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Actual versus apparent conflicts of interest

By Jeffrey M. Kaplan, JD

Virtually all codes of conduct prohibit apparent and actual conflicts of interest (COIs). Apparent COIs are generally seen as less serious than actual ones. Moreover, many compliance officers are familiar with situations where it is hard to prove an actual COI (even where it seems obvious that one exists) but easy to prove the apparent type.

Consider the following hypothetical case:

X Company is considering using Y Company as a supplier because Y offers the best goods on the best terms. But Y is owned and operated by A, whose twin brother, A Plus, is a senior manager of X. A Plus has nothing directly or indirectly to do with purchasing anything for X, and rigorous controls are put in place at X to ensure that he does not in any way help Y in its dealings with X. Does the fact that X has in fact mitigated any actual conflict mean that it has done so with the apparent one?

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