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Whitepaper

Conflicts of Interest: Best Compliance Practices

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Conflicts of interest (COI) sit at the intersection of personal, professional and organizational interests, creating a broad waterfront for risk vulnerabilities. Managing these conflicts is further complicated by the fact that many may never actualize but only exist in perception or potentials. This creates a nearly infinite number of conflict variables compliance professionals must account for.

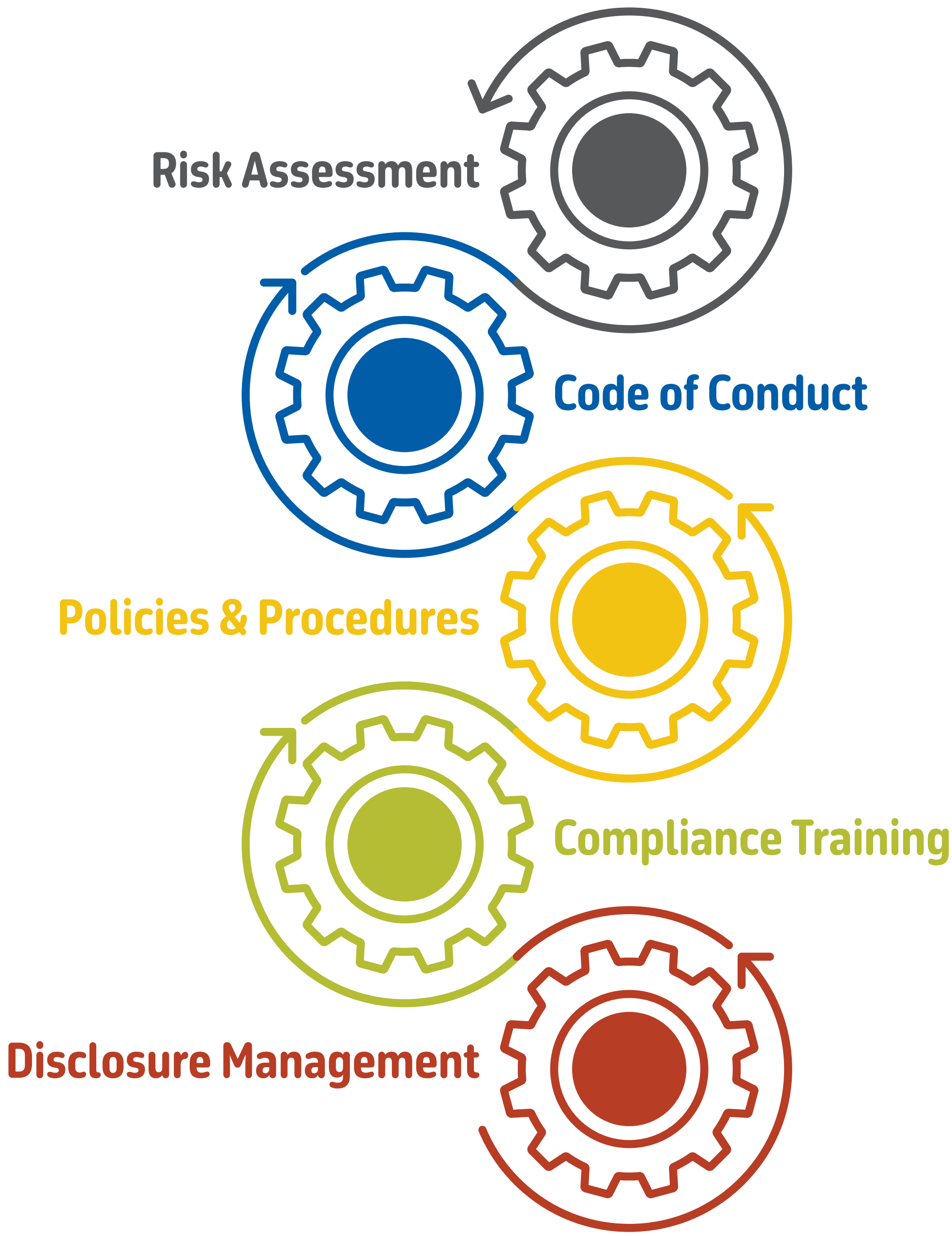
Conflicts of interest are not limited to any one type of company or industry but present risks for organizations of all types, geographies and sectors. For-profits, non-profits, sports, politics, media organizations and companies of every size must deal with COI risk in ways that are unique to their employees and operations.

Furthermore, conflicts of interest is a compliance issue that almost all employees and stakeholders are familiar with, which intensifies the spotlight and expectations regarding how conflicts are managed in the workplace. Because of the pervasiveness, personal nature and conspicuousness of COI, the way a company manages conflicts will play a pivotal role in shaping the culture of organizational justice, or lack thereof, in a company. While unidentified conflicts can be damaging from a regulatory and reputational perspective, improperly managed conflicts can create the perception of double standards, which corrodes employees and stakeholder trust in the integrity and ability of a compliance team – as well as the organization itself.

