The State of Transaction Opinions Report, written by FTI Capital Advisors, LLC (“FTICA”), presents the results of a survey covering the effectiveness of fairness and solvency opinions in defending boards of directors in a post-financial crisis transaction environment. Working in conjunction with the FTI Consulting Strategic Communications segment, more than 150 lawyers, senior corporate executives and private equity and hedge fund practitioners were engaged in September 2014 to share their views on the topics ranging from use of solvency and fairness opinions to independence and provider effectiveness. Participation in the polling was managed on an anonymous basis through an online format that facilitates objective feedback.

Key Findings:

• The majority of respondents indicated that fairness and solvency opinions were frequently or occasionally used to defend boards of directors (“Boards”) in a wide variety of transactions.

• More than seven times as many respondents believe that independent fairness opinions are very effective in defending board decisions in subsequent litigation than fairness opinions provided by investment banks involved in the underlying transaction.

• Over 60 percent of respondents indicated that there has been an increased preference for independent fairness opinions since 2008. This finding is consistent with increased regulatory oversight of Boards following the 2008 financial crisis. Nonetheless a recent study conducted by FTICA of 50 large mergers and acquisitions (M&A) transactions between 2009 and 2012 indicated that in only 9 percent of these cases were fairness opinions provided by an independent advisor. Conversely, 91 percent were provided by an investment bank that was receiving consideration for services other than the fairness opinions provided. ¹

• Greater than 85 percent of respondents believe that fairness and solvency opinions are more defensible if such opinions are rendered by providers possessing strong industry experience.

• 82 percent of respondents believe that unsupportable management forecasts underlying fairness and solvency opinions are best addressed by opinion providers that request management to adjust such forecasts. Notwithstanding that response, nearly one-half of respondents believe that actual teams underlying fairness and solvency opinions are largely comprised of industry generalists, calling into question the board defense effectiveness of such advisors’ forecast change requests.

• Lastly, 73 percent and 90 percent of respondents believe that fairness and solvency opinions, respectively, are more effective at defending Boards when opinion providers are hired at an early stage in a transaction (e.g., before forecasts and deal terms are finalized).

The survey results indicate that respondents believe that board defensibility is best enhanced when the opinion provider is engaged at an early stage, is an industry expert and is not a conflicted professional receiving other consideration for the underlying transaction. Selected questions and responses from the survey are included herein to share participant perspectives on use of transaction opinions, independence, industry expertise, management forecast support and provider effectiveness. These insights should be viewed within the framework of a more regulated deal environment that potentially elevates liability for boards of directors.

¹ “FTICA Fairness Opinion Landscape,” FTI Capital Advisors, February 2014.
Starting with the 2008 financial crisis, in your experience, how often do you see that fairness opinions are used in defending the decisions of boards of directors in the following transaction types?

<table>
<thead>
<tr>
<th>Transaction Type</th>
<th>Never</th>
<th>Infrequently</th>
<th>Occasionally</th>
<th>Frequently</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquisition of assets or equity (buy-side opinion)</td>
<td>10.9%</td>
<td>20.0%</td>
<td>36.4%</td>
<td>32.7%</td>
</tr>
<tr>
<td>Sale or merger of assets or equity (sell-side opinion)</td>
<td>12.7%</td>
<td>16.4%</td>
<td>29.1%</td>
<td>41.8%</td>
</tr>
<tr>
<td>Transfer of assets between public entities managed by related party</td>
<td>21.4%</td>
<td>12.5%</td>
<td>33.9%</td>
<td>32.1%</td>
</tr>
<tr>
<td>Transfer of assets between multi-party owned private entities managed by related party</td>
<td>17.9%</td>
<td>17.9%</td>
<td>30.4%</td>
<td>33.9%</td>
</tr>
<tr>
<td>Material consideration paid by controlling party for services in a public entity</td>
<td>21.4%</td>
<td>21.4%</td>
<td>30.4%</td>
<td>26.8%</td>
</tr>
<tr>
<td>Consideration received by holders of differing classes of stock</td>
<td>19.6%</td>
<td>14.3%</td>
<td>35.7%</td>
<td>30.4%</td>
</tr>
<tr>
<td>Material consideration paid by controlling party for services in a private entity</td>
<td>26.8%</td>
<td>25%</td>
<td>33.9%</td>
<td>14.3%</td>
</tr>
</tbody>
</table>

