs (FDA 1996). There is no evident size trend; while more firms that include this information come from the largest 2 quintiles within their respective industries, nearly half of them are located in the smaller size strata.

of the Template 2 firms, respectively. Global trade restrictions are mentioned by a smaller portion of the sample (16 or 28% of Template 2 firms).²¹

Inasmuch as ethics-oriented rhetoric combines with regulation to influence the coverage of the Codes, diversity-oriented rhetoric and applicable (equal employment opportunity) regulation may also influence them.²² Recent years also feature a significant rise in corporate social responsibility rhetoric that is also likely to exert institutional pressures on the Code content.²³ The Template 2 Codes accordingly feature discussion of diversity, harassment, and related human resources content (35 firms, or 61% of the Template 2 Codes) and health, safety, and environment matters (25, or 44% of the Template 2 Codes). A total of 42 of the Template 2 Codes (74%) feature content driven by these other institutional pressures.

The number of Template 2 Codes that contain *only* content driven by these institutional pressures is 32, or 56% of the sample firms. The total number of Codes (both Templates) that contain *only* institutional content is 41, or 62% of the firms supplying usable Codes. This degree of convergence is consistent with H2 and suggests that the content of the Codes is driven for the majority of firms strictly by institutional pressures.

Rhetorical Content

All Codes specifically advance ethics-oriented rhetoric, generally in the introductory material. The consistency and manner in which they do so is remarkable. Table 2 displays a representative sample from this introductory material in which the firms advance their commitment to the “highest” standards (and the number of sample firms using each of the quoted lines of text in their Code). Of the firms advancing claims to adherence to the “highest standards” of ethics, morality, and integrity, 22 of them limit their Codes to content driven strictly by institutional pressures. Furthermore, many Codes include additional rhetoric pertaining to the Company’s dedication to behavior that exceeds minimum standards, statements such as “Obeying the law, both in letter and spirit, is the foundation upon which this Company’s ethical standards are built” and “...in many instances this Code goes beyond the law”. Assertions of this type were made by 40 of the sample firms, including 2 that provided the checklist-approach of Template 1 and 20 Template 2 firms that provided no coverage beyond that stimulated by institutional pressures (3 of which provided nothing beyond the regulatory minimum content). These

²¹ The global trade restrictions are mentioned more frequently by software publishers (4 firms) and medical equipment and drug manufacturers (8 firms) more frequently than by any other industry. Firms including this material tended to be in the larger than the average firm within their respective industries.

²² See Edelman, Fuller, and Mara-Drita (2001) for a discussion of the institutional pressures generated by equal-opportunity regulation, the accompanying development of diversity rhetoric, and how these influence managerial behavior.

²³ See Kallio (2007) for a discussion of social responsibility rhetoric and associated matters.

inflated claims are consistent with attempts to gain legitimacy by proclaiming the firm's adherence to the popular ethics rhetoric.

 Insert Table 2 about here

Decoupling Content

Numerous firms provided language indicative of a decoupling dynamic, separating the symbolic response from the true internal processes responsible for determining the ethics of any given action and enforcing ethical conduct within the organization. Decoupling internalizes the compliance and enforcement functions, rendering them opaque to parties who are external to the organization and possibly hiding the process even from members of the organization. The following statement is an example of language that suggests decoupling and hidden processes, in that it is clear that waivers of the Code may be obtained, but not how, when, or under what circumstances this will happen:

“The Corporation will waive application of the policies set forth in this Code only when circumstances warrant granting a waiver...” (Med Gen, Inc.)

The following text appears to provide more information. Careful reading, however, yields the information that the process of enforcing the Code (conducting investigations and punishing wrongdoers) is still fundamentally hidden:

“The [Board of Directors/Audit Committee] shall determine, or designate appropriate persons to determine, appropriate actions to be taken in the event of violations of [the Code]...Such actions shall be reasonably designed to deter wrongdoing and to promote accountability for adherence to the Code...” (Antares Pharma, Inc., Rochester Medical Corporation, Rockwell Medical Corporation)

This type of nebulous and legalistic language is the type of response predicted by HLR (2003). It is so vague as to be unenforceable and leaves both external parties and members of the organization looking to the Code for guidance uncertain what the penalties for violation will be, or how they will be determined. As a contrast, consider the following text – which does not specify the investigation process, but provides a range of likely penalties to be imposed upon violators:

“Failure to comply with the standards outlined in this Code will result in disciplinary action including reprimands, warnings, probation or suspension without pay, demotions, reductions in salary, discharge and restitution. Certain violations of this Code may require the Company to refer the matter to the appropriate governmental or regulatory authorities for investigation or prosecution. Moreover, any supervisor who directs or approves of any conduct in violation of this Code, or who has knowledge of such conduct and does not immediately report it, also will be subject to disciplinary action, up to and including discharge.” (Art Technology Group, Inc.)

Decoupling language in other Codes renders the boundary of the Code itself a matter for internal interpretation:

“While some of the policies contained in this Code must be strictly adhered to and no exceptions can be allowed, in other cases exceptions may be possible.” (Art Technology Group, Inc., MRO Software, Inc., Icagen, Inc.)²⁴

Contrast the preceding language with the following text (from a different firm) emphasizing the degree to which the boundaries of the Code are not considered flexible by the organization:

“OUR BASIC POLICY: "WE DO WHAT IS RIGHT" It is [the Company's] policy to comply with all laws, rules and regulations pertaining to its businesses around the world and beyond this to act in an honest and ethical manner at all times. You should never "assume" or "read between the lines" that [the Company] ever wants you to violate a law or regulation, or to act unethically in your work even if asked or ordered to do so by your supervisor...Respecting and following the principles of this Guide is a condition of your employment with [the Company]. You will never advance your career with [the Company] by violating these principles – but you could end it.” (Becton, Dickinson and Company)

