EFFECTIVE RISK MANAGEMENT AND CRISIS-MANAGEMENT:
The Role of Enterprise-wide Risk Management and Crisis-Management in Mitigating Legal Risk and Liability

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The Corporate Legal Excellence OnConferences Webinar

INTRODUCTION

1. The role that Enterprise-Wide Risk Management Programs and Crisis-Management Plans can play in improving business operations and mitigating risk and liability.
2. How to identify, assess and mitigate risk (including reputational risk) – not just legal.
3. How to structure and implement ERM Programs and Crisis-Management Plans – including a robust, preventative compliance program
4. What to do when a corporate crisis materializes?
5. Steps to reduce exposure
   - Prevention
   - Be prepared for the unanticipated

NEED FOR AN ENTERPRISE-WIDE RISK MANAGEMENT PROGRAM AND CRISIS-MANAGEMENT PLAN

- Start with basic proposition that an Enterprise-wide Risk Management Program and a Crisis Management Plan at the management and Board of Directors levels are essential to:
  - mitigate risks and reduce a company's litigation exposure and in extreme cases, perhaps even critical to a company's survival, and
  - improving business operations by forcing a risk-adjusted analysis of profitability.
- Key in the process is to recognize the interdependence to the company across multiple lines of business, geographies, and product mixes when a crisis materializes in any one of these.

INTRODUCTION

1. Brief description of my experience at Freddie Mac to set the stage
   - 6 years of unanticipated and unforeseen events and crises impacted every aspect of the company. Based on lessons learned from that experience.
2. ERM to identify, assess and mitigate risk
   - describe a model ERM program
3. How to manage through the unknown
   - need for a crisis-management template
4. Crisis-Management Plan for events you
   - cannot anticipate, or
   - those that are low probability and high severity that you cannot afford to mitigate.
5. What should Boards and GC's be doing

BACKGROUND

- Freddie Mac was a Fortune 50, New York Stock Exchange listed, SEC registrant with 2.5 trillion dollars in assets, approximately 1.0 trillion dollars of public debt and 1.2 trillion dollars of public securitizations. Freddie Mac was put into conservatorship on September 7, 2008 by the U.S. Treasury and The Federal Housing Finance Agency. 40 billion dollars of shareholder capital was wiped out and it became one of the largest restructurings and conservatorships in global history.

BACKGROUND

- When I first joined Freddie Mac the Company was in the midst of a myriad of investigations, including the SEC and the FEC, and a multitude of derivative, ERISA and shareholder class actions arising out of the 2003 Restatement. In addition, to resolving these investigations and the civil litigation, I helped to restructure the Board, the ERM structure, and the corporate governance structure in the aftermath of the Restatement.

BACKGROUND

- With the Financial Crisis in 2008, working closely with the FHFA, I helped to guide the prior Board of Directors and Executive Management of Freddie Mac through the appointment of the Conservator in 2008. After the appointment of the Conservator in 2008 and the departure of the 3 senior executives and resignation of the Board, I advised and supported the creation of a new corporate governance structure and the appointment of a new Board of Directors.

BACKGROUND

- This involved, among other things, developing an appropriate Delegation of Authority from the FHFA as Conservator to the new Board of Directors and management, the creation of a Board Committee structure, and the recruitment, selection and orientation of new directors.
- For almost three years, I advised the Board of Directors, and the new management team of Freddie Mac, on their duties and responsibilities in conservatorship and the appropriate corporate governance structure in conservatorship including the drafting of the Board Committee Charters, advising on Board and Committee agendas, running the Board and Committee meetings, determining who had authority to approve actions and when approvals were required from FHFA pursuant to the Delegation of Authority.

BACKGROUND

- This involved balancing the conflicting and oftentimes competing requirements of the conservatorship statute, the statutory requirements of Freddie Mac's Federal charter, the safety and soundness requirements of the FHFA as regulator, the Senior Preferred Stock Purchase Agreement with the US Treasury, Virginia corporation law, the Federal Securities laws (since Freddie Mac continues to be an SEC registrant), and the listing requirements of the New York Stock Exchange (until voluntary delisting).

