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by Jeffrey M. Kaplan

Conflict of interest risk assessments, Part 1

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“Form follows function,” is a famous quote from architect Louis Sullivan. Too often, in my view, compliance and ethics (C&E) programs have an unduly narrow set of goals when it



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comes to identifying the function of a conflict of interest (COI) risk assessment, and this can lead to an unduly constricted approach to designing and conducting such assessments.

Of course, virtually all risk assessments—COI and other—have a goal of informing the board of directors and senior management with respect to C&E program oversight. As well, using risk assessment to help set audit priorities is near universal.

But, as I have argued over the years in the *Conflict of Interest Blog*,¹ there are many other possible—but less common—uses for COI risk assessments, including doing the following:

- ▶ Revise the COI portion of the code of conduct and/or draft or revise a standalone COI policy document or other related written materials (e.g., FAQs on the organization’s intranet).
- ▶ Decide whether to deploy COI certifications and, if so, who should receive them and what their content should be.
- ▶ Create/revise COI provisions of supplier codes and other third-party-related measures (e.g.,

compliance certificates by agents and distributors, terms and conditions in purchase orders).

- ▶ Develop a plan and content for COI training and other communications for employees, directors, and (as appropriate) third parties.
- ▶ Determine the best ways to audit for COIs, and develop/revise plans and protocols for such audits.
- ▶ Decide whether COI monitoring is warranted and, if so, when and what form it should take.
- ▶ Structure/improve the COI disclosure approach, including policies and procedures for reviews of disclosed COIs.
- ▶ Develop a COI management mechanism for situations where COIs are permitted under specified terms and conditions.
- ▶ Determine whether technology should be deployed for COI disclosures, reviews, and management. If technology is not used, one should utilize the risk assessment to determine/review record-keeping needs.
- ▶ Determine whether/how to embrace customer and other third-party C&E standards to avoid causing COIs in others.
- ▶ Lay the groundwork for targeted (i.e., efficient) follow-on COI risk assessments.

In the next column, I will explore form-related implications for companies wishing to pursue such functions in their COI risk assessments. *

1. Kaplan, Jeff, Conflict of Interest Risk Assessments: Part Two” *Conflict of Interest Blog*, January 9, 2012. Available at <https://bit.ly/2uy8cgc>.