This approach pertains to individual elements of the Code, not just to the overall tone or enforcement policies. Many of the Template 2 Codes (37 Codes) include sections on the ethics of accepting gifts. These sections come in one of two forms: one type consists of a generic injunction against accepting gifts that would be likely to cause a conflict of interest:

“The purpose of business entertainment and gifts in a commercial setting is to create good will and sound working relationships, not to gain an unfair advantage with customers. No gift or entertainment should ever be offered, given, provided or accepted by any Company employee, officer, director, family member of an employee, officer, director or agent unless it: [1] is not a cash gift, [2] is consistent with customary business practices, [3] is not excessive in value, [4] cannot be construed as a bribe or payoff and [5] does not violate any laws or regulations.” (Antares Pharma, Inc., Ariba, Inc., Goodrich Petroleum Corp., Merit Medical Systems, Inc., Ultimate Software Group, Inc., W&T Offshore, Inc.)

The second type provides concrete guidance as to what gifts are acceptable vs. unacceptable and items employees are likely to encounter that may not immediately be recognized as a “gift”, as well as restrictions on acceptable gifts and instructions on what to do if a vendor provides a gift that is unacceptable under company policy:

“Team Members and directors should not give anything of value to anyone, or accept with anything of value from anyone, when doing so might compromise or appear to compromise the objectivity of business decisions...Some gifts and entertainment are allowed as follows: (1) Gifts with an established value of \$25 or less are generally allowed. (2) Business-related meals of nominal value are allowed, subject to specific requirements in [named internal policy]. (3) Gift baskets or flowers may be accepted within reason, but they must be made available for sharing

²⁴ No further information was provided in this Code as to what matters must be adhered to and which are open for negotiation.

with everyone...(4) Promotional items, such as those bearing a vendor's logo may be accepted up to total estimated value of \$25. (5) Existing Team Members may accept samples of new or reformulated products, and new Team Members may accept samples of existing products (one time only). It is not acceptable for Team Members to receive for their personal use multiple samples of the same product from a vendor. (6) Store-level Team Members may accept a vendor-paid trip made for the sole purpose of education and training. The vendor may pay for all expenses including airfare, accommodations and meals. There is a one-time limit on vendor- paid trips unless there is a significant change in products, programs or business practices. Global and regional Team Members may not have any expenses for a trip paid by the vendor. If someone tries to give you a prohibited gift, you should also tell your Team Leader. Then, either return the gift or personally reimburse the giver of the gift for its full value.” (Whole Foods Market)

The inclusion of concrete guidance renders this Code both enforceable and binding, and constrains the ability of employees or management to exploit loopholes. At the highest levels, the use of this type of concrete language may present an impediment to organizational flexibility. If an organization is not interested in having the behavior of its management constrained in by the Code it is likely to use vague decoupling language, or to directly state that a decoupling process of some type exists (consigning to internal organizational processes the determination of boundaries or the definition of compliance and enforcement mechanisms). Explicit decoupling language internalizing the organizational processes pertaining to the management of corporate ethics was included in 51 of the 66 usable codes (77% of the total pool of Codes). This type of behavior is a distinctive characteristic of the symbolic responses generated by institutional pressures for conformity (Meyer and Rowan, 1977).

One section of the Codes that is notably not characterized by the use of decoupling language is the material dealing with financial reporting and record maintenance; this material is generally very concrete in nature, with explicit boundaries, firm guidelines, and detailed prescriptions for appropriate behavior.

“Our records are the basis of our earnings statements, financial reports and other disclosures to the public and are the source of essential data that guides our business decision-making and strategic planning. Company records include booking information, payroll, timecards, travel and expense reports, e-mails, accounting and financial data, clinical records and data, measurement and performance records, electronic data files and all other records maintained in the ordinary course of our business. All Company records must be complete, accurate and reliable in all material respects. There is never a reason to make false or misleading entries. Undisclosed or unrecorded funds, payments or receipts are inconsistent with our business practices and are prohibited. You are responsible for understanding and complying with our record keeping policy...Inaccurate, incomplete or untimely reporting will not be tolerated and can severely damage the Company and cause legal liability. Employees should promptly report evidence of improper financial reporting. Examples of evidence that should be reported include: financial results that seem inconsistent with the performance of underlying business transactions, inaccurate Company records, such as overstated expense reports, or erroneous time sheets or invoices, transactions that do not seem to have a good business purpose, and requests to circumvent ordinary review and approval procedures.” (Conceptus, Inc.)

Fifty-four of the Template 2 firms provided a separate section on record-keeping and financial reporting, generally with the level of detail provided in the excerpt above. The consistency with which detailed, binding guidance was given in this area is remarkable, and perhaps best explained by one of the sample firms:

“Remember Enron? Everybody knows about them – they set up their financials to look a lot better than they actually were. Well, this policy exists to always make sure that [the Company’s] name never ever is tied to a financial scandal.” (Wild Oats Markets, Inc.)

The list of items covered in the record-keeping and reporting section (see Appendix B) reads like a laundry list of the elements of the Enron fraud. This material appears to be a direct and unambiguous response to the legitimacy crisis provoked by the major accounting frauds and likely consists of a robust attempt at rebuilding legitimacy through providing assurances of the quality and credibility of financial reports and the accounting process. Consistent with this, five firms provide prohibitions against intimidating, threatening, or lying to the company’s outside auditors, while 21 firms provide a section of the Code specifically requiring employees to cooperate with any federal, state, or other criminal investigation procedures. The convergence in the coverage of this section of the Codes provides a clear depiction of isomorphic behavior in response to coercive forces, and – distinctively – a response to these forces that is designed for substance rather than for form.

