



Harvard Law School Corporate Governance Forum

The CPA-Wharton Zicklin Model Code of Conduct

Posted by Bruce F. Freed (Center for Political Accountability), Karl J. Sandstrom (Perkins Coie), and William S. Laufer (The Wharton School), on Saturday, November 28, 2020

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[Bruce F. Freed](#) is president of the Center for Political Accountability; [Karl J. Sandstrom](#) is senior counsel at Perkins Coie and formerly served on the Federal Election Commission; and [William S. Laufer](#) is the Julian Aresty Endowed Professor and Director of the Carol and Lawrence Zicklin Center for Business Ethics Research at The Wharton School at the University of Pennsylvania. This post is based on their recent memorandum.

How can U.S. public companies protect against the risks inherent in spending to influence elections when politics is hyperpartisan, citizens are polarized and a controversy can ignite a wildfire virally and potentially affect a company's bottom line?

The Center for Political Accountability and The Wharton School's Zicklin Center for Business Ethics Research have produced a new [Model Code of Conduct for Corporate Political Spending](#) to address these issues. Expanded and updated from a Model Code written by CPA in 2007, it provides a framework to guide not only companies' political spending, but also their assessment of its impact and related ethical and societal considerations.

As the new Code's preamble states: "Whether a company is directly contributing to or spending in elections or indirectly participating through payments to political or advocacy organizations, a code commits senior management and directors to responsible participation in our nation's politics.

"The Model Code is intended as a guide for companies that seek to:

- be responsible members of society and participants in the democratic process; responsive to the range of stakeholders, in both letter and spirit,
- be recognized for their leadership in aligning corporate integrity and accountability with codified values,
- prudently manage company resources, and
- avoid the increased level of reputational, business and legal risk posed by the seismic shifts in how society engages with and scrutinizes corporations. The risk is exacerbated by the evolution of social media and a resurgence of activism in civil society.

"Companies are encouraged to develop standards and procedures beyond those outlined in the model code that demonstrate their commitment to ethical behavior as they engage in political activity."

The new Model Code takes into account the Supreme Court's game-changing *Citizens United* decision in 2010; an explosion of secretive "dark money" spending; the rapid growth of ESG investment; and corporate political disclosure and accountability becoming a business norm. In doing so, it adds two critical principles to the original:

“The company shall review the positions of the candidates or organizations to which it contributes to determine whether those positions conflict the company’s core values and policies. This review should be considered by senior management and the full board of directors annually.

“The board of directors shall, independent of this review, consider the broader societal and economic harm and risks posed by the company’s political spending.”

The new Model Code is intended to provide new benchmarks and a broader framework for organizational integrity. It grew out of a roundtable convened last year by CPA and the Zicklin Center, with participants from the corporate, legal, judicial, corporate governance and investor communities.

The 2007 Code had committed companies to disclosure and board oversight of direct and indirect election-related spending with corporate funds; ensuring that spending reflected a company’s interests, not those of its officers and directors; obtaining prior written approval by a senior official of company spending; and making contributions directly rather than through third-party groups.

Since then, *Citizens United* has greatly expanded the type of election-related spending that companies can undertake. The extent and type of risk that companies face has grown exponentially. And the expectations of investors, stakeholders and the public of a company’s obligations and responsibilities as a member of society and the body politic have changed dramatically.

In addition to accounting for *Citizens United* and other changes since 2007, the new Model Code builds on the well-established standards of the [CPA-Zicklin Index](#), the two groups’ annual benchmarking of the S&P 500 for companies’ political disclosure and accountability policies and practices. The Index was first published in 2011 for the S&P 100 and was enlarged to cover the S&P 500 in 2015.

Michael E. Porter, the Bishop William Lawrence University Professor at Harvard Business School and Director of the school’s Institute for Strategy and Competitiveness, said of the new framework, “I urge businesses to adhere to the principles outlined in the Model Code and to support healthy political competition that will improve the overall business environment and advance the public interest.” ([Read his entire statement here.](#))

The 2020 Model Code soon will be sent to all S&P 500 companies. It is especially timely. The nation has been wracked by upheaval over police killings of Black citizens, by the catastrophic coronavirus pandemic, and by the resulting economic crisis. These events and the ongoing polarization of Americans underscored by the 2020 elections—the most expensive in history—have placed daily demands on corporations to take a stand.

The news media, meanwhile, have given a higher level of scrutiny to the issue of companies making political donations that ultimately contribute to policies or actions in conflict with company core values and positions. And in another case, three leading Ohio utilities and their executives that have become ensnared in a major “dark money” scandal involving \$60 million as the companies pushed for state help in bailing out a troubled nuclear generating plant; the fallout has included criminal complaints, lawsuits and the firing of FirstEnergy’s CEO and other top executives. The companies’ share prices dropped following the legal actions.

The new Model Code sets a concrete framework for avoiding these kinds of consequences and for navigating the high level of risk that political spending poses today.