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Conflicts of interest are at the root of almost all significant ethical and legal compliance issues that go unresolved for a long period of time.

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What crystalized this view is watching good people lose their jobs, ruin their reputation, trash their career, take a financial hit and risk going to jail for a crime they did not commit.

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The only way to manage conflicts of interest of others is to have a person without conflicts of interest reviewing them..

INSIDE COI

CONFLICT OF INTEREST: INTERVIEW WITH AN INDUSTRY LEADER

2019



INSIDE COI



Osprey Compliance Software is proud to bring you this inside insight interview with Roy Snell. As the ex-CEO of major compliance organizations SCCE and HCCA, Roy is a well established expert in the compliance industry. Roy is also a recent addition to our strategic advisory board. In that time, we have appreciated his wealth of knowledge. We think you will, too.

Brendan Walters
Content Editor



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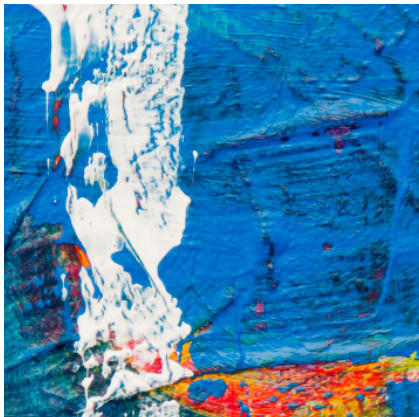
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ROY SNELL

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Compliance and ethics professionals not only make organizations better, but also whole regions of the world better too.

Roy Snell

Roy Snell is the former CEO of the Health Care Compliance Association (HCCA) and the Society of Corporate Compliance and Ethics (SCCE). Roy was a co-founder and the organization's first President. He has developed numerous partnerships with government, industry, and other professional associations, and he has facilitated collaboration between the compliance/ethics profession and the enforcement community. Roy has a Masters degree in Health and Human Services Administration.

Roy is a recognized Compliance industry leader and author. Roy is the author of the recently published book entitled, "The Accidental Compliance Professional," and has also written countless blogs and articles for several international publications, including European CEO and The European Business Review. Roy is the co-editor of the Health Care Compliance Professional's Manual and serves as editor, co-editor and advisory board member of several other books, magazines and newsletters. He has served as a source for many media reports, including national publications such as the Wall Street Journal, Forbes Magazine and Business Week. He has been quoted in international publications such as Financial Times and Ethical Corporation..

