

COMMITTEE MEMORANDUM

TO: Audit and Compliance Committee Members
Board of Regents, State of Iowa

FROM: Jean Friedrich

DATE: April 20, 2005 *ASN*

SUBJ: Sarbanes–Oxley Best Practices

Recommended Actions:

1. Receive the status report of the Regent universities' activities regarding the Sarbanes–Oxley Act.
 2. Recommend the Board consider, as a first reading, the addition of the Code of Business and Fiduciary Conduct (Attachment A) as new section 7.02 in Chapter 7 of the Board of Regents Policy Manual and renumbering the current sections of 7.02 through 7.09.
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Executive Summary:

At the request of the Audit and Compliance Committee at its August 2004 meeting, the Regent universities outlined the status of their implementation of Sarbanes–Oxley activities.

At its November 2004 meeting, the Regent Audit and Compliance Committee endorsed the universities action plan which included:

- A Gap Analysis of the Sarbanes–Oxley provisions.
- Three primary focus areas as best practices consistent with Sarbanes–Oxley.
 1. Refinement/development of a business code of conduct.
 2. Development of a confidential reporting mechanism with anti-retaliation provision.
 3. Refinement of financial certification practices.

The Committee specifically directed the three Regent universities to form a single group to explore best practices and to consider development of a single hotline reporting mechanism. The Committee's work plan indicated that the universities would provide a status report on these activities at the May meeting.

The universities have worked together and drafted a uniform code of business and fiduciary conduct (Attachment A) that has been reviewed by each Regent institution's executive officers. The code is not a new policy or a restatement of existing policy but provides the overarching ethical context for policy.

The Board will be asked to take final action on the addition of the Code of Business and Fiduciary Conduct to the Board of Regents Policy Manual at the June meeting.

Background:

Sarbanes–Oxley Act of 2002 The Sarbanes–Oxley Act of 2002 defines “corporate responsibility” related rules for the accounting professions, auditor/client relationships, and governance of publicly traded US companies. Regent institutions as public entities, though not subject to Sarbanes–Oxley, may benefit from implementing best practices associated with Sarbanes–Oxley requirements.

Objectives The primary objectives of the Act seek to improve corporate management, financial reporting, internal controls, and executive conduct by:

- Enhancing the integrity and reliability of financial reporting
- Strengthening corporate governance and accountability
- Improving disclosure
- Increasing oversight and enforcement of federal securities law
- Heightening auditor independence

In May 2003, the Board of Regents adopted new policies, consistent with the Act that strengthen governance and accountability, improve disclosure, increase oversight, heighten auditor independence, and clearly define an auditor’s ultimate reporting responsibilities.

With regard to the Act, the institutions have:

- Apprised administration of best practices as they relate to higher education and healthcare organizations;
- Worked with each other and the Board Office to identify activities to determine how internal audit plays a role in the implementation of any new Board policies and what functions they would perform;
- Participated in a web seminar and attended an extensive presentation by a non–profit legal expert on the Act;
- Disseminated various informational materials; and
- Researched activities of peer institutions relating to the Act.

Action Plan The Regent universities jointly conducted a Gap Analysis of the Sarbanes–Oxley provisions and reviewed recommendations of the National Association of College and University Business Officers (NACUBO), published in an advisory report “The Sarbanes–Oxley Act of 2002: Recommendations for Higher Education” in November 2003. The universities:

- Identified specific provisions of the Act;

- Compared those with the NACUBO Best Practices Recommendations; and
- Determined applicability of each to the universities.

Code of Conduct The status report from the Regent universities includes the draft of a uniform code of business and fiduciary conduct (Attachment A).

It is proposed that each Regent university will publish on a policy web site and/or in print the following:

- a. A letter from the University President setting the tone of conduct expectation for all employees
- b. The Code of Business and Fiduciary Conduct
- c. Summary list and appropriate links to each University's and Regents related policies eg. conflict of interest, conflict of commitment, anti-retaliation, etc.
- d. Hotline phone number and list of other phone numbers employees may access to report concerns

Confidential Reporting Mechanism

The universities propose development of a confidential reporting mechanism with anti-retaliation provision for the Regent institutions.

The three Regent universities have jointly evaluated three hotline vendor products: My Safe Workplace, Global Compliance Systems, and EthicsPoint. Each vendor product offers both a web-based and a 24 hour 7 days per week telephone center reporting system for Sarbanes-Oxley concerns along with a web-based software system for report management. The universities unanimously recommend the use of the EthicsPoint system. The universities evaluation ranked EthicsPoint the highest based on the sophistication of the reporting system, its ability to be customized to meet individual academic institutional needs, experience with other academic institutions, excellent confidentiality reporting mechanism and price competitiveness. Reference checks further supported this recommendation. Product testing to date has been very satisfactory.

