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GOVERNING HEALTH UPDATE

from Michael W. Peregrine

RE: CORPORATE GOVERNANCE LESSONS FROM NEW ACC CHIEF LEGAL OFFICER SURVEY

The 2022 edition of the [annual Chief Legal Officer survey](#) published by the Association of Corporate Counsel (“ACC”) contributes to “best practices” expectations that the corporate chief legal officer assume a significant hierarchical position within the organization.

Yet the ACC survey also identifies significant areas for improvement in terms of CLO authority, responsibility and access to leadership. For these and other reasons this survey should be closely considered by the board of directors and any committee with delegated responsibility over the corporate legal affairs function.

Survey findings that support a strong and empowered CLO position include the following:

- Over 80% of surveyed CLOs have a reporting relationship to the CEO; while over 50% have a reporting relationship with the board; regularly attend board meetings, consult with senior executives on operational matters, and are sought out by fellow executives for advice on business matters.
- An increasing number of CLOs are assigned additional responsibilities for leadership of other critical legal functions (e.g., compliance, ethics, privacy and business risk).
- 60% of surveyed legal departments include at least one legal operations professional, while 70% of surveyed CLOs identify legal operations as a leading departmental strategic initiative.
- An increasing number of CLOs serve as corporate secretary, and are also assigned additional responsibilities for leadership of other critical legal functions (e.g., compliance, ethics, privacy and business risk).

Survey findings that should receive close consideration by the board include the following:

- Of those CLOs who do not report directly to the CEO, a disconcertingly high percentage (47%) report to the CFO, contrary to established governance principles.
- A surprisingly high percentage of CLOs (40%) still do not possess a reporting relationship with the board of directors; precluding the board from having ready access to its legal counsel.
- Less than 25% of surveyed CLOs have responsibility for ESG matters, despite increasing evidence that speaks to the qualifications of the CLO for that role.
- Of those CLOs who regularly attend board meetings, the percentage of those who have additional, significant contact with board and executive leadership (e.g. meet with/are sought out for advice by business leaders on risk and operations; who participate in executive sessions or otherwise have access to board members) is static if not declining when compared to 2021 survey results.

The board of directors has a fiduciary responsibility to assure the effectiveness of the corporate legal affairs function, and the prominent hierarchical executive status and authority of the CLO position. The new survey provides useful information to the board in the performance of these responsibilities and should be brought to its attention, and especially to the attention of the legal affairs function.

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