OSPREY SOFTWARE



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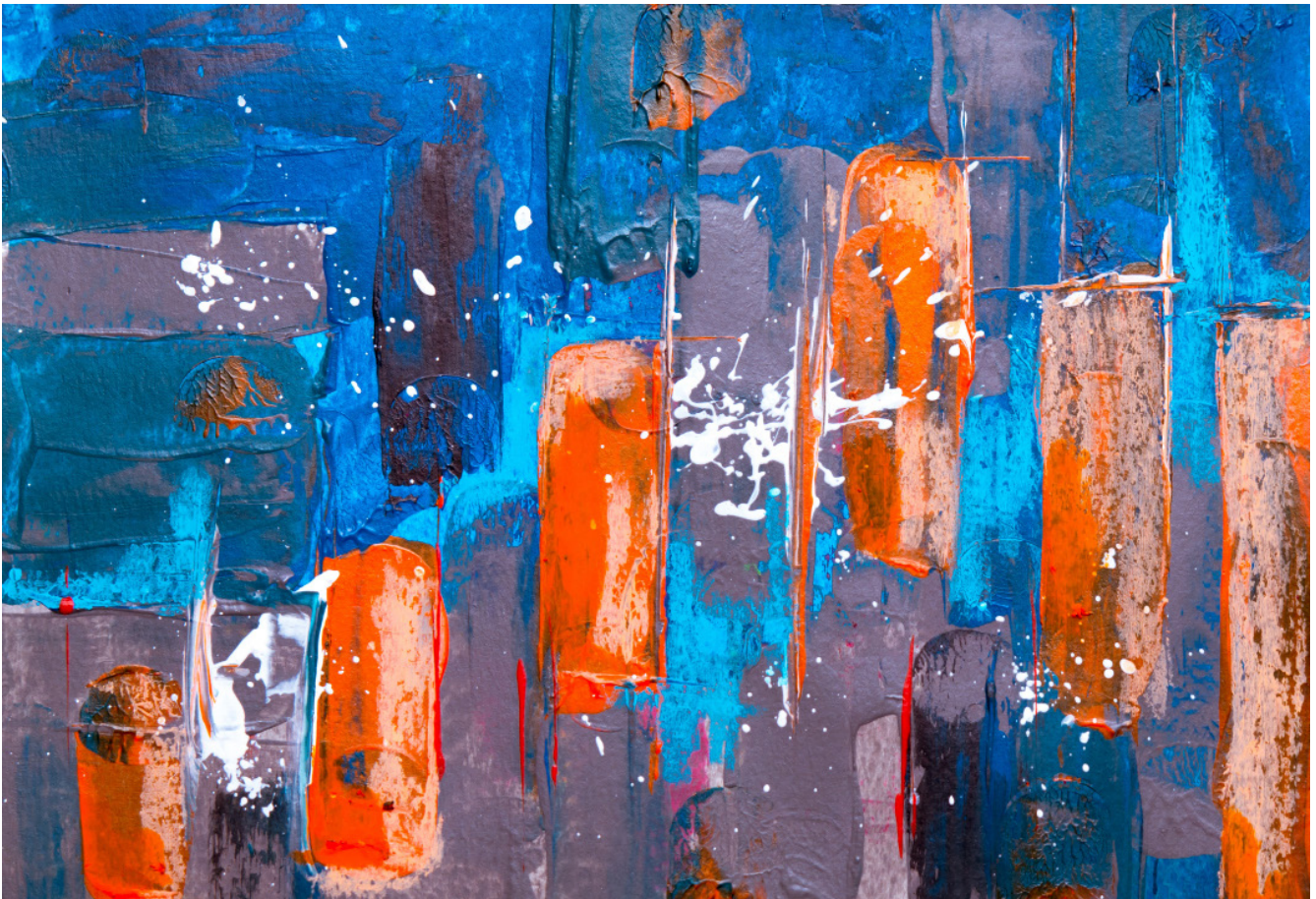
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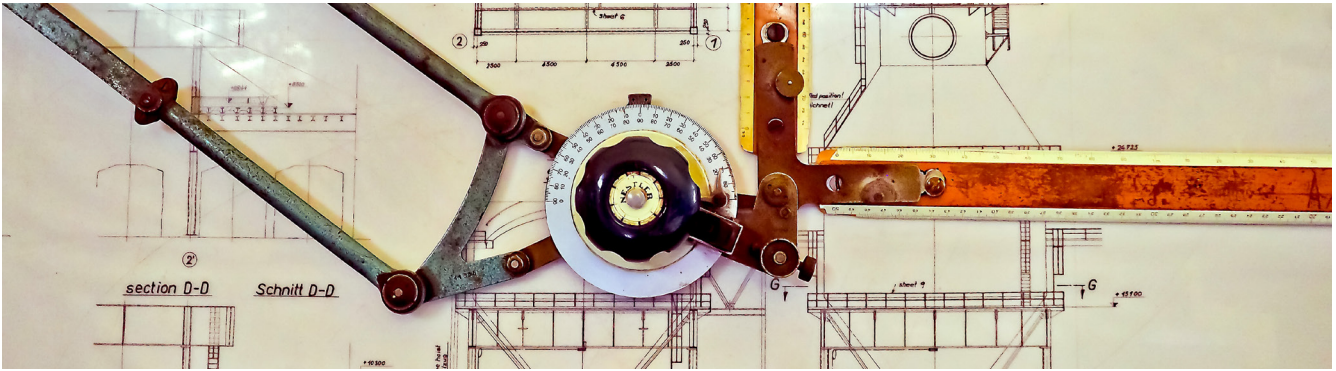
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QUESTION:
LET'S START
FROM THE
TOP. WHAT IS
A CONFLICT
OF INTEREST?