Taken as a whole, the content and structure of these Codes – Template 1 and Template 2 – is highly suggestive of a response to isomorphic forces and lends support for H1. Even companies that provide industry- or firm-specific addenda to the coverage stimulated by institutional pressures adhere closely to the mandatory listing requirements. Nor is there any statistical evidence to suggest industry or size trends in terms of which type of firm includes which type of information.²⁵ The lack of discernable pattern suggests, for example, that grocery retailers are just as concerned with issues of confidentiality as R&D-intensive pharmaceuticals and software developers. This approach does not strongly suggest a desire on the part of the drafters of these Codes to create a document that is highly tailored to the individual needs of the organization.

CONVERGENCE IN LANGUAGE

Hypothesis 2 suggests convergence in the language in which the Codes are framed. Table 3 provides, for reference, descriptive statistics about the raw data, the length (in words) of the Codes included in the study.

 Insert Table 3 about here

²⁵ Based on the results of chi-square goodness-of-fit tests, not reported separately; no test attained statistical significance at any conventional level.

Table 4 displays the associated percentages of unoriginal content in the entire document, based on the reports from the analysis software. The statistics displayed in Table 4 indicate that the sample Codes are primarily comprised of unoriginal material. Many Codes (nearly 40% of the viable sample) contain no original material at all, other than the name of the company, the date of the Code, and the firm-specific details involved in reporting violations (management titles, phone numbers, mailing addresses). Another 18 of the firms (27%) provide Codes with less than 5 percent original content. Only nine Codes provide Codes that contain less than 80% boilerplate. The numerical evidence provides strong support for Hypothesis 2.²⁶

 Insert Table 4 about here

In many cases, there has been no pretense at providing a Code authored by a member of the firm. Table 5 provides statistics on the use of boilerplate by major Code section. As shown in Table 5, the median unoriginal (boilerplate) content for all major sections of the Codes is 100% - or in other words, at the median, zero percent of the content for any given section constitutes firm-specific guidance to employees.

 Insert Table 5 about here

A typical example of the type of boilerplate suggested by the statistics in Table 5 is provided in Table 6. These excerpts are from the Gift policies of the Codes of four firms in different size quintiles and industries. The text is virtually identical from one excerpt to the next; differences involve minor changes to the wording, punctuation choice, and formatting of the text.

 Insert Table 6 about here

The section on competition and fair dealing is characterized by exact copying rather than poorly paraphrased material, as seen in this text used by 9 of the sample firms (verbatim), and by an additional 14 firms (with very minor word substitutions):

“[w]e seek to outperform our competition fairly and honestly. Stealing proprietary information, possessing trade secret information that was obtained without the owner's consent, or inducing such disclosures by past or present employees of other companies is prohibited. Each employee should endeavor to respect the rights of and deal fairly with the Company's customers, suppliers, competitors and employees. No employee should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other intentional unfair-dealing practice”

²⁶ Of the excerpts provided in the previous section on content convergence, the only one that represents original material is the one about Enron. All other excerpts are entirely unoriginal.

In a like manner, no firm includes any original material in the discussion of corporate opportunities, as seen in the use of the following text (verbatim) by 19 of the Template 2 firms:

“[e]mployees, officers and directors are prohibited from taking for themselves personally opportunities that are discovered through the use of corporate property, information or their positions without the consent of the Board of Directors. No employee may use corporate property, information, or his or her position for improper personal gain, and no employee may compete with the Company directly or indirectly. Employees, officers and directors owe a duty to the Company to advance the Company's legitimate interests when the opportunity to do so arises”

This type of similarity is pervasive through the sample and sample sections, and may be the result of mimetic isomorphism. The environment surrounding the development of these Codes is characterized both by an explicit need to rebuild legitimacy and by significant uncertainties arising jointly from vagueness in the regulatory environment and aggressive legal liability and litigation regimes (Seetharaman, Gul, and Lynn, 2002; Baginski, Hassell, and Kimbrough, 2002; and Macey 2007). These are circumstances under which mimetic isomorphism is thought to flourish (DiMaggio and Powell 1983). Furthermore, these are the circumstances under which Edelman, et al.'s (1999) managerial construction of rational myth is likely to flourish.

The rational myth theory suggests that symbolic organizational responses to law may promote a particular form of compliance or compliance strategy, which in turn informs the judicial process that pertains to the enforcement of the matters to which the symbol is a response. Symbolic responses become invested with authority through an endogenous process involving the legislators, the organizations, and the enforcement bodies. This suggests that the use of boilerplate text in Codes is a rational response to the uncertainty, and one that may provide legal protections through the widespread adoption of the text. That is, organizations may garner protection from organizational threats arising from the publication of binding constraints by adopting a “herd mentality” and taking refuge in a standardized response.²⁷

The rational myth theory suggests that some sections of the Codes should involve more extensive boilerplate than others pursuant to different levels of exposure to liability. Even firms that have clearly made an effort to tailor the Code content and language to their organization rely heavily on boilerplate in certain sections. The nine firms that provide Codes that contain at least 20 percent original material generally devolve into boilerplate in sections discussing insider trading, conflicts of interest, competition and fair dealing, employment matters, reporting and disclosure matters, proper use of company assets, confidential information, gifts, compliance with laws, antitrust, and bribery – all areas of particular legal

²⁷ This theory is not posited as an alternative to the mimetic isomorphism argument; the two theories lead to the same conclusion (use of boilerplate). The “rational myth” theory spells out the details whereby mimetic behavior is also economically rational.

risk. With respect to the content sections on record-keeping, reporting, and disclosure, only four of the 66 sample firms include any original material at all, and the use of original material in those firms is limited to conversational prefaces and slides promptly into boilerplate text for the main body of the content in that section. Only six of the sample firms include original material in their employment and human resource coverage (employment, discrimination, and harassment). This degree of convergence in language is strongly supportive of Hypothesis 2, and of a managerial response to legal risks.