BACKGROUND

- During this period I helped to navigate Freddie Mac through multiple Congressional investigations, governmental investigations, internal investigations, and parallel civil litigation. The impact of these events on the company was incredible. When I joined, I was the 5th General Counsel in 2 years - while I was GC I survived 4 CEO's, 3 CFOs, CEO resignation, multiple heads of business units and IT, a COO, and a virtually 100% new Management Committee and 2 turnovers of the Board of Directors and ERM programs. It was 5 years of never-ending crisis management.
- Every day came another unimaginable event. Impact on employees was catastrophic. Culminating in CFO Suicide.
- Key employee departures
- Hostile public and political environment

BACKGROUND

- Reputational impact
- Customer impact
- Vendor impact
- Shareholder impact
- Regulatory relationship impact
- Employee impact
- Political impact
- Congressional impact

NEED FOR AN ERM PROGRAM AND A CRISIS-MANAGEMENT PLAN

- What I learned through all of this was to make sure that there is an effective Enterprise-wide Risk Management Process and a Crisis Management Plan -- be prepared for the unexpected and unanticipated.
- The velocity and unpredictability of change cannot be anticipated.

NEED FOR ERM PROGRAM

- Consequences flowing from a headline event are extremely severe in the current environment as my Freddie Mac experience had shown me because of:

1. the politicization of headline events,
2. the criminalization of corporate events,
3. the extreme and activist reaction of shareholders and the public, and
4. the velocity of consequences.

- The importance of preventative enterprise risk management programs and post-event crisis management programs is magnified by the exponential multiplier effect of the consequences of a headline event.

VELOCITY AND POLITICIZATION OF CONSEQUENCES

- For example, a headline event in 2013 led to 16 consequences in the first 10 days of public reporting:

1. SEC investigation
2. DOJ investigation
3. FBI investigation
4. Civil class actions
5. Congressional hearings
6. Internal investigations

VELOCITY AND POLITICIZATION OF CONSEQUENCES

1. Congressional legislative reaction
2. Political reaction
3. Shareholder activism – some unsuccessful efforts to split CEO and Chairman
4. Public vilification
5. Executive officer dismissals
6. Significant market cap loss
7. Fitch rating downgrade
8. CFTC investigation

Over a year later, renewed controversy to split Chairman and CEO roles and a 1,500 page Congressional Investigative Report.

VELOCITY AND POLITICIZATION OF CONSEQUENCES

- More recently, in 2017 the Wells Fargo cross-selling announcement resulted in 61 publicly reported consequences in the first 30 days following the announcement.
- They included:
  - multiple Congressional investigations and hearings
  - executive officer dismissals
  - clawback of executive compensation
  - state and cities ceasing to do business with Wells Fargo
  - multiple employee and former employee class actions
  - multiple investigations
  - state attorney general actions
  - shareholder litigation
  - multiple regulatory actions
  - legislative reaction

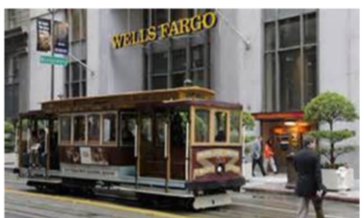
VELOCITY AND POLITICIZATION OF CONSEQUENCES

- These consequences continued through Senator Warren's demands that the Federal Reserve Board remove all of the members of the Wells Fargo Board.

AUGUST 4, 2017

Wells Fargo Says It May Find 'Significantly' More Fake Accounts

The bank boosts its estimate of possible legal losses by $1.3 billion and discloses a CFPB probe into freezing of accounts



Wells Fargo headquarters in San Francisco (Photo: AP)

Wells Fargo & Co., reeling from a scandal over fake accounts that erupted in September, said it's wrapping up an expanded review of that issue, while facing new probes and higher potential legal costs.

The bank must "go beyond what has been asked of us by our regulators by reviewing all of our operations -- leaving no stone unturned -- so we can be confident we have done all that we can do to build a better, stronger Wells Fargo," Chief Executive Officer Tim Sloan said in a statement Friday.

The Consumer Financial Protection Bureau is looking at whether consumers were "unduly harmed" by the bank freezing and closing accounts that had suspected fraudulent activity,

VELOCITY AND POLITICIZATION OF CONSEQUENCES

- Then on February 2, 2018, the Federal Reserve issued an enforcement action against Wells Fargo, which contained several statements regarding the Federal Reserve's view on the responsibility that boards of directors have with respect to risk management. In addition, the Federal Reserve:
  - characterized compliance breakdowns as failures of governance and board oversight;

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

MICHAEL S. GIBSON
DIRECTOR, DIVISION OF SUPERVISION AND REGULATION

February 2, 2018

Board of Directors
Wells Fargo & Company
420 Montgomery Street
San Francisco, California 94104

Re: *Performance of the Wells Fargo & Company Directors*

Dear Members of the Board:

It is incumbent upon the board of directors of Wells Fargo & Company ("WFC") to carefully evaluate the firm's risk management capacity and to oversee senior management's implementation of an adequate risk management framework for the entire firm. As events of the past few years have confirmed, WFC's board's performance of this oversight role did not meet our supervisory expectations.

