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A portrait of Laura Ellis, a woman with long, wavy blonde hair and blue eyes, smiling. She is wearing a black blazer over a white top with black polka dots. The background is a blurred indoor setting with a red wall on the left.

Meet Laura Ellis

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FEATURES

- 18 **Meet Laura Ellis, CCEP-I**
an interview by **Gerry Zack**
- 24 **Meet Richard Walden**
by **David D. Dodge**
Richard Walden talks about ethics and leadership in the world of sports.
- 29 **[CEU] Anti-bribery/compliance pitfalls at the U.S. state level**
by **Don McCorquodale and Susan Carr**
An examination of compliance issues that affect state and local sales markets in the U.S.
- 36 **[CEU] ISO 37001 Certification: Understanding and navigating the process**
by **Maurice L. Crescenzi, Jr.**
An in-depth look at the specifics of ISO 37001 and the certification process.
- 46 **Making the most of the FCPA Corporate Enforcement Policy**
by **Valerie Charles**
Companies can seize on enticements offered by the Corporate Enforcement Policy as they seek to build an effective compliance program.

DEPARTMENTS

- 8 **News**
- 11 **SCCE news**
- 16 **People on the move**
- 70 **SCCE congratulates newly certified designees**
- 72 **SCCE welcomes new members**
- 75 **Takeaways**
- 76 **SCCE upcoming events**

COLUMNS

- 3 **Letter from the Incoming CEO**
by **Gerry Zack**
- 5 **Letter from the CEO**
by **Roy Snell**
- 23 **Empirically speaking**
by **Billy Hughes and Dian Zhang**
- 27 **Ethics vs. or AND compliance**
by **Steven Priest**
- 35 **Compliance, life, and everything else**
by **Thomas R. Fox**
- 45 **View from the front lines**
by **Meric Craig Bloch**
- 49 **Kaplan's Court**
by **Jeffrey M. Kaplan**
- 53 **The view from Nickel City**
by **Jennifer L. Kennedy**
- 61 **How to be a wildly effective compliance officer**
by **Kristy Grant-Hart**
- 74 **The last word**
by **Joe Murphy**



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by Jeffrey M. Kaplan

Conflict of interest risk assessment: Part 2

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My prior column teed up the topic of conflict of interest (COI) risk assessment by identifying risk assessment needs that many organizations have, whether they know it or not.¹ In this column, I offer some tips on how to develop and implement an assessment



Kaplan

process that meets those needs. This discussion—like that in the prior column—draws from prior posts in the *Conflict of Interest Blog* (www.conflictsofinterestblog.com), of which I am editor.

One framework for assessing COI-related risks is to identify and analyze the “reasons” and “capacities” for conflicts on the part of all relevant individuals and entities—employees, various third parties, and the organization itself. “Motivations” are reasons to engage in wrongdoing purposefully. An employee having a personal economic interest in an entity that does business with your organization is the most obvious form of COI motivation. But less tangible personal interests can create motivations too, such as reputation or political affiliations, both of which can lead to COI-related involvement with suppliers and other third parties.

The other broad category of reasons—“misunderstandings”—refers mainly to COI-related expectations that may

truly not be understood (e.g., third-party standards). But this factor also encompasses standards that are known but underappreciated, as COI rules might be in certain cultures or industries.

“Capacities,” in this context, means a party’s ability to engage in harmful behavior. In some industries (e.g., financial services), such capacities for harmful conflicts-based conduct are widespread. More broadly, a key consideration for this aspect of risk assessment is the extent to which an individual exercises discretion over matters that could involve COIs. Most obviously in this category are individuals in management or procurement positions. But there are also many other, less obvious functions that could have COI risk-creating capacities, including that of agents.

Of course, a COI risk tends to be highest for individuals or functions where both “reasons” and “capacities” are significant, and in such instances, companies should consider deploying a full range of conflict-of-interest mitigation measures (e.g., targeted training and communications, auditing and monitoring, defined accountabilities, and other controls). The same is true with regard to COI risks for which only one of these dimensions is significant, but the potential impact of a COI is high. *

1. Jeff Kaplan: “Conflict of interest risk assessments, Part 1” *Compliance & Ethics Professional*, June 2018;15(6):53.