Additional Analysis

Even areas that one would expect to contain original material in many instances do not. Eleven of the Codes are prefaced by letters from the CEO to the Company's employees. Several letters offer details about support resources, additional supplemental material available from the Company, and means of reporting violations or suspected violations of the Code. They also assign responsibility for the contents of the Code to the employee. However, for the most part these letters consist of extended streams of ethics-oriented rhetoric:

“The reputation and integrity of the Company are valuable assets that are vital to our success.”
(Auxilium, Inc.)

“The Company has always held itself to the highest standards of business conduct. Our commitment extends beyond compliance with the law to include a firm belief that the best way to be a great company and to deliver value to our customers, associates, shareholders and communities is to be fair, honest and ethical in our business practices and personal behavior at work.” (Becton, Dickinson and Company)

“Personal and corporate integrity has been one of the Company's guiding principles since the day our company was founded. It enters into everything we do and is a central part of our daily lives.”
(Boston Scientific Corporation)

While the content of the letters is generally original, one of the letters is approximately 50% unoriginal in content, and two of them are completely unoriginal. The three unoriginal letters are distinctive through their evident generality and lack of any industry- or firm-specific content, including the additional resources discussed above. The following letter was advanced as a personally signed letter from the CEO yet is completely unoriginal except for the company's name:

“The Company is dedicated to conducting its business consistent with the highest standards of business ethics. We have an obligation to our employees, stockholders, customers, suppliers, community representatives and other business contacts to be honest, fair and forthright in all of our business activities.

As an employee of the Company, you are faced every day with a number of business decisions. It is your personal responsibility to uphold the Company's high standards of business ethics in each and every one of these situations. It is not possible for our Code of Business Conduct and Ethics (the "Code") to address every situation that you may face. If you use your good business judgment and experience, the majority of your business decisions are not likely to raise ethical issues. When you are faced with an ethical issue, we hope that this Code will serve as a guide to help you make the right choice.

We encourage you to take this opportunity to review our policies and to discuss any questions you may have with your supervisor, an HR representative, the Company's legal counsel or with any member of the Company's management team directly. The guidelines set out in this Code are to be followed at all levels of this organization by our directors, officers, employees and agents. We rely on you to uphold our core values and conduct our business honestly, fairly and with integrity.” (Conceptus, Inc)²⁸

The letter conveys an admirable regard for ethics and the tone at the top...until one realizes that it was copied.

CONCLUSIONS

U.S. governmental and regulatory bodies advanced a requirement for publicly-traded companies to have and provide a Code as a response to the legitimacy crisis triggered by business failures around the turn of the century. Despite the stated preference of the regulators for compliance with the spirit of the rules, the structure, content, and language of the Codes is instead consistent with a widespread response to isomorphic pressures. Codes that are ostensibly provided to guide the daily decision-making activities of employees are instead generic carbon-copies of one another, with little or no attempt for most firms to provide any sort of guidance tailored to the ethical pressures unique to the organization or to the industry. As anticipated by the HLR (2003) critique of the pending regulation, Codes are now boilerplate documents couched in nebulous and legalistic terms, unlikely to constrain actions, and difficult to enforce. The content of the Codes suggests a symbolic response to the regulation, in that they provide for decoupling of the organization’s public response from the internal workings of the firm in order to manage frictions between the necessary content of the symbolic gesture and the underlying reality of the organization.

While some Codes display evidence of the cynical response to these frictions that was projected by Meyer and Rowan (1977), most of them provide the *appearance* of an authentic effort to articulate organizational ideals and ethics that is characteristic of the decoupling response also projected by Myers and Rowan (1977). Upon inspection, it is apparent that the Codes are designed to minimize the likelihood of being used as part of a formal evaluation or investigation (through use of deliberately vague or nebulous language in most sections) while explicitly assigning responsibility for resolving issues arising from the disconnection to the informal power and information channels internal to the organization. Furthermore, the appearance of authenticity is entirely superficial; the vast majority of the Codes are built around boilerplate text copied from other firms or provided by a commercial boilerplate manufacturer. The lack of evidence that management pays attention to the specific content of the Codes suggests a

²⁸ This letter is replicated in full by a large number of non-sample firms including WNS Global Services, Mellanox Technologies, First Consulting Group, Compass Minerals International, and Nile Therapeutics, Inc., (each of which advance it as a personal letter signed by one or more executives) and is provided in boilerplate format on onecle.com

response to mimetic pressures to conform; it is possible that the use of a highly-formulaic approach is a camouflage strategy within the litigation environment, a deployment of a rational myth. To the extent that a given firm can argue in a court of law that other organizations have successfully deployed the formulaic strategy, the mimetic “sameness” may provide a degree of protective coloration. Or, as Edelman, et al. (1999) suggest, that the story of how a firm should respond to the law determines both the organization’s actions and the court’s perceptions of the legitimacy of those actions.

As DiMaggio and Powell (1983) point out, the fact that the actions are initially ceremonial does not preclude them from becoming substantive – the obligation to produce the desired image draws attention to that image and underlying processes and may as an eventual consequence, alter the processes and/or power within the firm. The continued choice of firms for form over substance – or boilerplate over carefully-considered guidance – argues for a deliberate choice to avoid the type of introspection or focus on practice and processes that opens the door for substantive change. Future research should consider the relationship between isomorphic practice and isomorphic speech, and evaluate the degree to which these factors differ in their likelihood of effecting organizational change.

Another direction for future research arises from consideration of the contents of Template 2. It is striking how predominant legal and regulatory, not ethical, items are featured in the Codes. Whether the Code would feature this legal compliance orientation in the absence of regulation is unclear; what is certain is that the disclosure of these items is completely in conformity with the regulatory requirements. The open question stands, then: why should regulators have chosen these items to emphasize? And what is the purpose of providing detailed and separate discussion of these matters when a single sentence stating that compliance with all applicable laws, rules, and regulations is mandatory company policy with no exclusions or exemptions would suffice?

