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The 'Goodfellas' Principles at Work in the Boardroom

By Michael W. Peregrine – May 16, 2012

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Sometimes, "the Goodfellas Principles" exist among executives and board members.

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Keeping secrets, no matter how small, can sometimes cause a boardroom shake up. That's the surprise corporate governance lesson from this week's Best Buy controversy.

The internal investigation commissioned by the Best Buy board, released on Monday, reaches two thoughtful conclusions. First, that Brian J. Dunn, the chief executive, violated company policy and used poor judgment in engaging in an inappropriate personal relationship with a female subordinate. We get that one.

But it's the second conclusion that's likely to have lasting governance implications. The board's chairman was also determined to have acted inappropriately when he became aware of the chief executive's conduct but failed to share that information with the audit committee.

According to the investigative report, the chairman, Richard M. Schulze, did confront Mr. Dunn about the written allegations from an employee, and Mr. Dunn denied them. But that's where it ended. There was no follow up.

Neither the board nor the general counsel was informed. And an opportunity was lost to address the problem at that moment. The board eventually did so in March, when it finally became aware of the allegations. In response to the investigative report, the chairman chose to step down and assume the honorary role of founder and chairman emeritus, while serving out the remainder of his term as director.

This unfortunate story should cause a stir and serve as a reminder that in the boardroom and C-suite, there aren't any secrets; loyalty to your friends only goes so far. The Best Buy board has, commendably, sent a strong message about the obligation of fiduciaries — board members and senior executives — to fulfill their compliance oversight obligations by both word and deed.

The problem is that this obligation violates "the Goodfellas Principles" that often exist among executives and board members. In the film "Goodfellas," Robert DeNiro's character recites the famous line about the two great lessons in life: "Always keep your mouth shut, and never rat on your friends." Or, in the Best Buy case, your chief executive.

It's a fundamental tenet of corporate responsibility that officers and directors must disclose to the board

information known to them that is relevant to the board's decision-making and oversight responsibilities.

Richard Schulze stepped down as chairman of Best Buy after an internal investigation.Best BuyRichard Schulze stepped down as chairman of Best Buy after an internal investigation.

The operating principle for board members should be if you see something, say something. That would include, as the investigative report concluded, information about a chief executive's affair with a younger employee.

Best Buy's action draws a sharp exclamation point that no one, not even a founder and chairman, is immune from compliance responsibilities to make proper disclosures. This goes to the essence of maintaining the "tone at the top" for compliance and ethics purposes.

This also means no board member should unilaterally decide how to proceed. No matter who you are, how senior you are, who is involved, or how much you know or don't know.

From the law's perspective, the board always knows best. From a policy perspective, that makes sense too, especially when rules place great emphasis on protecting whistle-blowers from retaliation — a particular concern cited in the Best Buy report.

The board, or its audit committee, deserves the chance to reach its own conclusions about the whether the allegations are material enough to address. But executives and officers should not substitute their judgment for that of the board when compliance issues are in play. To do so undermines the formal role of the board and its compliance related committees, sends a terrible message about corporate culture, and — as at Best Buy — potentially exposes the corporation to reputational harm.

Understandably, the risk of sharing confidential information is real. It could betray a friend or a colleague, destroy a successful working relationship or create a powerful enemy, without knowing whether the rest of the board will come down on the issue.

It's a risk that compliance officers face all the time. MF Global, for instance, replaced its chief risk officer last year after he repeatedly clashed with Jon Corzine over the firm's purchase of European sovereign debt, an investment that eventually led to the collapse of the firm. And recently, the New York Court of Appeals decided that a hedge fund compliance officer who was terminated after challenging his superior over what he said were inappropriate trades was held to be an at-will employee with no common law protection against wrongful termination.

It may be fitting to keep officers and directors on a tight leash, and yank on that leash if they fail to be forthcoming about corporate improprieties. That goes right to the core of responsible governance. Best Buy should be commended for its actions.

But at the same time, boards need to anticipate that some officers and directors may be following the "Goodfellas" motto and might be reluctant to share what they learned in confidence, especially about someone they know, and respect.

Therefore, boards need to provide assurances that internal discussions about allegations of improprieties will be protected regardless of whether it turns out to be accurate or what action the board or audit committee decides to take. Those would be the same standards used if a traditional whistle-blower came to the board with accusations of wrongdoing.

Omertà may work well in some places, but not in the boardroom.