An effective program for managing conflicts of interest can pull from existing risk and compliance processes, such as risk assessments, codes of conduct, policies and procedures, assignment of responsibilities, compliance training, disclosure management and auditing.

This whitepaper will demonstrate key elements of a robust risk and compliance program to effectively manage conflicts of interest within an organization.

Key Compliance Components for Managing Conflicts of Interest



Risk Assessment

While the main risks from COI are fairly well known, performing a risk assessment is still an essential starting point. The conflicts of interest within most organizations fall along economic relationships between customers, competitors, suppliers and family employment issues. Understanding the nuances of these relationships is critical to risk assessment.

Managing conflicts of interest requires context. Because of the near limitless circumstances that could be a catalyst for a conflict of interest, risk and compliance professionals need to determine and prioritize key vulnerabilities for a program to be effective and sustainable. A risk assessment will help a company identify what their COI risks are – as well as the larger context of who, when, where, why, and how for each risk, which is equally important.

For most organizations, the COI risk assessment can be part of a larger compliance risk assessment. In this case, however, ensure that there is adequate bandwidth devoted to the COI portion of the assessment, or you may not obtain enough granular information to create appropriate controls.

A Framework for Assessing the Cause of COI Risk

To understand the nature and magnitude of the risk created by conflicts of interest, identify and analyze the factors at the root of these risks. Conflicts of interest are often initiated by motivations or misunderstandings. Motivating causes drive individuals to engage in purposeful wrongdoing, whereas misunderstandings emanate from ignorance or an under-appreciation of the severity of conflicts.

Motivations	Misunderstandings
Personal Economic Interests Ownership of or revenue participation in an entity that has business dealings with the organization	**Expectations that are not fully understood** E.g., Allowing a conflict to exist in a third party relationship because unfamiliar with expected standards
Personal Reputation Enhancement Promoting personal interest of friends or family. Directing corporate funds to philanthropic efforts that promote an individual	**Under-appreciation of standards** Cultural, regional, departmental differences may lead to a lack of understanding of conflict severity

Code of Conduct, Policies and Procedures

Every organization should have conflicts of interest provisions in its code of conduct; for many organizations, these COI provisions will be sufficient. For organizations with complex COI risks or risks with substantial possible consequences, a standalone policy is advisable as well. Organizations should also consider developing appropriate procedures to manage the certification and disclosure process, which will be discussed later in this paper.

Writing an effective conflicts of interest policy requires balancing specificity with flexibility. Company policy must cover a broad scope of possible COIs, while personalizing the message to specific employee audiences, including localization as needed. Like most ethics and compliance efforts, COI policies are not one size fits all. Because conflicts of interest can be nuanced and context-specific, policies should be tailored to the different regions in which you operate.

This makes it important that your risk assessment inform what is covered in your code and/or COI policy. With insights from your assessment, you can tailor your policy to address the risks that are most likely to arise, most harmful if they occur, and most difficult to identify and manage.

Additionally, an organization's COI policy should document how conflicts will be treated once they are identified. Policies rarely prohibit conflicts in every instance. Even conflicts such as economic relationships with a business partner are not usually handled with outright prohibition, but rather are mitigated through disclosure and effective management.

Personal Relationships	Financial Interest	Public Service
Speeches and Presentations	Common Conflicts of Interest Categories	Political Relationships
Corporate Opportunities	Gifts & Hospitality	Board Participation

Compliance Training and Communications

Strategies to Reinforce COI Messaging

- Formal training
- Micro-learning refreshers Awareness posters
- Anonymized cases from E&C files
- Tailored leadership trainings Messages from leaders FAQs

Most employees are well aware of the concept of conflicts of interest, but they might not understand the complexities of the risk and the negative impact on the organization. COI compliance training and communications are important for employees to understand the company's expectations and their personal responsibilities. Because conflicts of interest are complex, organizations should not view training as a single course, but rather as an iterative educational program embedded within ongoing ethics and compliance messaging.

Most employees can get sufficient COI training from an additional module added to a broader Code of Conduct training. These key lessons, however, should be reinforced throughout the year with supplemental lessons, posters around the office, and top-down messaging from leaders.

Consider additional training for high-risk positions, managers and leaders who have disproportional influence and impact on the organization. Employees in finance, legal, human resources, audit, procurement logistics and sales should generally receive an additional level of COI training. Develop specialized training and messaging for managers, who must be above reproach themselves, and able to identify and monitor COI risk

As with any ethics and compliance educational effort, consider best practices for a multiyear training and communications program. These include:

- **Audience**
  Identify the groups that need to be educated
- **Timing**
  Optimize limited training hours to avoid overloading employees with too much training in a short period of time
- **Frequency**
  Determine training frequency, guided by the organization's risk assessment and risk tolerance level
- **Depth and Duration**
  Balance risk and training needs against resource limitations; prioritize training depth and duration to maximize impact

Learn more about training best practices in the **Definitive Guide to Ethics & Compliance Training**.