A related feature of these Codes of Ethics requires further investigation: uniformly, even among the companies that have an image of public-spirit, the Codes revolve around attempts to protect the firm and to extend the power the firm enjoys over its environment. Minimal amount of attention is paid to the ethical obligations of the firm; the question of whether the firm has an ethical obligation does not, in fact, arise – let alone an attempt to address what that obligation might be. Every element of these Codes represents a unilateral attempt to constrain the behavior of employees in ways that may have nothing to do with ethical matters. Employees in exchange give up the right to use their intellectual property as they wish; they give up the right to speak freely during and after employment; they give up the right to privacy of their messages; and in some cases, they give up the right to behave as they wish when not on the job. And in exchange – what do they receive? The promise of an uncertain paycheck, with obligations – but not benefits – that extend beyond the term of employment. Several companies address this directly, offering reminders that nothing in their Code should be construed as a promise of employment and that

employment is at-will. Future studies should carefully consider the extent to which these Codes are used as a means to stretch the boundaries of the firm and to expand the power of the organization into arenas not traditionally considered the province of the employer.

In this study, I focus on the observable output of internal organizational processes, and suggest that these outputs are consistent with processes theorized within the institutional literature. However, I do not directly examine the organizational processes that give rise to these outputs. The regulatory process may greatly benefit from future studies examining the internal processes associated with the development and promulgation of a Code; a finding that the processes are such that the development may give rise with some certainty to a genuinely increased substantive emphasis on ethics would substantially bolster the attractiveness of this type of regulatory initiative. This study also does not yield information on the means by which the isomorphic information is transmitted between organizations, although other research (Brivot 2008) and the widespread dissemination of these materials over the internet suggest attractive possibilities. It is of general interest to determine the routes of communication between organizations and the growing role of the professional service firm in facilitating knowledge transfer of the type required in order to generate isomorphic behavior; future research could focus on the evident dissemination of Codes of Ethics to determine how this information is transferred.

The legal mandate for the drafting and promulgation of a Code of Ethics was driven by ethical failures that stimulated massive business failures, and as a result, the field is now littered with meaningless texts that say much and deliver little of substance. These Codes celebrate the triumph of form over substance, and yet, the irony of someone prefacing a Code of Ethics with an entirely copied yet ostensibly personal letter is inescapable. As with the convergence in structure, the convergence in language is not supportive to the proposition that managers wish or design these Codes to promote any kind of organizational change. While this response is a rational one, it is not the response envisioned by the regulators; the regulation – if intended to remedy the organizational problems that led to the business failures – is intrinsically flawed in that this rational yet empty response was wholly predictable.

REFERENCES

- Adams, J. S., A. Tashchian, and T. H. Shore. 2001. Codes of ethics as signals for ethical behavior. *Journal of Business Ethics* 29(3): 199-211.
- Baginski, S., J. Hassell, and M. Kimbrough. 2002. The effect of legal environment on preemptive disclosure: Evidence from management earnings forecasts issued in U.S. and Canadian markets. *The Accounting Review* 77(January): 25-50.
- Bealing, W. E. Jr. and R. L. Baker. 2006. The Sarbanes-Oxley Act: Have we seen it all before? *The Journal of Business and Economic Studies* 12(2): 1-12.
- Brivot, M. 2008. Exploring the control dimension of knowledge management systems and its implications for the "ethos of partnership" in professional service firms. Presented at the Third Alternative Perspectives in Accounting Research Conference at Universite Laval, Quebec (April 11).
- Campbell, D. J. 2000. Legitimacy theory or managerial reality construction? Corporate social disclosure in Marks and Spencer Plc corporate reports, 1969-1997. *Accounting Forum* 24(1): 80-100
- Cetindamar, D. and K. Husoy. 2007. Corporate social responsibility practices and environmentally responsible behavior: The case of the United Nations Global Compact. *Journal of Business Ethics* 76: 163-176.
- Coughlan, R. 2005. Codes, values and justifications in the ethical decision-making process. *Journal of Business Ethics* 59: 45-53.
- Cressey, D. R. and C. A. Moore. 1983. Managerial values and corporate codes of ethics. *California Management Review* 25(4): 53-77.
- Deegan, C. and B. Gordon. 1996. A study of the environmental disclosure practices of Australian corporations. *Accounting and Business Research* 26(3): 187-199.
- DiMaggio, P. J. and W. W. Powell. 1983. The iron cage revisited: Institutional isomorphism and collective rationality in organizational fields. *American Sociological Review* 48 (April): 147-160.
- Dobson, J. 2005. Monkey business: A neo-Darwinist approach to ethics codes. *Financial Analysts Journal* 61(3): 59-64.
- Edelman, L. 1992. Legal ambiguity and symbolic structures: Organizational mediation of Civil Rights Law. *The American Journal of Sociology* 97(6): 1531-1576.
- Edelman, L., C. Uggem, and H. S. Erlanger. 1999. The endogeneity of legal regulation: Grievance procedures as rational myth. *The American Journal of Sociology*, 105(2): 406-454.
- Edelman, Fuller, and Mara-Drita. 2001. Diversity rhetoric and the managerialization of law. *The American Journal of Sociology* 106(6): 1589-1641.
- Elsbach, K. D. 1994. Managing organizational legitimacy in the California cattle industry: The construction and effectiveness of verbal accounts. *Administrative Science Quarterly* 39(March): 57-88.
- Food and Drug Administration (FDA). 1996. FDA Export Reform and Enhancement Act of 1996. Public Law 104-134.
- Gray, R., R. Kouhy, and S. Lavers. 1995. Corporate social and environmental reporting: A review of the literature and a longitudinal study of UK disclosure. *Accounting, Auditing & Accountability Journal* 8(2): 47-77.
- Hampel, Sir R. 1998. *Committee on Corporate Governance, Final Report*. London: Gee Publishing.
- Handelman, J. M. and S. J. Arnold. 1999. The role of marketing actions with a social dimension: Appeals to the institutional environment. *Journal of Marketing* 63(3): 33-48.
- Harvard Law Review. 2003. The good, the bad, and their corporate codes of ethics: Enron, Sarbanes-Oxley, and the problems with legislating good behavior. *Harvard Law Review* 116(7): 2123-2141.
- Kallio, T. J. 2007. Taboos in corporate social responsibility discourse. *Journal of Business Ethics* 74: 165-175.
- Kerkow, U., J. Martens, and T. Schmitt. 2003. The limits of voluntarism: Corporate self-regulation, multi-stakeholder initiatives and the role of civil society. World Economy, Ecology and Development Association.