VELOCITY AND POLITICIZATION OF CONSEQUENCES

- noted replacement of board members;
- censured directors with publicly released letters of reprimand even after they had left the board for “lack of inquiry and lack of demand for additional information”;
- expressed the view that a board’s composition, governance structure and practices should support the company’s business strategy and be aligned with risk tolerances;

VELOCITY AND POLITICIZATION OF CONSEQUENCES

- expressed the view that business growth strategies be supported by a system for managing all keys risks, including those arising from performance pressure and compensation incentive systems and the potential that business goals could motivate compliance violations and improper practices;
- expressed the view that “management assurances” of enhanced monitoring and handling of known misconduct be backed up by “detailed and concrete plans” reported to the board; and
- referred to the company’s published corporate governance guidelines as containing duties and responsibilities that were not fulfilled.

VELOCITY AND POLITICIZATION OF CONSEQUENCES

Press Release

February 02, 2018

Responding to widespread consumer abuses and compliance breakdowns by Wells Fargo, Federal Reserve restricts Wells' growth until firm improves governance and controls. Concurrent with Fed action, Wells to replace three directors by April, one by year end

For release at 6:15 p.m. EST

Share

Responding to recent and widespread consumer abuses and other compliance breakdowns by Wells Fargo, the Federal Reserve Board on Friday announced that it would restrict the growth of the firm until it sufficiently improves its governance and controls. Concurrently with the Board's action, Wells Fargo will replace three current board members by April and a fourth board member by the end of the year.

In addition to the growth restriction, the Board's consent cease and desist order with Wells Fargo requires the firm to improve its governance and risk management processes, including strengthening the effectiveness of oversight by its board of directors. Until the firm makes sufficient improvements, it will be restricted from growing any larger than its total asset size as of the end of 2017. The Board required each current director to sign the cease and desist order.

In recent years, Wells Fargo pursued a business strategy that prioritized its overall growth without ensuring appropriate management of all key risks. The firm did not have an effective firm-wide risk management framework in place that covered all key risks. This prevented the proper escalation of serious compliance breakdowns to the board of directors.

NEED FOR AN ERM PROGRAM AND A CRISIS-MANAGEMENT PLAN

- Unintended Consequences.
- Publicity and headlines are very “sticky” – they seem to last indefinitely.
- HAVE A PLAN AND YOUR TEAM IN PLACE BEFORE ANYTHING HAPPENS.

ROLE OF ERM AND CRISIS-MANAGEMENT

- Enterprise Wide Risk Management is the process of identifying, assessing, managing and mitigating risk.
- Crisis-Management is the process of addressing a risk that has materialized but ERM is the first step for crisis-management, litigation prevention, and loss mitigation.

SCOPE OF ERM

- Enterprise-wide Risk Management encompasses all of the risks that a company faces including, in no particular order;
  - Financial markets disruption
  - Credit
  - Interest rate
  - Capital
  - HR
  - Transactional
  - Data privacy
  - Legal
  - Enforcement actions by Federal or state criminal authorities
  - FCPA
  - Governmental investigations
  - Regulatory and compliance

SCOPE OF ERM

- Cyber attacks
- IT
- Business Continuity
- Operational
- Supply chain
- Financial disclosure
- Executive misconduct
- Brand
- Reputational
- Vendors
- Business partners
- Third party service providers
- Customers
- Environmental
- Tax

IMPORTANCE OF ERM

- The nature and intensity of regulatory and enforcement responses to problems has increased significantly, and all indications are that this will continue. A proactive, preventative approach to risk management will help to minimize problems and, when problems do occur, to minimize the litigation, regulatory, enforcement, reputational and financial consequences.