Roy Snell:

A conflict of interest occurs when an individual in a relationship enters a second overlapping relationship. The concern here is that the individual with dual loyalties might make a decision that favors one relationship while simultaneously taking advantage of the other relationship.





QUESTION:
WHO DECIDES
WHICH
CONFLICTS OF
INTEREST ARE
APPROPRIATE
FOR A
BUSINESS TO
ALLOW... AND
WHICH TO
REMEDiate?
IS THERE AN
OVERSIGHT
BOARD OR
AGENCY?

RS:

Most organizations with an effective COI management program will start with a board approved COI policy to guide their actions.

All declared COIs will be reviewed and categorized by trained personal. A typical categorization would be:

- i. No conflict
- ii. Manageable conflicts
- iii. Conflicts that must be eliminated

The categorized conflicts of interest list will be brought to a COI committee for review. Some organizations use an

existing committee such at the audit or compliance committee. That committee will approve the COI grading, highlight COIs of particular concern and ensure that action is taken in a timely manner for COIs that need to be managed or eliminated.

The board should review the entire COI process once a year to be sure that it is working effectively. On rare occasions, very significant or politically sensitive COIs might be brought to the board for their review and approval before the COI managed or eliminated.



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QUESTION:
SHOULD I CARE
(AS AN OUTSIDER,
EMPLOYEE OR
INVESTOR) WHAT
A COMPANY
HAS DECIDED TO
IDENTIFY AS A
COI?

RS:

Employees, customers, investors and anyone with a vested interest should care deeply about their organization being taken advantage of.

The most effective tool to prevent an organization from being taken advantage of is an effective COI process.

Individuals with a vested interest should ask for evidence of an effective COI management program. A best practice would be to briefly share something about the COI process in the annual report



**"CONFLICTS OF INTEREST
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SIGNIFICANT
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COMPLIANCE ISSUES
THAT GO UNRESOLVED
FOR A LONG
PERIOD OF TIME."**

ROY SNELL
**'THE ACCIDENTAL COMPLIANCE
PROFESSIONAL'**

RS:

There are two primary reasons why I feel conflicts of interest are important to disclose and manage.

First, I think the regulators and enforcement community are focusing on this. I have been on a bit of a rant over the last 2 years about the need for an effective COI process. I emailed the most effective enforcement agent I have ever known asking him if he is aware of any action in this area. He sent me back information regarding a law that he had just had passed in New York that mandates nonprofit charities have an effective COI process. Where this guy has gone

in the past, most of the enforcement community has followed over the last 20 years. I would expect more to come. I have also reviewed speeches and guidance by the enforcement community stating that this is an area of interest.

The second reason is that any effective compliance professional wants to prevent or find problems early, and knows that COI are a breeding ground for unethical and illegal behaviors. If you want to prevent or get to problems early, you are a fool not to use COIs as a way to direct your education, audits, risk assessments, investigations, etc.

QUESTION:
YOU'VE WRITTEN A
NUMBER OF ARTICLES
AND BLOGS AND
DEDICATED PARTS
OF YOUR BOOK "THE
ACCIDENTAL COMPLIANCE
PROFESSIONAL" TO THE
TOPIC OF COI. WHY DO
YOU FEEL THEY ARE SO
IMPORTANT TO DISCLOSE
AND MANAGE?



QUESTION:
IN YOUR BOOK, "THE ACCIDENTAL COMPLIANCE PROFESSIONAL," YOU SAY THAT CONFLICTS OF INTEREST ARE AT THE ROOT OF ALMOST ALL SIGNIFICANT ETHICAL AND LEGAL COMPLIANCE ISSUES THAT GO UNRESOLVED FOR A LONG PERIOD OF TIME. DO YOU HAVE ANY GOOD ANECDOTES THAT ILLUSTRATE THIS?