- Krawiec, K. 2003. Cosmetic compliance and the failure of negotiated governance. *Washington University Law Quarterly* 81: 487-544.
- Krawiec, K. 2005. Organizational misconduct: Beyond the principal-agent model. *Florida State University Law Review* 32: 571-592.
- Lefebvre, M. and J. Singh. 1992. The content and focus of Canadian corporate codes of ethics. *Journal of Business Ethics* 11(6): 799-808.
- Lere, J. C. and B. R. Gaumnitz. 2007. Changing behavior by improving codes of ethics. *American Journal of Business* 22(2): 7-17.
- Macey, J. 2007. What Sarbox wrought. *The Wall Street Journal* (April 7): A9.
- Mathews, M. C. 1987. Codes of ethics: organizational behavior and misbehavior. *Research in Corporate Social Performance and Policy* 9: 107-130.
- Meyer, J. W. and B. Rowan. 1977. Institutionalized organizations: Formal structure as myth and ceremony. *American Journal of Sociology* 83(2): 340-363.
- Milne, M. J. and R. W. Adler. 1999. Exploring the reliability of social and environmental disclosures content analysis. *Accounting, Auditing & Accountability Journal* 12(2): 237-256.
- Murphy, P. E. 2005. Developing, communicating and promoting corporate ethics statements: A longitudinal analysis. *Journal of Business Ethics* 62: 183-189.
- NASDAQ. 2003. SEC Approves NASDAQ Corporate Governance Rules. (November 3) New York: NASDAQ.
- Neuman, W. L. 2005. *Social Research Methods: Quantitative and Qualitative Approaches* 6th ed. Allyn & Bacon: Boston.
- NYSE. 2004. *Listed Company Manual*. New York: NYSE.
- O'Dwyer, B. and G. Madden. 2006. Ethical codes of conduct in Irish companies: A survey of code content and enforcement procedures. *Journal of Business Ethics* 63: 217-236.
- OECD. 2001. *Codes of Conduct: Exploring their Economic Significance* (OECD, Paris).
- Pfeffer, J. and G. Salancik. 1978. *The External Control of Organizations: A Resource Dependence Perspective*. New York: Harper and Row.
- Schwartz, M. S. 2002. A code of ethics for corporate code of ethics. *Journal of Business Ethics* 41(1/2): 27-43.
- Schwartz, M. S. 2004. Effective corporate codes of ethics: Perceptions of code users. *Journal of Business Ethics* 55: 323-343.
- Securities Exchange Commission (2003). 17 CFR Parts 228, 229, and 249. [Release Nos. 33-8177; 34-47235; File No. S7-40-02]. RIN 3235-AI66. Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002. January 24, 2003.
- Seetharaman, A., F. Gul, and S. Lynn. 2002. Litigation risk and audit fees: Evidence from U.K. firms cross-listed on U.S. markets. *Journal of Accounting and Economics* 33(February): 91-115.
- Stevens, B. 2008. Corporate ethical codes: Effective instruments for influencing behavior. *Journal of Business Ethics* 78: 601-609.
- Suchman, M. C. 1995. Managing legitimacy: Strategic and institutional approaches. *Academy of Management Review* 20(3): 571-610.
- Svensson, G. and G. Wood. 2004. Codes of ethics best practice in the Swedish public sector: A PUBSEC scale. *International Journal of Public Sector Management* 17(2): 178-195.
- Svensson, G. and G. Wood. 2007. Strategic approaches of corporate codes of ethics in Australia: A framework for classification and empirical illustration. *Corporate Governance* 7(1): 93-101.
- Svensson, G., G. Wood, and M. Callaghan. 2006. Codes of ethics in corporate Sweden. *Corporate Governance* 6(5): 547-566.
- Thompson, K. R. 2007. A corporate training view of ethics education: An interview with Dov L. Seidman, CEO of LRN. *Journal of Leadership & Organizational Studies* 13(3): 79-91.
- Toedt, D. C. III. 1997. *Law and Business of Computer Software*. Clark Boardman Callaghan.
- Verschoor, C. C. 2002. New governance initiatives have ethics component. *Strategic Finance* 84(5): 22-23.

- Warren, R. C. 2003. The evolution of business legitimacy. *European Business Review* 15(3): 153-163.
- Wood, G. 2002. A cross-cultural comparison of the content of codes of ethics: USA, Canada, and Australia. *Journal of Business Ethics* 25(4): 287-298.

