

# ADVANCED CONFLICT OF INTEREST RISK & DISCLOSURE PROCESS

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## Segment 1

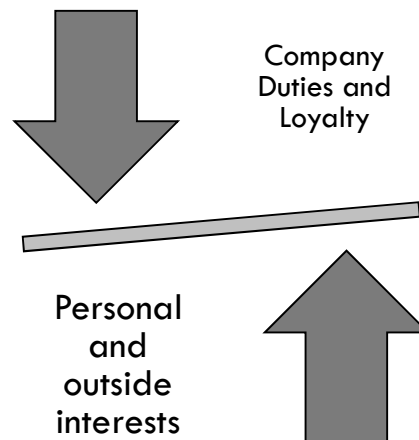
Conflict of Interest Best Practices and Guidance

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# Conflicts of Interest

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- When director, officer or employee's "personal (or outside) interests" interfere with duty of loyalty to organization
- When company's "business interests" conflict with those of customer
- Duty of loyalty to exercise independent and objective judgment when carrying out responsibilities



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# Impact

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- Person unable to act with impartiality
- Divided loyalties
- Conflict:
  - Fiduciary and professional duties
  - Personal interests



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## Remedy – Disclosure?

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Conflict of interest risk mitigation strategy is disclosure

But does disclosure really restrain bias in decision-making process?

For decisionmakers, recusal and “walling off”



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## Challenges of Conflicts of Interest

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- Complex area of compliance
  - Compliance function often owns issue
  - Issues are not easy to define
  - Situations differ and require careful and consistent judgment
  - Easy to conceal conflicts
  - There often is little difference in impact between apparent and actual conflicts



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## Personal Interests

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Financial



Social



Political



Relationships with colleagues, family and friends



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## Conflict of Interest Threats

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Damage to  
culture and  
reputation

Poor  
decision-  
making

Lack of  
adequate  
justification

Evasion and  
circumvention  
of controls

Harm to  
company's  
public image

Violation of  
law or  
regulation

Collateral  
litigation



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## Culture Currency: Reputation

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“Lose money and I will forgive you. Lose even a shred of reputation and I will be ruthless. .... Wealth can always be recreated, but reputation takes a lifetime to build and often only a moment to destroy.”



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## Conflicts Undermine Corporate Culture

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- Undermines organization's commitment to integrity
- Questioning of otherwise routine business decisions
  - Hiring and promotions
  - Vendor selection
- Confidence in business strategies
- Internal and external stakeholder relationships can deteriorate
- Threatens productivity and employee retention
- Creates atmosphere in which other misconduct more likely to occur (e.g. fraud, corruption, insider trading and more).
- Harm to long-term financial and reputational stability



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## Conflicts of Interest Regularly Occur

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- Board members, officers and employees serve in variety of roles in and outside of company
- People have lots of connections and opportunities where conflicts can arise
- Personal awareness can be a challenge



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## Conflict of Interest Terminology

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### Duties

- Duty of Loyalty: individual's obligation to act in furtherance of organization's mission
- Duty of Care: to act in good faith, with the care of a reasonable and prudent person

### Interests

Primary interest:  
primary obligations  
of employee to  
organization

Secondary interest:  
secondary goals, such  
as personal interests,  
of individual outside  
of organization



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# Common Conflicts of Interests