RS:

Sadly I have too many. Michigan State University, Penn State University and some religious organizations did not take appropriate action on individuals that were abusing children. Why would leadership not take action? Why would they risk their jobs and potentially go to jail for a crime someone else committed? They were conflicted. These are epic examples of unresolved problems caused by a conflict of interest. These leaders who did not act, did not act for a reason. That reason was related to a conflict of interest. They were concerned about their reputation or the consequences of the problem happening "on their watch." They were worried about the organization's reputation and did not want the problem exposed to the public. Instead of attacking the problem and running into the fire to put it out, they ran the other

way due to a conflict of interest.

I will tell you personal story. As CEO of the Society of Corporate Compliance and Ethics I was told by the board that I should have a bonus. I refused. I did not want to make decisions based on how I would be personally effected. Bonuses are designed to focus and motivate an individual. I did not need that as I would be pressuring myself to a point that it would be unhealthy. However, about 5 years into the job I was convinced by a board member to have a bonus. It was created and consisted of about 7 elements, lots of numbers, a point system and a scale for each element. I looked at it and said fine, have at it, but I am not going to look at it throughout the year and I am not going to think about it because I do not want to make decisions based on my personal benefit. I already wanted the organization to be successful in every way possible, more than anyone else on the planet and I didn't need this motivation. To this day I cannot tell you much about it. Ironically, as we grew, I used the same bonus for high level staff that we hired or promoted. I understand both sides of this story. I understand the need to focus and motivate people and I understand how this sort of thing can become a conflict of interest.



"THEY WERE CONCERNED ABOUT THEIR REPUTATION OR THE PROBLEM HAPPENING "ON THEIR WATCH." THEY WERE WORRIED ABOUT THE ORGANIZATION'S REPUTATION AND DID NOT WANT THE PROBLEM EXPOSED TO THE PUBLIC."



"WHAT
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WATCHING
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TO JAIL FOR A
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NOT COMMIT."



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QUESTION:
WHAT
EXPERIENCES
AND THINKING
HELPED
CRYSTALLIZE
THIS OPINION?

"Talking and meeting is easy and all fun and games. But when it comes to doing the hard work of approaching people with a conflict of interest, most everyone can be found hiding under their desk."

RS:

What crystalized this view is watching good people lose their jobs, ruin their reputation, trash their career, take a financial hit and risk going to jail for a crime they did not commit. I thought, what in the world would cause the President of Michigan State University to not deal

with a known issue of this magnitude? She wanted to avoid short term pain of some sort by not having the problem becoming public. At the moment that I write this, she has lost everything and is defending herself against criminal charges for simply not acting on someone else's crime.



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RS:

The biggest lesson I ever learned in relation to this is from a past President of our organization. It sounds too simple but he said, many years ago, that we need not freak out over conflicts of interest, because most can be managed. If someone has a conflict of interest they can just be excluded from a few decisions or meetings each year. Some people just become unhinged over fairly meaningless COIs. They think any potential conflict of interest must be eliminated immediately. One other thing that I would share is that most people love to write policies about COI and they love to meet and talk about a list of COI, but when it comes to conflicts that need to be managed or eliminat-

ed, they are nowhere to be found. Talking and meeting is easy and all fun and games. But when it comes to doing the hard work of approaching people with a conflict of interest, most everyone can be found hiding under their desk. The real problem in all this is finishing. And if you want to get into trouble with the enforcement community, document all your conflicts and do nothing about them. This is why an automated system is essential. The oversight committee needs to see if action is being taken and there is no way you can do that with a system that involves a bunch of COI forms sorted nicely in a file cabinet somewhere.

QUESTION:
CAN YOU
SHARE SOME
BEST/WORST
PRACTICES
FOR HANDLING
COIS ONCE
UNCOVERED?