Disclosure Managment

Organizations cannot manage unknown conflicts of interest, so disclosure is an initial, critical step for creating appropriate COI controls.

As a best practice, offer a disclosure form that walks employees through specific conflict categories, and clarify the expectation that they disclose potential conflicts. This disclosure creates an opportunity for management, HR or compliance to assess the potential conflict and help the employee navigate it properly.

Employee adoption depends on ease of use. Paper-based disclosure programs, spreadsheets or email can be time-intensive and prone to human error and inconsistent results. Automated software solutions allow organizations to track disclosures in a centralized system, create a documented audit trail, and stay informed about changes in potential conflicts as they occur.

The evolving life events of employees and partners requires a flexible, amenable disclosure process: employees should be able to easily update their disclosure status, so that organizations have an accurate view of their current COI risk and modify accordingly.

Managing Conflicts

Once an employee discloses a potential conflict, the organization must decide whether it is can be tolerated, managed, or needs to be removed. An established process ensures that these conflicts are thoroughly reviewed in a timely fashion by qualified individuals with adequate training and experience.

When such a disclosure is assessed and identified as a legitimate conflict, it must be remediated. Remediation depends on the type of conflict and the nature of the business circumstances.

Potential Remediation Steps Include:

- Separating individuals with conflicts from impacted decision-making
- Shifting supervisory roles or responsibilities
- Removing assets or relationships that cause the conflict
- Terminating conflicting external activity
- Setting protective contractual clauses with third parties
- Declining engagements when remediation is not possible

Additional Auditing

Companies generally audit executives' travel and expense activity, as well as procurement activity, for conflicts of interest. Depending on the results of the risk assessment, other expenses or exchanges of goods or services may be subject to substantive COI auditing. (For some companies, COI auditing overlaps with fraud auditing.)

COI procedures should be audited, too. For instance, if a company's procedures involve multiple layers of management, compliance should be audited.

Conclusion

Effective conflicts of interest programs and disclosure management functions help organizations manage individual conflicts and larger COI trends. The also create transparency and trust throughout the enterprise. Any mature program to truly address conflicts of interest should include a risk assessment, code of conduct with clear policies and procedures, compliance training, streamlined employee-friendly disclosure process, and a regular auditing function to ensure each element is performing properly.

Resources and Solutions

Conflicts of Interest Software

NAVEX Global's Disclosures product delivers a simplified and streamlined solution that allows your organization to gather, track and analyze all types of disclosures. Disclosures will operationalize many of the manual processes associated with annual company tracking and reporting of these potential employee and Board of Director based risks.

Learn more about Disclosures Conflict of Interest Software

Additional Resources

1. Datasheet: Disclosures Conflict of Interest Management

2. Use Case: Proactive Employee Risk Management

About The Authors

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Jeffrey M. Kaplan is a partner in the Princeton, New Jersey office of Kaplan & Walker LLP. For twenty-five years he has specialized in assisting companies in developing, implementing and reviewing corporate compliance/ethics programs. This work has included conducting

risk analyses; writing/editing codes of conduct and other policy documents; counseling companies in matters regarding training; developing compliance audit protocols and reporting systems; establishing compliance/ethics offices; and assisting boards of directors in meeting their fiduciary duties under the Caremark case. He has also conducted numerous program assessments. Mr. Kaplan's compliance/ethics program practice has included work for clients

in the health care, medical devices, pharmaceuticals, automotive, government contracting, insurance, manufacturing, energy, retail, paper, publishing, professional services, education, consulting, telecommunications, technology, securities, private investments, food and chemical fields, as well as non-profit organizations.

Rebecca Walker, Partner, Kaplan & Walker LLP

Rebecca Walker is a partner in the Santa Monica, California office of Kaplan & Walker LLP, a law firm that assists organizations in developing, implementing and improving their corporate compliance and ethics programs. For over twenty years, Ms. Walker has specialized in advising clients on the development and implementation of compliance and ethics programs that are tailored to each client's legal risks and business needs and that conform to applicable government requirements and pronouncements. Ms. Walker has counseled numerous companies in diverse industries on the various components of their compliance and ethics programs, including:

- Assisting organizations in effectively structuring their programs
- Drafting and revising codes of conduct and other policies and procedures, including conflicts of interest and anti-corruption policies and procedures
- Developing and delivering compliance training and assisting in the development of compliance training and communications plans
- Developing reporting systems, investigations procedures and investigations training
- Developing risk assessment processes and conducting compliance risk assessments