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## Categories



Use of company  
information



Outside  
employment



Vendor  
relationships



Board service



Financial interests



Family and  
organization  
services



Use of company  
assets



Gifts and  
Hospitality



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# Gifts and Hospitality

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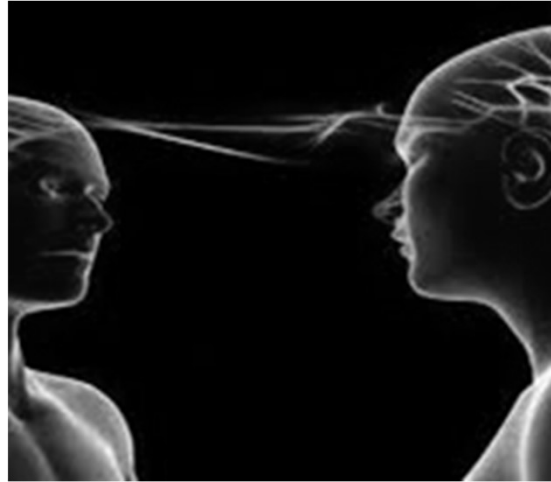
- ☐ Giving and Receipt of gifts and hospitality
- ☐ Threat to objective vendor selection
- ☐ Disclosure and monitoring of interactions
- ☐ Standards for accepting gifts:
  - ☐ Prohibition against soliciting gifts
  - ☐ Are regional differences permissible?
- ☐ Different rules applicable to specific categories of employees?
  - ☐ Members of procurement team
  - ☐ Members of C&E department, legal department
  - ☐ Members of political/lobbying group



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## Legitimate Gifts, Meals, Entertainment and Travel

- Promoting cordial relations is important for business development
- Appropriate GMET principles
  - ▣ Open and Transparent
  - ▣ Accurately recorded on books
  - ▣ Motivated by desire to show esteem and/or gratitude versus **corrupt intent** to improperly influence recipient



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## Defining the Extremes: Nominal to Lavish

- Nominal items, by definition, **are not** intended to improperly influence recipient
- Examples include cab fare, company promotional products (pens, caps)
- Larger and more extravagant items indicate intent to improperly influence
- Fur coat (RAE Systems) armored Mercedes Benz (Daimler), or “widespread gifts of smaller items as part of a pattern of bribes”



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# Conflict of Interest Risk Mitigation Strategies

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- ❑ **Conflicts Compliance Strategies**
- ❑ Policies
- ❑ Training and communications
- ❑ Disclosure and approval systems
- ❑ Questionnaires and proactive inquiries
- ❑ Oversight
- ❑ Auditing

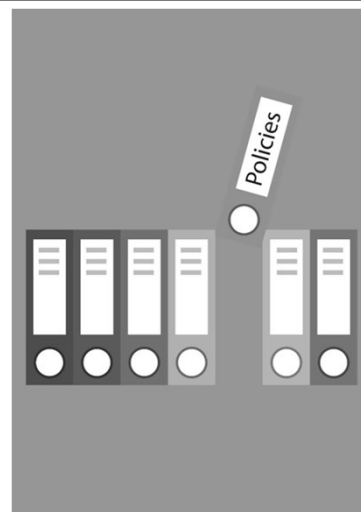


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# Conflict of Interest Policies and Procedures

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- ❑ Outline general principles
- ❑ Include “common” hypotheticals
- ❑ Address specific risk areas
  - ❑ Financial interests
  - ❑ Working for business partners or competitors
  - ❑ Family members at the company or in the industry
  - ❑ Personal use of company property
  - ❑ Corporate opportunities
  - ❑ Board membership



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## Educate the Board and Senior Management

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- Focus on their potential conflict risks
  - ▣ Other business interests
  - ▣ Corporate opportunities
  - ▣ Transactions with the Company
- Monitor their own conflicts
  - ▣ Require regular disclosures and attestations
- Educate on responsibilities for oversight of broader Conflict of Interest program



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## Senior Management Communications

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- Board and senior management have to lead by example
- Communicate importance of message and ensure that conduct is exemplary surrounding these issues
- Publicize COI compliance steps taken, if possible, to demonstrate commitment
- If the Board and senior leaders fail to comply, no one will comply



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## Conflict of Interest Messaging

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- ☐ Create a messaging program to reinforce and create culture of disclosure and avoidance
- ☐ Explain importance of conflict-free operations
- ☐ Use straight-forward and common examples to underscore risks (e.g. outside employment and divided loyalties)
- ☐ Regularly update Conflict of Interest policy, communications and incorporate new examples based on real events
- ☐ Explain and reinforce disclosure and approval process
- ☐ Plain language not legalese
- ☐ FAQs (akin to OFAC) would be helpful
- ☐ Apply the Conflict of Interest Policy consistently



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## Spreading the Word

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- ☐ Communicate proactive message
- ☐ Encourage reporting concerns
- ☐ Ensure system responds to concerns
- ☐ Embed with managers who are on the front line