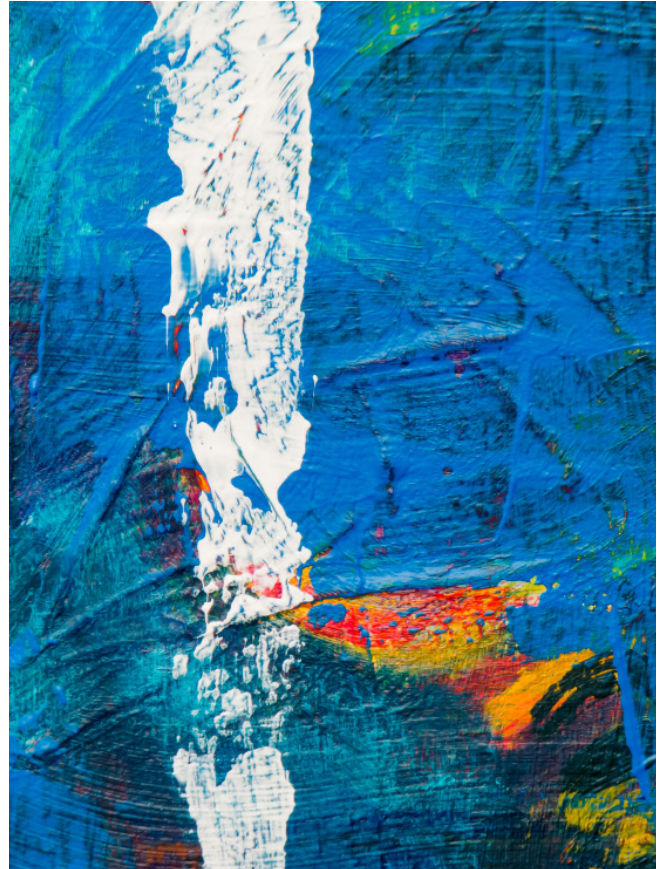
QUESTION:
ASKING SOMEONE TO
REPORT THEIR COIS IS
OFTENTIMES PERCEIVED
AS ASKING THEM TO
REPORT ON THE THINGS
THEY ARE DOING
WRONG. HOW CAN WE
FLIP THE SCRIPT AND
HAVE PEOPLE WILLINGLY
SHARING THEIR
RELATIONSHIPS AND
POTENTIAL CONFLICTS?

RS:

This is a big deal. We do a horrible job educating people about the conflict of interest management process before asking them to share their conflicts of interest. As a result, they become defensive. They think we don't trust them and that is not true. They think we are going to overreact and that is not true. They feel like they are being accused of wrong-doing by simply being asked to list their potential conflicts of interest. Yes there will be a couple people out of thousands that will make bad decisions because they have a conflict of interest, however most people

don't. We describe the process so poorly that they are completely unaware that almost all conflicts of interest that are listed will be deemed not a conflict of interest by the organization. I have jokingly said we should call this the Potential Conflict of Interest process because most things listed on the COI form are ultimately not considered a COI. If you want to "flip the script" do a better job educating and give people more information. It is a stone cold fact that we trust our people and most conflicts of interest amount to nothing. This is an easy problem to fix, just tell them everything.

QUESTION:
YOU MENTION
IN YOUR BOOK
THAT THE CURE
FOR CONFLICTS
OF INTEREST IS
INDEPENDENCE.
COULD YOU
ELABORATE ON
THAT POINT?



RS:

I think I was referring there to the compliance officer, in particular.

We need a compliance officer in part because most everyone else has a vested interest in how decisions are made and as a result are somewhat conflicted. So we need a compliance officer that has no conflicts of interest.

The only way to manage the conflicts of interest of others is to have a person without conflicts of interest reviewing them.

Specifically, I said in the book that the compliance officer should not report to someone with conflicts of interest because by doing so we have to live by their conflicts of interest. Simply put, the compliance officer cannot report to, have their annual review or have hire/fire authority over anyone that they might have to investigate. That is a short list, and that is why the compliance officer, at a minimum, often has a dual reporting relationship to the audit or compliance committee of the board.



QUESTION: WHAT DOES A GOOD COI PROCESS NEED TO INCLUDE?