TABLE 1.
Descriptive Statistics for the Sample Firms

Panel A. Entire Sample

	Mean	Median	Minimum	Maximum
Total Assets*	5650.53	107.86	0.61	123684.00
Sales*	5094.25	72.03	0.86	56434.00

Panel B. By Industry

<i>Industry</i>	Total Assets*		Sales*	
	<i>Mean</i>	<i>Median</i>	<i>Mean</i>	<i>Median</i>
OIL	5253.01	566.47	2071.13	172.07
PHARMA	17736.16	49.59	10004.33	15.89
SOFTWARE	140.43	32.39	66.83	25.70
GROCERY	5721.65	2618.89	16029.21	10632.85
MFG	1909.54	34.37	1365.17	32.69

Panel C. By Aggregate Size Quintile**

<i>Quintile</i>	Total Assets*		Sales*	
	<i>Mean</i>	<i>Median</i>	<i>Mean</i>	<i>Median</i>
1	6.96	7.12	7.89	3.96
2	39.90	36.29	22.65	23.35
3	141.43	133.93	86.38	73.99
4	1219.02	933.89	3100.56	1048.16
5	27871.71	13577.40	23180.35	11368.00

* in millions

**Aggregate size quintiles identified by ranking the entire sample by total assets in order from smallest to largest and dividing into quintiles.

TABLE 2.
Ethics-Oriented Rhetoric Embedded in Codes of Ethics

Text from Code	No. of Sample Firms Using Text*
“This Code is intended to deter wrongdoing and to promote the conduct of all Company business in accordance with high standards of integrity and in compliance with all applicable laws and regulations.”	3
“[The Company] is, and since its inception, has been committed to the highest standards of honesty, ethics and integrity in its business dealings.”	3
“[The Company] is committed to the highest standards of legal and ethical business conduct...”	2
“[The Company] is dedicated to conducting its business consistent with the highest standards of business ethics.”	2
“Each employee of the Company is responsible for conducting the Company's business in a manner that demonstrates a commitment to the highest standards of integrity.”	2
“This Code of Business Conduct and Ethics (the “Code”) is intended to be a guide for applying legal and ethical practices to your everyday work and to explain the types of behavior that will help our Company meet its commitment to operate on the highest standards of ethical conduct.”	2
“This policy demands adherence to the highest standard of business ethics and conduct.”	2
“[The Company] ... is committed to the highest standards of business and ethical conduct.”	1
“...all employees are expected to conduct business according to the highest ethical standards of conduct.”	1
“...we should each be personally committed to demonstrating the highest standards of ethical business conduct.”	1
“Our Company is built upon the highest standards of business integrity and corporate morality.”	1
“[The Company] has established a strong reputation for integrity in our business. To maintain and enhance that reputation, it is important for each of us to adhere to the highest moral, ethical and legal standards.”	1

*Represents the number of Codes from the 75 sample firms that used the exact, verbatim text.

TABLE 3.
Code Length Descriptive Statistics

Panel A. Word Count Descriptive Statistics

Mean	Median	Minimum	Maximum
4120.25	3461.00	261	11180

Panel B. Code Length in Words, by Industry

Industry	Mean	Median	Minimum	Maximum
OIL	3812.50	3629.50	616	7998
PHARMA	4550.90	4203.50	261	10825
SOFTWARE	2942.82	3265.00	506	4456
GROCERY	5191.00	4779.00	282	9011
MFG	4300.33	2999.00	1136	11180

Panel C. Code Length in Words, by Aggregate Size Quintile**

Quintile	Mean	Median	Minimum	Maximum
1	2426.50	2149.50	506	6088
2	3825.00	3484.00	1397	7339
3	2964.50	3313.00	282	4604
4	5098.64	4200.00	261	9011
5	6134.91	4779.00	416	11180

*Aggregate size quintiles identified by ranking the entire sample by total assets in order from smallest to largest and dividing into quintiles.

TABLE 4.
Boilerplate Descriptive Statistics for Entire Code*

Panel A. Percentage of Code Comprised of Boilerplate, Entire Sample

Mean	Median	Minimum	Maximum
90.60	98.10	26.92	100.00

Panel D. Percentage of Code Comprised of Boilerplate, by Industry

Industry	Mean	Median	Minimum	Maximum
OIL	96.48	98.09	82.94	100.00
PHARMA	90.90	96.61	43.97	100.00
SOFTWARE	97.94	100.00	85.93	100.00
GROCERY	81.40	81.18	60.76	100.00
MFG	85.82	100.00	26.92	100.00

Panel C. Percentage of Code Comprised of Boilerplate, by Aggregate Size Quintile**

Quintile	Mean	Median	Minimum	Maximum
1	97.32	100.00	85.93	100.00
2	94.72	99.40	62.59	100.00
3	97.96	98.33	90.62	100.00
4	86.99	94.58	60.76	100.00
5	75.77	86.91	26.92	100.00

*Boilerplate is defined as unoriginal material. Calculated as the number of words comprising unoriginal content, as identified by the analysis software, divided by the total number of words in the entire document

TABLE 5.
Boilerplate Descriptive Statistics by Major Code Section

Section	Length of Section (in Words)		Unoriginal Text as a Percentage of Section Length	
	<i>Mean</i>	<i>Median</i>	<i>Mean</i>	<i>Median</i>
Conflicts of Interest	511.70	436	97%	100%
Gifts	185.88	108	93%	100%
Corporate Opportunities	69.23	62	100%	100%
Protection and Proper Use of Company Assets	165.77	128	96%	100%
Record-Keeping and Reporting	285.28	238	97%	100%
Confidentiality	168.98	111	97%	100%
Competition and Fair Dealing	224.58	120	91%	100%
Compliance with Laws	133.30	98	96%	100%
Compliance with Code and Reporting Violations	208.07	141	93%	100%
Bribery	209.16	131	94%	100%
Insider Trading	182.70	130	96%	100%
Diversity and Human Resources	216.49	65	92%	100%
Health, Safety, and Environment	95.47	0	93%	100%
Waivers	71.96	59	100%	100%

TABLE 6.
Sample Boilerplate Content

Company 1

The purpose of business entertainment and gifts in a commercial setting is to create good will and sound working relationships, not to gain unfair advantage with customers. No gift or entertainment should ever be offered, given, provided or accepted by any Company employee, family member of an employee or agent unless it (1) is not a cash gift, (2) is consistent with customary business practices, (3) is not excessive in value, (4) cannot be construed as a bribe or payoff and (5) does not violate any laws or regulations. Please discuss with your supervisor any gifts or proposed gifts which you are not certain are appropriate.