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## Developing Sustainable Conflict of Interest Disclosure Reviews

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## Automation

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- New technology platforms improve risk mitigation strategies
- Similar to third-party risk, technology offers effectiveness and efficiency improvements
  - Sales department submits expense reports for approval
  - Finance department keeps real-time up-to-date records
  - Compliance department receives real-time requests to increase pre-approval capabilities

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## Compliance Procedures

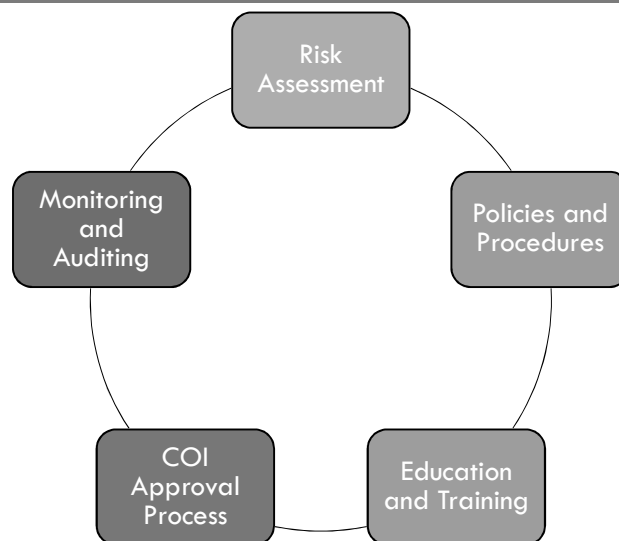
- ❑ Clear and easily accessible guidelines and processes in place for GMET expenses (covers agents and distributors)
- ❑ Prospective gifts, meals, entertainment and travel expense review policy
- ❑ Threshold amounts set for senior manager review
- ❑ Web-based approval system with clear limits and annual ceilings
- ❑ Notification of compliance or legal staff to have them, in appropriate circumstances, approve unique requests.
- ❑ Gifts, entertainment, travel data base includes records of expenses and requests by person and government official



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## Compliance and Risk Mitigation

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## Risk Assessment: Severe and Minor Risks

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## Comparing Risks

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### Severe Conflicts

- ❑ Board Members
- ❑ Financial Decision-making
- ❑ Procurement
- ❑ Country Managers
- ❑ Positions with significant authority for spending or use of assets

### Minor Conflicts

- ❑ Lower individual impact on organization
- ❑ Often individual employee with outside employment or interests
- ❑ Individual impact may be minor but combination, if ignored, could be significant



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## Automate Approval and Disclosure Process

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- ❑ Centralize process
- ❑ Generates data
- ❑ Monitor trends
- ❑ Employee buy-in
- ❑ Ease of use
- ❑ Tracking
- ❑ Auditable



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## Annual Disclosures and Certification

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- ❑ Define employee population for annual requirement
- ❑ Practical challenges
- ❑ Attestation reinforces importance of conflict of interest policy



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## Targeted Inquiries for High-Risk Conflicts

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- ☐ Periodic inquiries for high-risk managers
- ☐ Require disclosure
- ☐ Verify information for sample of population
- ☐ Update attestation



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## Auditing

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### Routine

- ☐ Ensure compliance with policy
- ☐ Training attendance and understanding/learning objectives
- ☐ Consistent pre-approval determinations through automated platform
- ☐ Submission of annual questionnaires and attestations and appropriate follow-ups

### High-Risk

- ☐ Ensure board member and senior management compliance
- ☐ Identify potential risks and verify disclosures
- ☐ Ensure that information is current
- ☐ Review T&E receipts for sensitive procurement functions
- ☐ Cross-check employee and vendor data for matches and relationships



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# Investigation Practices

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Standard internal  
investigation  
protocols

- ❑ Isolating potential conflict risk(s)
  - Relationships: vendor, family, romantic
  - Transactional: payments, benefits
- ❑ Corroborating facts
  - Independent research (publicly available)
- ❑ Remedial action
  - HR collaboration
  - Enterprise level remediation (policy revision or training)
  - Targeted executive communications