RS:

It needs a board approved conflict of interest policy that outlines the following:

- i. Identification of all people who need to fill out the conflict of interest form.
- ii. Collect all conflicts of interest forms annually.
- iii. Have individuals who think they may have a new conflict of interest midyear, update



their COI form.

- iv. Review the COIs and separate them into, at minimum, 3 categories: no conflict, conflicts that require management, and conflicts that must be eliminated.
- v. Have a committee review these conflicts and the categories they are assigned to.
- vi. Review significant



conflicts of interest to the board.

- vii. Annual review and assurance of the process by the board.
- viii. Have an outside, independent (not a current service provider) audit the COI process and report findings to the committee overseeing the process.

QUESTION:
WHAT ARE SOME
DIFFICULT PARTS OF
HAVING / MANAGING
A COI PROCESS?

RS:

It is overwhelmingly tedious and difficult if it is a manual process. If you simply have people fill out forms and put them in a file cabinet it will be difficult to follow-up effectively. The greatest weakness of a COI process, in my view, is having a robust process for the collection of COIs

but not a robust process for following up on COIs. Following up on conflicts of interest that must be managed requires a great deal of real time monitoring. If you have dozens of people listing hundreds of COIs, it is very difficult, if not impossible, to monitor the conflicts manually.

QUESTION: HOW SHOULD A COMPANY USE TECHNOLOGY TO IMPLEMENT A COI PROCESS?

Automating the COI process has been one of the most successful, high return on investment IT efforts I have seen.

Not only is a manual process for COI untenable for average size and larger organizations, if you collect the data and not follow up on it, it could be used against you should the enforcement community ever investigate a potential problem in your organization.

RS:

I began my career in IT and been involved in automating manual processes after I moved into management roles. In the 1980's we automated writing, accounting and data collection. The ROI on this automation is incalculable but enormous. We then tried to automate more complicated processes. Some efforts have worked and some have not.

In addition, the COI process is very sensitive. People who have to share potential COIs become defensive. If you are not effective and efficient you exacerbate employees sensitivity to the COI process. Your work with people who have a COI has to be accurate, effective and quick. This can only be done, even in a moderately sized organization, through automation of the process.

QUESTION:
WHO IS, OR
SHOULD BE
RESPONSIBLE
FOR REVIEWING
POTENTIAL
CONFLICTS AND
HOW ARE THEY
TRAINED?



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RS:

I would have a trained compliance officer, without any conflicts of interest, or someone who reports to them, review conflicts of interest and categorize them. A committee should review and verify that the categorization is consistent with the COI policy. The board should review the overall process annually. Compliance professionals should not only receive training, such as at

conferences, but also receive training annually to maintain an understanding of best practices and any changes in the governments perspective about how this should be handled. The compliance officer should train the committee that oversees the process and the board. A best practice would be to have a member of the committee and a board member attend COI training at a conference.





"The compliance officer should train the committee that oversees the process and the board. A best practice would be to have a member of the committee and a board member attend COI training at a conference."



Those two individuals (possibly the same person) should help those working on the process communicate with the committee and the board. The ideal situation is to have the audit committee of the board chair, who also sits on the board, help make sure that the needs of the COI team are properly communicated and acted upon by the committee and board.

QUESTION:
DO THEY FOLLOW
WRITTEN RULES
TO DETERMINE
WHAT IS A
CONFLICT AND
HOW IT SHOULD
BE REMEDIATED?

RS:
Yes the COI policy should clearly
define the categories and the
policy should give examples for
the person/team that is
responsible for categorizing COI.



QUESTION:
WHAT EXPERTISE
DO THEY NEED?

This really doesn't require specific
expertise beyond studying ev-
erything COI. This involves more
common sense and influence
than anything else. I guess I would
sum it up by saying the expertise
that someone needs to lead this
effort is interpersonal skills.



I would start by studying everything you can find. Get to know the subject as well as anyone in your organization. Then I would find a leader that has the authority to implement a COI process and educate them until they act.

QUESTION:
MY COMPANY
DOESN'T HAVE A
COI PROCESS
(OR IT IS LACKING)
WHERE SHOULD I
START?



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