- The majority of respondents indicated that fairness opinions are frequently or occasionally used in defending:
  - Buy-side and sell-side purchases, sales and/or mergers of assets or equity;
  - Transactions involving the transfer of assets between public and/or private companies that are managed by a related party; and
  - In a majority of transactions involving public company compensation to a controlling party.
- The frequency underscores the perceived importance of fairness opinions in supporting the defensibility of a transaction.
Use of Solvency Opinions

How often are solvency opinions used in defending the decisions of boards of directors in the following transaction types?

- Nearly 80 percent of respondents indicated that solvency opinions were used in defending recapitalizations and parent company spin-offs.
- 63 percent of respondents viewed solvency opinions being used to defend Boards in asset sales, transfers, dividends and/or other capital distributions.
- 57 percent indicated solvency opinions were used to defend Boards in refinancing transactions.
Comparatively, how effective are the following types of fairness opinions in defending the decisions of boards of directors in subsequent litigation?

- A fairness opinion provided by the investment bank involved in the transaction:
  - Not At All Effective: 9.8%
  - Not Too Effective: 49.0%
  - Somewhat Effective: 35.3%
  - Very Effective: 5.9%

- A fairness opinion provided by a respected independent opinion provider:
  - Very Effective: 76.5%

- A secondary fairness opinion from a respected independent provider behind a primary opinion provided by the investment bank involved in the transaction:
  - Not At All Effective: 2.0%
  - Not Too Effective: 2.0%
  - Somewhat Effective: 43.1%
  - Very Effective: 52.9%

76.5 percent of respondents indicated that fairness opinions provided by a respected independent opinion provider were very effective in defending Boards.

More than 52 percent indicated secondary fairness opinions provided by an independent source were very effective in defending Boards.

Less than 10 percent indicated that fairness opinions from the investment bank involved in the transaction were very effective at defending Boards.

Respondents indicated that there is perceived value of an independent third-party opinion in defending boards of directors.
Independence

Q In your experience, how has the preference for independent and/or objective fairness opinions (provided by a party other than the M&A bankers) changed since 2008?

- More than 60 percent of respondents indicated that the preference for independent and/or objective fairness opinions has increased since 2008. The change in viewpoint on this topic is likely a result of the increased regulatory environment and scrutiny regarding transactions.

Q Starting with the 2008 financial crisis, how many of the fairness opinions that you have observed have been provided by the investment banks running the deals they opine on?

- More than 70 percent of respondents indicated that some or most of the fairness opinions observed were being provided by the investment banks running the transaction. Notwithstanding prior responses involving the value of independence, the majority of opinions continue to be provided by related parties.

- As previously noted, FTICA determined that over 90 percent of fairness opinions rendered on the dataset between 2009 and 2012 were provided by investment banks receiving other material consideration for the transactions in which they were providing fairness opinions.2

2 Ibid.
Industry Expertise

6 Q In your experience, how significant is the industry experience of the opinion provider in rendering solvency opinions and in defending solvency opinions in subsequent litigation?

- Industry experience emerged as a paramount consideration of respondents. Presumably, this finding is indicative of the need of opinion providers to have sector specific understanding of forecasts, synergies and other elements underlying a transaction.

7 Q In your experience, how significant is the industry experience of the opinion provider in rendering fairness advice and in defending fairness opinions?

- Over 95 percent of respondents indicated industry experience to be somewhat-to-very significant for fairness opinions.