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## Segment 3

Heightened Conflict of Interest Risks: Outside Board Service

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## Evaluating Outside Board and Advisory Service Roles

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- Underlying presumption: that directors with Board oversight responsibility have will be held to a “triad of fiduciary duty”
  1. good faith
  2. loyalty
  3. due care
- Unwritten rule: general assertion that directors must protect the interests of the organizations they serve
- What does this mean?  
Directors must refrain from doing anything that might injure or deprive its organization of profit or some advantage that the Director could provide by virtue of her or his Board service



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## Risk Identification & Board Service Types

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- Tactical board questionnaire can assist with risk identification
  1. Append the questionnaire to the disclosure form
  2. Compliance Program personnel perform an interview
- Base your questions according to the organizational service type

### Board Service Types

- 1) Public company board
- 2) Private company board
- 3) Advisory board (i.e. consultative in nature)
- 4) Nonprofit board, as determined by the U.S. Internal Revenue Service (IRS)
  - 501c3 : Examples include the national and local United Way or Boys & Girls Clubs organizations
  - 501c4 : Examples include social welfare organizations such as volunteer fire departments or organizations that lobby politically for social welfare causes
  - 501c6 : Examples include trade or business league associations such as American Institute of Certified Public Accountants (AICPA)

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## Information gathering

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### Considerations

- ☐ Does this board service pose a competitive threat?
- ☐ Could the employee be at risk or susceptible to disclosing trade secrets or competitive/confidential business information?
- ☐ What type of information does this employee have access to?
- ☐ If your organization is a public company, do your organization's officers require any governance-related disclosure or filing, such as a proxy statement?
- ☐ Will this board service potentially disrupt the employee's existing workload or schedule?
- ☐ Will the employee interface with competitor companies personnel?
- ☐ Does the employee's company or organizational human resource policies permit volunteer or paid board service, and is paid board service interpreted as "outside employment" subject to any additional employment or management approvals?

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## Sample Questionnaire

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Was a board offer letter or service agreement provided?  
What is the tenure or length of service?

Was compensation offered?  
Equity?  
Benefits?  
Travel?  
Reimbursement?

What are the travel and meeting commitments?

Does the employee have any personal relationships to members employed by the board's organization? (e.g., Does the company employ a partner or spouse?)

For nonprofit organizations, has the employee's company made charitable contributions to the board's organization using company funds?

Are there any company business ties to the board's organization?

Has your manager approved this outside board service?

Research the board organization's website for:

- Collect Board governance documents and information
- Organizational mission and vision
- Financial information such as annual reports or financial statements
- Company business segment or product/service information

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# Advisory Boards

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A special note: the growing trend of “advisory” groups, councils, or boards

- These governance-type groups can exist for working groups, collaborative exchanges, or as paid consultative support to the board or organization
- While these advisory roles may not incur the level of fiduciary duty of a director on a board, they present conflicts similar to those of an outside volunteer or paid consultancy (employment) opportunity
- In either instance, the potential for competitor interface, confidential information disclosure, or time requirements could conflict with an employee’s loyalty duty
- It is recommended your conflict of interest policy scope, training, and disclosure process include these outside activities for review

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# Issuing Guidance

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- Guidance issued to an employee should be documented for accountability and transparency purposes.
- Use of an online tool by the ethics and compliance program can archive the guidance and employee communication
- The nature of the outside organization (i.e., public company versus nonprofit 501c3) may require specific or additional guidelines

## Policy reminders

- Supervisor or manager approval requirements for outside service (e.g., in conflict of interest policies, your code of conduct, or applicable employee handbook standards)
- Confidentiality and competition standards
- Charitable contribution and fundraising restrictions for personal board service, if applicable
- Requirements for updates to the conflict disclosure circumstances, such as resignation from a board
- Specific guidelines concerning ownership/financial interest in a publicly traded company

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## Monitoring

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- Multiple channels
  - conflict of interest policy certification processes and periodic disclosure reminders
  - training exercises
  - ethics and compliance functional communications
- Periodic “refresh” of high risk disclosures (e.g. public company board service)
- Consider an annual frequency



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## Table Top Exercises

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