SCCE™
corporatecompliance.org

Compliance & Ethics PROFESSIONAL®

A PUBLICATION OF THE SOCIETY OF CORPORATE COMPLIANCE AND ETHICS
AUGUST 2018

Contents

August 2018

Compliance & Ethics Professional is printed with 100% soy-based, water-soluable inks on recycled paper, which includes 10% post-consumer waste. The remaining fiber comes from responsibly managed forests. The energy used to produce the paper is generated with Green-e® certified renewable energy. Certifications for the paper include Forest Stewardship Council (FSC), Sustainable Forestry Initiative (SFI), and Programme for the Endorsement of Forest Certification (PEFC).

by Jeffrey M. Kaplan

Conflict of interest risk assessment: Part 2

***Jeffrey M. Kaplan** (jkaplan@kaplanwalker.com) is a Partner with Kaplan & Walker LLP in Princeton, NJ.*

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

Kaplan

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.