

Facing Conflicts of Interest in Troubled Times

CO-SPONSOR



**Santa Clara
University**

Markkula Center
for Applied Ethics



RiskMetrics Group

ISS Governance Services
Accredited Director Education Program

This program has been
accredited by RiskMetrics.

TOPICS WILL INCLUDE:

Techniques for identifying and surfacing conflicts

- conflicts surface more quickly and in new places during economic down turns
- vigilance in identifying conflict-rife situations
- surfacing and dealing with conflicts
- economic pressure brings out behavior traits that can overwhelm personal integrity

Conflicting interests in corporate communications: “sugar coating” bad news

- board member
- VCs
- Wall Street

Conflicting interests in the “zone of insolvency”

- creditors
- shareholders
- employees
- self-preservation

Conflicting interests in private company valuations

- insider-led venture financings (particularly “down rounds”)
- option repricings (shareholder wrath, RiskMetrics (ISS) wrath, accounting charges)
- going-private transactions

Conflicting interests in accounting determinations

- temptation to “bend the rules” to meet expectations (revenue recognition)
- asset impairments due to market cap declines (delayed or avoided writedowns)
- liquidity and covenants can lead to pressure on balance sheet in addition to operating statements

Conflicting interests in “speaking truth to power”

- gatekeepers’ duty to speak up / whistleblowers
 - supportive corporate governance
 - supportive culture
 - board dynamics
- gatekeepers more vigilant / proactively look for conflicts

New conflicts settling derivative class action litigation

- company and board member defendants, desire to settle with payment by corporation (or D&O insurer); courts refusing to approve such settlements as “pay offs”