



FTI Consulting Study Reveals that Dealmakers Prefer Independent Fairness and Solvency Opinions

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WASHINGTON, Nov. 18, 2014 /PRNewswire/ -- FTI Consulting, Inc. (NYSE: FCN), the global business advisory firm dedicated to helping organizations protect and enhance their enterprise value, today announced the results of a new study, *State of Transaction Opinions*, which examines attitudes on how well fairness and solvency opinions hold up to the scrutiny associated with post-transaction litigation. The poll of transaction attorneys, corporate executives and private equity practitioners found that fairness and solvency opinions provided by independent experts are more effective, and preferred, in defending boards of directors ("Boards") from transaction-related litigation.

Fairness and solvency opinions are part of the due diligence process in complex mergers, acquisitions, disposals and other transactions and provide directors, trustees and managers with a legally defensible basis for setting the price of a deal. While not required by law, fairness and solvency opinions have been increasingly relied upon since the financial crisis due to increased regulatory oversight.

"In today's highly regulated and litigious transactional environment, Boards should ensure that they are taking the appropriate actions to mitigate legal risks and uphold their fiduciary duty to shareholders," said [Roy Salter](#), Senior Managing Director in FTI Consulting's Corporate Finance/Restructuring segment. "This study overwhelmingly shows that fairness and solvency opinions prepared by independent providers, with strong industry experience that are hired at an early stage in a transaction, is the best approach for defending a transaction's fairness, regardless of the size or industry."

FTI Consulting's *State of Transaction Opinions* identifies practices Boards should take to ensure sound corporate governance and shield themselves from potential liabilities when contemplating transactions.

More than seven times as many poll respondents indicated that fairness opinions from independent providers were more effective in defending Boards than those provided by investment banks involved in the underlying transaction. However, despite this overwhelming preference, more than seven-in-ten (71 percent) respondents stated that some or most of the fairness opinions they've observed since the 2008 financial crisis were provided by parties "running the deals they opine on." Conversely, more than six-in-ten respondents (62 percent) believe that the preference for independent and/or objective fairness opinions has increased since 2008.

With respect to solvency opinions, 86 percent of respondents said the industry expertise of the opinion provider is significant in defending solvency opinions in subsequent litigation. Moreover, the study found that solvency opinions are most often used to defend recapitalizations and parent company spin-offs, followed by asset sales, transfers, dividends and/or other capital distributions.

"As the transaction and regulatory environment becomes increasingly complex, we expect the importance of fairness and solvency opinions to only intensify," said [Eric Briggs](#), Senior Managing Director in FTI Consulting's Corporate Finance/Restructuring segment. "Boards should seek to make the best-informed decisions and utilize appropriate resources accordingly. Besides using an objective party, either independently or to supplement existing opinions, Boards should deploy opinion providers at earlier stages in a transaction and ensure that they have relevant industry expertise."

In addition to securing an objective, conflict-free opinion, the study identified a range of other factors that Boards should consider in order to enhance their ability to defend transaction decisions.

- **Timeliness in Provider Retention:** An overwhelming majority of respondents believe that fairness and solvency opinions are more effective at defending Boards when opinion providers are hired at an early stage in a transaction, before forecasts and deal terms are finalized. Nine-in-ten respondents indicated that hiring solvency providers at an earlier stage in a transaction is more effective and nearly three-in-four (73 percent) felt the same about fairness opinions.
- **Industry Expertise is Critical:** Over 85 percent of respondents believe that fairness and solvency opinions are more defensible if such opinions are provided by firms with strong industry experience as opposed to generalists. Based on the experience of those polled, fairness and solvency opinions are nearly split down the middle between teams of "Industry Specialists" and "Generalists," who are arguably less able to evaluate forecasts and analyze potential synergies and benefits associated with transactions.
- **Management Forecast Support:** When management forecasts cannot be supported, 82 percent of respondents indicated that Boards are most strongly protected when the opinion provider requests that management adjust forecasts to supportable levels.

The full report can be accessed here: www.fticonsulting.com/transactionopinions

Survey Methodology

FTI Consulting conducted an anonymous online panel survey in September 2014 that was directed to over 150 transaction lawyers, private equity and hedge fund managers and corporate executives.

About FTI Consulting

FTI Consulting, Inc. 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 4,200 employees located in 26 countries, FTI Consulting professionals work closely with clients to anticipate, illuminate and overcome complex business challenges in areas such as investigations, litigation, mergers and acquisitions, regulatory issues, reputation management, strategic communications and restructuring. The Company generated \$1.65 billion in revenues during fiscal year 2013. More information can be found at www.fticonsulting.com.

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