Job Security

By Tim Croasdaile

The crisis clouds had been building for some time.

Tom Trueheart, vice president of corporate communication and investor relations for A+ Consumer Products, knew that his company had treated shareholders poorly because of its lack of sound corporate governance. A+ had two classes of stock: one voting, one non-voting. Eighty-six percent of the voting stock was controlled by the company's founder and chairman, I. M. Megabucks; the remaining 14 percent was controlled by eight of his cronies who also represented the A+ board of directors. In addition, Megabucks controlled 55 percent of the non-voting stock, the remainder of which was held by outside, public shareholders. The ownership situation was such that one sell-side securities analyst quipped, "You don't own A+ stock; you rent it."

Tom had been with A+ his entire career, beginning as a staff accountant and progressing eventually to manager of corporate reporting before being named the head of investor relations when A+ went public in 1988. He added the corporate communication function a few years later and was promoted to the corporate officer position of vice president in 1996. Despite the lack of good governance caused by the ownership situation, Tom conducted an investor relations and corporate communication program that could rank among the best in corporate America. Tom reports directly to President and CEO Farley Straightarrow, who was hired by Megabucks and the board in early 2001, replacing a CEO who was fired for disagreeing with the board.

A+ runs a nationwide string of houseware retail stores — selling everything from plates and tableware to washing machines and refrigerators. The business has had its ups and downs over the years, generally tracking with economic and consumer spending trends. One key element in the A+ business model is a wholly owned bank that provides easy credit to A+ customers purchasing products at their stores. The bank finances approximately 70 percent of the company's sales to customers.

The company's retail business had taken a turn for the worse in the economic fallout that followed the September 11 terrorist attacks. As they had during previous slowdowns, A+ management turned up the credit spigot to spur demand at A+ stores. But unlike previous cycles, the bad debt experience in this cycle was much higher.

This situation continued to worsen month by month and combined to foretell near-certain financial crisis for the company. Tom insisted on disclosing the problem, and CEO Straightarrow agreed — but was overruled by Megabucks and the board. Tom could see that this crisis could eventually result in the company's auditors issuing a "going concern" qualification to its opinion for the 2002 10-K and annual report, which were in the final stages of preparation. Tom believed that the disclosures in the annual report and 10-K would clear the air and properly inform investors of the problems at A+.

Then the unthinkable, and inexcusable, happened. Megabucks and the board ordered A+ management to delay the filing of the 10-K, hoping that time would provide a solution to the problem. In fact, due to worthless receivables and poor cash flow, the company was facing a potential bankruptcy filing. Of course, Megabucks and the board were equity holders, and a bankruptcy reorganization could leave them with nothing. Tom pointed out that the delay in filing the 10-K

could put them in violation of both stock exchange and SEC regulations, not to mention the fact that nondisclosure of the problem on a timely basis was illegal.

What was Tom to do?

He sought advice from the A+ general counsel and the firm's outside counsel. He was fearful of the legal consequences for himself and the other corporate officers. The lawyers assured him that legally he was *probably* protected because he had gone to great lengths in written communication to recommend what the company should disclose. However, Tom was fearful of damaging his credibility as an investor relations professional.

Finally, he went to CEO Straightarrow and told him that he was going to resign from A+.

Straightarrow informed Megabucks and the board, who instructed Straightarrow to offer Tom a significant severance package in return for his silence about anything to do with the company's operations.

Tom had a tough choice. The current job market was horrible. His son had just been accepted at a private and very expensive university. There was a significant mortgage to pay and three other mouths to feed at home. The severance package would help Tom and his family maintain their standard of living while he searched for a new job.

In reviewing past instances of corporate malfeasance, Tom found that the inaction and/or silence of corporate officers often exacerbated the consequences of any missteps or misdeeds. Indeed, he discovered that many of these corporate officers had received advice from legal counsel that their actions (or inactions) were perfectly legal. He made up his mind not to repeat those mistakes — and with the support of his family, he decided to resign without taking the severance package and to contact the SEC to offer his cooperation in any action against A+. IRU

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This bimonthly column is written by members of the NIRI's Ethics Counsel. If you have a problem that could benefit from their experience and advice, please contact any member: Jane McCahon, Tim Croasdaile, David Erickson, Jay Gould, Len Griehs or Karen Warren. They are available through the Volunter Advisory Network at www.niri.org. All communicaton will be kept confidential.