Company 2

The purpose of business entertainment and gifts in a commercial setting is to create good will and sound working relationships not to gain unfair advantage with customers. No gift or entertainment should ever be offered, given, provided, or accepted by, an employee unless it: is not a cash gift, is consistent with customary business practices, is not excessive in value, cannot be construed as a bribe or payoff, and does not violate any laws or regulations. Employees should discuss with their managers or a Human Resources representative any gifts or proposed gifts if they are not certain that such gifts are appropriate.

Company 3

The purpose of business entertainment and gifts in a commercial setting is to create good will and sound working relationships, not to gain unfair advantage with customers or suppliers. No gift or entertainment should ever be offered, given, provided or accepted by any Employee, family member of an Employee unless it: (1) is not a cash gift, (2) is consistent with customary business practices, (3) is not excessive in value, (4) cannot be construed as a bribe or payoff and (5) does not violate any laws or regulations. Supervisors can advise on the appropriateness of any gifts or proposed gifts.

Company 4

The purpose of business entertainment and gifts in a commercial setting is to create good will and sound working relationships, not to gain an unfair advantage with customers. No gift or entertainment should ever be offered, given, provided or accepted by any Company employee, officer, director, family member of an employee, officer, director or agent unless it: (1) is not a cash gift, (2) is consistent with customary business practices, (3) is not excessive in value, (4) cannot be construed as a bribe or payoff and (5) does not violate any laws or regulations.

Please discuss with your supervisor any gifts or proposed gifts that you are not certain are appropriate.

APPENDIX A.
Content of Template 1 Code of Ethics (n=9)*

In my role as a _____ of the Company, I recognize that I hold an important and elevated role in corporate governance. I am uniquely capable and empowered to ensure that stakeholders' interests are appropriately balanced, protected and preserved. Accordingly, this Code provides principles to which I am expected to adhere and advocate.

The Code embodies rules regarding individual and peer responsibilities, as well as responsibilities to the company, the public and other stakeholders. I certify to you that I adhere to and advocate the following principles and responsibilities governing my professional and ethical conduct.

To the best of my knowledge and ability:

1. I act with honesty and integrity, avoiding actual or apparent conflicts of interest in personal and professional relationships.
2. I provide constituents with information that is accurate, complete, objective, relevant, timely and understandable.
3. I comply with rules and regulations of federal, state, provincial and local governments, and other appropriate private and public regulatory agencies.
4. I act in good faith, responsibly, with due care, competence and diligence, without misrepresenting material facts or allowing my independent judgment to be subordinated.
5. I respect the confidentiality of information acquired in the course of my work except when authorized or otherwise legally obligated to disclose. Confidential information acquired in the course of my work is not used for personal advantage.
6. I share knowledge and maintain skills important and relevant to my constituents' needs.
7. I proactively promote ethical behavior as a responsible partner among peers in my work environment and community.
8. I achieve responsible use of and control over all assets and resources employed or entrusted to me.

*This example represents a verbatim representation of the entire Code of Ethics for one of the sample firms.

APPENDIX B.
Template 2 Code of Ethics* (n=57)

Introduction (n=55)

- Promotion of ethical behavior
- Applicability of the Code to class of employees

Conflicts of Interest (n=57)

- Definition or general description of conflicts
- Prohibition or recommendation to avoid and obligation to disclose
- Gifts, Gratuities, and Entertainment (n=37)
 - Restriction on size of gift that may be given or received
 - Statement that the purpose is to “create good will and sound working relationships”
 - Does not create or appear to create an obligation

Corporate Opportunities (n=57)

- Prohibition against personally taking opportunities discovered through work for firm
- Prohibition against using company resources for personal gain
- Prohibition against competing, directly or indirectly, with company
- Statement of duty to advance the company’s legitimate business interests

Protection and Proper Use of Company Assets (n=57)

- Statement that employees have an obligation to protect company assets
- Restriction of the use of company property to company business
- Caution against “theft, carelessness and waste” of assets
- Reminder that proprietary information is included in the protected assets
- Record-Keeping, Reporting, and Disclosure (n=57)
 - Commitment to providing “full, fair, accurate, timely, and understandable” disclosure
 - Requirement to maintain books that accurately represent transactions/prohibition against creating misleading accounts or causing accounts or books to become misleading
 - Statement of commitment to honest and accurate reporting
 - Requirement to comply with Generally Accepted Accounting Principles (GAAP)

Confidentiality (n=54)

- Obligation to maintain confidentiality
- General definition of “confidential” information

Competition and Fair Dealing (n=55)

- Instruction to “deal fairly” with stakeholders
- Prohibition against “taking unfair advantage” of stakeholders

Compliance with Laws, Rules, and Regulations (n=57)

- Statement that applicable laws, rules, and regulations must be followed by all employees

Compliance with Code and Reporting Violations (n=56)

- Statement of non-retaliation for good-faith reports/provision for anonymous reporting
- Requirement for employees to report violations or suspected violations

Anti-Bribery Provisions (n=37)

- Statement of compliance with Foreign Corrupt Practices Act

Insider Trading (n=42)

- Prohibition against using material, nonpublic information to make stock trades
- Reference to separately published insider trading policy
- Prohibition against providing “tips” to others

Employment and Human Resources (n=35)

- Prohibition of harassment
- EEO statement
- Assertion that employee diversity is “valued asset”

Health, Safety, and Environmental (HSE) (n=25)

- General commitment to “safe and healthy” work environment
- Assignment of responsibility for providing same to employees
- Prohibition against substance use on the job

*The number of firms using Template 2 is 57. Specific items within each category represent those made by at least 50% of Template 2 firms.