IMPORTANCE OF ERM

- Historically an event could lead to SEC, criminal and civil actions -- new era now -- Congressional investigations, State AG's, public vilification, employee reaction, customer reaction, vendor reaction, shareholder reaction, political and governmental reaction. Freddie and Fannie were two of the first BUT THEN CAME OTHERS INCLUDING:
  - BP
  - TOYOTA
  - MASSEY COAL
  - NEWSCORP
  - WALMART
  - CHESAPEAKE ENERGY
  - SIEMENS
  - GM
  - VOLKSWAGEN

IMPORTANCE OF ERM

- FOX NEWS
- WELLS FARGO
- THERANOS
- YAHOO
- EQUIFAX
- UBER
- WEINSTEIN
- STARBUCKS

RESPONSIBILITIES OF MANAGEMENT AND THE BOARD OF DIRECTORS

- It is imperative that management and boards of directors assume a leading role in ensuring that all risks facing a company are identified and assessed, and that a risk management and compliance system is in place to facilitate the proactive identification, assessment, management and mitigation of those risks.
- The board must make sure that it is fully apprised of risks faced by the company, and that it can make an independent determination that management has implemented and maintained effective enterprise-wide integrated risk management policies and procedures, including internal controls and compliance.

MANAGEMENT

ERM RISK MANAGEMENT IDENTIFICATION AND ASSESSMENT

- An enterprise-wide risk identification and assessment should be undertaken. In many circumstances it may be appropriate that the assessment be undertaken by an independent third party and that it be updated periodically. This risk assessment is critical to establishing an appropriate risk management process, as outlined below.

MANAGEMENT

ERM RISK MANAGEMENT IDENTIFICATION AND ASSESSMENT

- Once a risk assessment has been completed, an enterprise-wide risk management process should be implemented. Obviously, no process is appropriate for all companies and the process must be modified to reflect a company’s business needs, operating realities and the nature of its regulatory environment. The goal of this process should be to have a holistic approach to risk prioritization, risk tolerance level and mitigation approach.

MANAGEMENT

PROCESS – ESTABLISH AN ERM COMMITTEE AT THE COMPANY

- An example of such a process is described below.
  - An enterprise-wide risk management committee (“ERM”) should be established, composed of senior executives from all non-line areas (e.g., IT, finance, audit, legal, compliance, human resources, public/investor relations), and primary business line areas (e.g., heads of manufacturing, operations, geographic heads or business lines, depending on how the company is organized).
- This approach recognizes the interdependency of products, geographies and business lines.
- Empowerment – not just “check the box”.

MANAGEMENT

PROCESS – ESTABLISH AN ERM COMMITTEE AT THE COMPANY

- The ERM committee should assure that all risks faced by the company are identified, analyzed and prioritized, and that internal controls and procedures are in place to manage and mitigate those risks based on frequency and severity.

MANAGEMENT

ERM COMMITTEE

- The ERM Committee should have a charter.
- The ERM committee should report directly to the audit committee of the board or a special risk committee of the board.
- The chairman of the ERM committee should be the Chief Risk Officer, if there is one, and the CEO should be a member.

MANAGEMENT

ERM RISKS

- Risks should be assessed on an ongoing basis, and should include not only business and financial risks, but all risks the company faces, including legal, regulatory, compliance, governmental, operational, treasury, shareholder (activist), unions, communities in which the business operates, vendor, customer, product, political, environmental, international, supply, reputational, human resources, technology, insurance and audit.
- Monthly meetings should be scheduled and run similar to the way in which meetings of the board of directors are scheduled and run.

MANAGEMENT

ERM COMMITTEE PROCESS

- At initial meetings, each member of the committee (or senior officers from the area) should make a formal presentation assessing and identifying risk in the particular area for which the officer is responsible, and explaining what processes and controls are in place within that area to mitigate and manage risks identified.
- This identification and assessment process should be based upon a “bottom-up” informational gathering, review and assessment and mitigation recommendations. Recommendations regarding prioritization and tolerance should be made as well.

MANAGEMENT

ERM COMMITTEE PROCESS

- Executives in the Divisions should engage in a Sox-like financial reporting certification process to assure that they and their divisions take this process seriously.
- This decentralized bottom-up approach is designed to ensure that the process appropriately reflects, recognizes and assesses risks as identified at the operating levels and puts accountability at these levels of the enterprise.

MANAGEMENT

ERM COMMITTEE PROCESS

- However, by making this presentation to the centralized risk management committee, the members can offer an assessment of how the risk in a particular area interrelates with risk in the various other line and non-line areas of the company. Once the initial meetings have identified, assessed and discussed controls in place to manage and mitigate risk, a risk prioritization should be undertaken to determine the frequency of subsequent presentations.
- **MOST IMPORTANT**
- This should include stress testing and operational war games to determine risks and mitigation in extreme financial, operational, IT, vendor, customer, and supply chain circumstances.

