

When the Whistleblower is the Whistleblowee

BY JAY GOULD

Roger's heart sank and that prickly sensation of finding oneself suddenly and unexpectedly in a career-threatening situation raced up his spine. "What was I thinking and what do I do now?" he said to himself over and over.

Roger was IRO for Exponential Pharmaceuticals, a rapidly growing drug company. A 15-year IR professional, he had joined them four years ago to help prepare for their initial IPO. Exponential had just received the patent and FDA approval to market a drug that had been shown clinically to shorten the duration of the common cold to 24-hours. Since pre-IPO Exponential was cash-strapped, he was granted shares out of the initial IPO. The drug was a phenomenal success, and Exponential's stock price took off.

With their rich stock price in hand, Exponential embarked on a series of acquisitions of small drug research firms and acquired nine companies in three years. While Exponential's stock always took a hit immediately following the announcement of an acquisition, it had also always rebounded in a few months and soon they were on the prowl again. But with no new acquisitions in almost a year, Roger's investor relations program settled into a routine.

Last Monday, Roger's son advised him the university scholarship they were counting on fell through. Further, in order for him to stay in school, a tuition payment was due next week. Roger didn't have that type of cash lying around. So, that night he logged on to the on-line option exercise web site and did a cashless exercise.

It's now Friday, and Roger has just left a meeting where Exponential's CEO advised him that over the last three weeks they have been in talks to acquire their largest company ever. They were paying a hefty price, and the Street would not like the initial dilution hit. Roger was asked to join the merger team and work over the weekend to prepare a press release for Monday.

Roger's adrenaline flowed as he walked back to his office. This deal could transform Exponential, and he was going to be in the thick of the action! Then it hit him. The SEC almost always reviews the stock transactions of officers for the weeks preceding a merger announcement.

"Man! With 20/20 hindsight my exercise might look bad timing-wise," he told himself. "Yet, I'm not a Section 16 officer.



So technically, I don't have to seek approval before exercising my options," he argued back. "Yet, would anyone really believe that as the IRO I did not know discussions were underway? I did attend some planning meetings over the last few weeks. Did I miss something I should not have? Was it there and I didn't see it?" he thought playing the second-guessing game. "Nothing will happen. No one will notice it," he countered. "If they do, I can just explain it at the time."

He knew the CFO and the corporate secretary would not be happy to have his option exercise surface, either now or in the future, for Roger had a "gentleman's agreement" about seeking their permission before exercising any options. This time, and in the urgency of the moment and given the ease of on-line exercising, he just acted and told no one. Roger finally yielded to his conscience. He picked-up the phone and called the CFO to blow the whistle on himself.

Roger has been reminded of two key axioms every IRO sooner or later learns, and hopefully never the hard way:

- Circumstances at companies can, and often do, change quickly and unexpectedly... so always expect the unexpected.
- You never know what you don't know... and what you don't know can kill your career, or worse.

Roger did the difficult, but right thing. Had this surfaced later, with no prior mention of it, he not only could have harmed Exponential, but in the lens of 20/20 hindsight and second-guessing, would have permanently damaged his reputation for integrity. Once an IRO loses that, his or her career in investor relations might as well be over. IRU

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