8 Q In your experience or to your knowledge, are most solvency and/or fairness opinions rendered by opinion provider teams that are staffed with:

- **55% Industry Specialists**
- **45% Generalists**

- In light of the previous response regarding the perceived importance of industry expertise, this response indicates a relatively high percentage of fairness and solvency engagements are being staffed by generalists – who, arguably, have less expertise in evaluating forecasts and analyzing potential synergies and benefits associated with transactions.
9  Q  If management forecasts are insupportable, in your opinion, what approach most strongly protects a board of directors?

- 2% The opinion provider accepts the forecasts as-is, even if deemed insupportable
- 82% The opinion provider requests that management adjust the forecast to levels deemed supportable
- 16% The opinion provider effectively adjusts management forecasts by raising discount rates or other valuation metrics

- 82 percent of respondents indicated that Boards are most strongly protected when the opinion provider requests that management adjust forecasts to supportable levels rather than accept insupportable forecasts, or compensate for such forecasts with higher discount rates or other indirect approaches.

10  Q  In your observation of fairness opinions since 2008, have the opinions more often relied on:

- Unadjusted management forecasts, even if deemed insupportable 25%
- Management forecasts that may be adjusted for opinion provider feedback if such forecast were deemed initially insupportable by the opinion provider 75%

- This is a significant observation given that nearly half of respondents believe opinions are being provided by generalists even though more than 95 percent of respondents believe that industry expertise strengthens opinion defensibility. Furthermore, greater than 90 percent of fairness opinions are still being rendered by investment bankers working on the transactions in which opinions are provided.
- 75 percent of respondents indicated that fairness opinions have more often relied on forecasts adjusted for opinion provider feedback if such forecasts were deemed initially insupportable by the opinion provider.

11  Q  In your observation of solvency opinions since 2008, have the opinions more often relied on:

- Unadjusted management forecasts, even if deemed insupportable 20%
- Management forecasts adjusted for the opinion provider feedback if such forecasts were deemed initially insupportable by the opinion provider 80%

- As noted, this is significant given that nearly half of respondents believe opinions are being provided by generalists, while a large majority of respondents believe that industry expertise strengthens opinion defensibility.
- 80 percent of respondents indicated that solvency opinions have more often relied on forecasts adjusted for opinion provider feedback if such forecasts were deemed initially insupportable by the opinion provider.
Summary
Overall, the survey findings indicate that the majority of respondents view board defensibility as being most enhanced when fairness and solvency opinion providers are engaged at early stages, are industry experts and are providing services as non-conflicted opinion providers.

Despite increased regulatory oversight and legal actions taking place against Boards, a large percent of fairness and solvency opinions are still rendered by opinion providers who do not possess specific expertise of the industry in which opinions are provided, and/or are conflicted as providers of other services in the transactions in which the opinions are rendered.
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.

About FTI Capital Advisors

FTI Capital Advisors, LLC is a wholly owned subsidiary of FTI Consulting, Inc. FTI Consulting provides fairness and other opinion work through FTICA, an SEC registered broker-dealer and member of FINRA / SIPC. FTICA opinions are developed and provided under the guidance of appropriately licensed and registered representatives of FTICA and in accordance with FINRA regulatory guidance.

FTICA differentiates itself in providing fairness and solvency opinions in a variety of ways:

- Independence
- Deep Industry Expertise
- Global Reach
- Senior, Hands-on Involvement
- High Standards of Public Accountability and Integrity

For more information regarding this report, please contact:

Luke Schaeffer
Senior Managing Director
luke.schaeffer@FTIConsulting.com

Roy Salter
Senior Managing Director
roy.salter@fticonsulting.com

Eric Briggs
Senior Managing Director
eric.briggs@fticonsulting.com

1840 Century Park East Suite 400
Los Angeles, CA 90067
+1 310 552 3774

fticonsulting.com/transactionopinions

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