FTI CONSULTING

Survey: Board Directors and General Counsel Struggling with Corporate Risks

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45% of Directors, 48% of GCs Say They Now Spend More Time on Risk Management

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Corporate Board Member magazine and FTI Consulting, Inc. (NYSE: FCN), the global business advisory firm, collaborated on the seventh annual legal study, the findings of which indicate that with the glut of leveraged buyouts (LBOs) hitting U.S. companies, enterprise risk management (ERM) has moved to the forefront of issues facing boards of directors and general counsel.

In their efforts to reduce corporate risk, companies are increasingly turning to ERM, a systematic approach to identifying, quantifying, managing, and mitigating risk, noted Roger Carlile, leader of FTI Consulting's Forensic and Litigation Consulting segment. “If crisis management is the remedy to an explosive situation, ERM is the preventive medicine,” Carlile said.

While 45% of directors and 48% of general counsel spent more time on ERM in 2006 than in previous years, only 27% of directors and 25% of general counsel said they would like their boards to allow more time for ERM in 2007. “Dedicating more resources to ERM can reduce the number of day-to-day crises that consume directors' and counsel's time,” Carlile said.

In other findings, the surveyed groups identified corporate governance and mergers and acquisitions (M&A) risk as the two areas in the most need of an ERM assessment:

Forty-one percent of board directors said that governance changes were the area most requiring additional preparation, compared with 35% of general counsel.

Approximately one-third of each group said that understanding M&A risk should be their company's highest ERM priority. The survey also found that today's litany of corporate risks is leading both directors and general counsel to seek their own personal outside counsel:

Forty-four percent of today's directors would seek personal advice from outside lawyers and 51% from non-legal advisers. Meanwhile, fully 57% of general counsel – usually the ones doing the advising – said they would seek personal advice from outside legal counsel, and 48% from outside non-legal advisors.

The leading cause for this increased reliance on outside advice is M&A issues, on which 62% of directors and 66% of general counsel said they would retain personal outside counsel. In second place was compliance with Sarbanes-Oxley, on which 50% of directors and 43% of general counsel would seek outside advice.

General counsel showed much greater interest than directors in seeking personal legal counsel on issues of antitrust (24% of general counsel, versus 7% of directors), bankruptcy (12% versus 2%), data retention (11% versus 2%) and e-discovery (18% compared with 2%). Only about 3% of each sample said they expected to seek outside counsel to defend them against criminal charges.

“The role of the general counsel has become one of the most challenging positions in today's corporate c-suite,” said TK Kerstetter, president and CEO of Board Member Inc., which publishes Corporate Board Member and Bank Director. “Their advisory duties to the board and its committees, coupled with a GC's day-to-day responsibilities as part of the management team, can test even the best of chief legal officers.”

The increased liability stemming from Sarbanes-Oxley has required both general counsel and directors to establish a reporting structure within a culture of compliance.

A majority of both directors (53%) and general counsel (55%) said that they spent more time on compliance in 2006 than in 2005.

However, 62% of directors said they would like to spend less time on compliance in 2007 than in previous years, while only 37% of general counsel agreed.

“Over the past five years, compliance requirements have become acutely more complex, meaning that general counsel have had to assume a broader corporate role in identifying problems and keeping their firms out of the regulatory maze,” Carlile said.

The two groups differed sharply on electronic discovery – the process during which parties to a lawsuit access, compile, analyze, and produce electronically stored information from a variety of sources during litigation:

Fifty percent of directors said electronic discovery is not a significant issue for their companies, while only 34% of general counsel agreed.

Likewise, three-quarters of general counsel reported that they are increasingly concerned over handling and managing electronic data, compared with only about half of directors.

According to David Remnitz, leader of FTI's Technology segment, many companies require additional help in this area. “Managing the risks brought on by the information age in dispersed or global company operations is a task few companies are prepared to embrace,” noted Remnitz.

In the aftermath of QualComm, Enron and the vast array of new computer threats, directors appear to be taking a greater role in managing corporate crises:

Thirty-six percent of directors reported they spent more time on crisis management in 2006 than in the past, compared with only 27% of general counsel.

A nearly identical majority of directors and GCs (56% and 57%) agreed they will spend the same amount of time on crisis management this year as last year.

“Whether it be a natural or man-made disaster requiring temporary relocation, off-site data storage and backup facilities, or a legal or public relations issue threatening credibility and stakeholder trust, advance planning and well-trained internal and external crisis teams are the keys to success and a full recovery,” said Harlan Loeb, leader of FTI's Strategic Communications Litigation segment.

About the Survey

The seventh annual legal study, surveying 802 directors and 235 general counsel, was highlighted in Corporate Board Member's July/August issue. The complete findings, along with relevant commentary from Corporate Board Member and FTI Consulting, are published in a special supplement, “The Legal Playing Field,” which is being mailed with the magazine's September/October issue. The supplement is also available online at www.boardmember.com/PDFs/LegalPlayingField.pdf and www.fticonsulting.com.

About Corporate Board Member

Corporate Board Member is a leading information resource for senior officers and directors of publicly traded corporations, large private companies, and Global 1000 firms. The bimonthly publication provides readers with decision-making tools to deal with the corporate governance challenges confronting their boards. Corporate Board Member further extends its governance leadership through an online resource center, conferences, roundtables, and timely research. The magazine maintains the most comprehensive, up-to-date database of directors and officers serving on boards of publicly traded companies listed with the New York Stock Exchange, NASDAQ Stock Market, and American Stock Exchange. Headquartered in Brentwood, Tenn., with editorial offices in New York, Corporate Board Member is published by Board Member Inc. and is the sister publication of Bank Director magazine, a leading information resource for officers and directors of financial institutions. For more information, visit www.boardmember.com.

About FTI Consulting

FTI Consulting is a global business advisory firm dedicated to helping organizations protect and enhance enterprise value in an increasingly complex legal, regulatory and economic environment. With more than 2,200 professionals located in most major business centers in the world, we work closely with clients every day to anticipate, illuminate, and overcome complex business challenges in areas such as investigations, litigation, mergers and acquisitions, regulatory issues, reputation management and restructuring. More information can be found at www.fticonsulting.com.

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