A single vendor product designed to serve all three Regent universities is expected to cost approximately \$30,000. This would include an annual operating fee plus initial set up and employee marketing cost.

The three universities are proceeding with negotiation of a contract with the vendor and establishment of appropriate management protocols.

Closely related to the confidential reporting mechanism of the Sarbanes-Oxley Act is for whistleblower protection. Anti-retaliation for reporting of wrongdoing or bringing forward complaints has been a strong tradition at the Regent universities, and all three have policies in place reflecting this tradition.

Financial Certification Practices

At the November 2004 Audit and Compliance Committee meeting, the Regent universities reported that evidence indicated that the current required State Auditor management representation letter exceeded Sarbanes-Oxley requirements. Given the high cost of external audit of internal controls, a decision was made to not hire consultants to review

internal controls. Instead an incremental approach was recommended which involved increasing awareness of existing internal controls through staff training and evaluation of sub-certification requirements for senior staff having financial reporting responsibilities. The Regent Audit and Compliance Committee endorsed this approach.

Next Steps for
Institutions

Each institution will publish the Code of Business of Fiduciary Conduct along with references to existent related policies at each institution.

The three Regent universities will jointly negotiate a contract with EthicsPoint, proceed with development of report management protocols for reports received via the hotline, install the system, and develop a summary report mechanism for the Board Office. The report mechanism will be marketed to faculty and staff along with the provision for anti-retaliation.

The three Regent universities will proceed with finalizing sub-certification requirements for relevant management and staff having financial reporting responsibilities.

These steps will conclude the new institutional activities related to implementing provisions of the Sarbanes-Oxley Act.

NEW SECTION

7.02 Code of Business and Fiduciary Conduct

Purpose

All employees of the Board of Regents and its institutions play a role in ensuring that the resources entrusted are protected, preserved, and enhanced. This Code sets forth the fundamental expectations relating to all business and fiduciary conduct. The Code is not intended to modify or restate policy. Instead, this is the Board of Regents' statement of the underlying principles by which it expects those with business and fiduciary responsibilities to carry out their duties.

1. Fairness, integrity, respect

The Regents value fairness, integrity, and respect, and strive to integrate these values into their business practices. All faculty, staff, students, and administrators are expected to act at all times with fairness, integrity, and respect for others. This standard applies to interactions with the public, contractors, students, and coworkers.

The Regents value self-expression. Faculty and staff members are responsible for promoting a spirit of respect that reflects a commitment to tolerance and diverse points of view.

2. Accountability

Employment by the Board of Regents and its institutions also requires a commitment to work diligently, to perform assigned duties and to strive to meet the objectives, goals, and missions of the organization. Employment responsibilities are to be carried out in a manner that promotes and protects the institution's best interests. Employees should not use their positions to advance their own personal interests over the institution's. Objectivity in decision making is a key component in complying with the standard of accountability. Discretion and recognition of the obligation to treat certain information with confidentiality is a responsibility of all employees.

3. Compliance with law

Persons acting on behalf of the Board of Regents and its institutions are individually accountable for their own actions and, as members of the Regent community, are collectively accountable for upholding these standards of behavior and for compliance with all applicable laws and policies.

Employees should take no action for the purpose of rendering the institution's financial statements materially misleading. In particular, no one should take action to influence, coerce, manipulate or mislead an auditor engaged in the performance of an audit for the purpose of rendering the institution's financial statements materially misleading.

Senior Management

By virtue of their leadership status, members of senior management have the responsibility for not only complying with this Code of Business and Fiduciary Conduct but also bear responsibility for “setting the tone” for the Board of Regents and its institutions. This added ethical responsibility requires senior management to:

- Provide leadership and vision and serve as role models as stewards of the institution’s finances, assets, resources and business processes
- Avoid actual or apparent conflicts of interest involving personal and professional relationships
- Work to promote, by personal example, ethical behavior among employees
- Communicate to employees the content of the Code of Business and Fiduciary Conduct and strive to ensure that the standards of professional conduct it describes are met
- Create realistic expectations and clearly indicate that integrity is not to be compromised in order to achieve results
- Create an environment encouraging employees and others to report policy and law violations promptly, and which protects such persons from retaliation.