MANAGEMENT

ERM RISK ASSESSMENT

- An ongoing enterprise-wide risk assessment should be prepared based on the presentations so that a holistic, enterprise-wide approach to prioritization, tolerance and mitigation can be adopted.
- The risk prioritization enables the risk management committee to determine the frequency and scope of presentations by each of the line and non-line units similar to the way in which an auditor undertakes a risk prioritization to determine the frequency and scope of audits within a company.

MANAGEMENT

ERM RISK ASSESSMENT

- This assessment must reflect a “heat-mapping” of probability or likelihood and severity.
- The obvious example is BP in the Gulf-low probability but high severity if it happens.

MANAGEMENT

ERM COMMITTEE MEETINGS

- On a scheduled going-forward basis, formal presentations by each division of the company to the ERM Committee should describe and analyze:
  - All risk their areas face
  - What controls have been or will be put in place to minimize these risks
  - Where loss has occurred or might occur
  - What is the probability and severity
  - What monitoring is being done
  - What stress testing has been done

MANAGEMENT

ERM SHOULD REVIEW NEW PRODUCT, GEOGRAPHIC EXPANSION OR BUSINESS INITIATIVES

- In addition to regularly scheduled presentations, ongoing meetings should require each line and non-line executive to discuss any new products, activities or significant new relationships, or geographic expansions and assess the risk associated with them for group discussion and incorporation into the ongoing risk assessment, management and mitigation program and as part of a process of calculating risk-adjusted profitability.

MANAGEMENT

OVERSIGHT OF THE ERM PROCESS – SELF ASSESSMENT

- In order to assure the oversight and accountability of the ERM process, there should be a risk self-assessment process by each division and a periodic audit or review by the risk management division or by audit to independently review the risk identification, assessment and mitigation results of each division.
- The results of this process should be evaluated as part of employee performance evaluations.

ERM BOARD REPORTING

- The Audit Committee or Risk Management Committee of the Board should receive regular written and oral reports from the enterprise risk management committee and the Chief Risk Officer or Chair of the ERM Committee so that it can independently oversee the approach of management through the ERM Committee in identifying, assessing, prioritizing and mitigating risk.

ERM BOARD REPORTING

- There are several Board Models for ERM Reporting and Oversight at the Board level:

1. Audit Committee
2. Audit and another Committee
3. Business/Finance Committee
4. Risk Management Committee
5. Full Board

CRISIS-MANAGEMENT PLAN

- Crisis Management is what to do when a risk materializes - whether identified or not.
- It involves having a plan in place to minimize loss and litigation including:
  - PR
  - Board involvement and role
  - Political
  - Regulatory
  - Enforcement
  - Reputational
  - Legal – strategy for simultaneous actions:
    1. SEC
    2. DOJ
    3. Civil Shareholder suits

CRISIS-MANAGEMENT PLAN

1. Internal investigations
2. Congressional investigations
3. Regulatory investigations
4. State attorney general actions

- Management’s role
- Employees (How do you keep them going? Tired, demoralized, uncertain, scared, angry)
- Customers
- Vendors
- Suppliers
- Shareholders

- A plan properly developed and implemented reduces the risk of litigation and the losses and reputational risk if litigation occurs.

CRISIS MANAGEMENT PLAN: Business Continuity Plan

- For certain types of risks, it is essential to have a business continuity plan in place as part of a crisis management plan.

A CRISIS IS LIKE AN ICEBERG, YOU CAN REALLY ONLY SEE THE LITTLE PART STICKING OUT OF THE WATER BUT IT IS THE MASS OF ICE UNDERNEATH THAT CAN DO THE MOST DAMAGE

- When management and Boards think about a crisis that might result in an investigation or litigation, it is critical to be prepared to get on top of the issue quickly. In this environment, a headline grabbing crisis -- the tip of the ice berg -- results in simultaneous or rapid sequential civil litigation, governmental investigations by the SEC, DOJ, primary regulatory agency, congressional investigations, and actions by state Attorney Generals. The strategies for each are different and require an integrated, coordinated, holistic response. The key is to get the facts quick – most often an independent investigation is necessary to get the facts.
- In addition to legal issues, these events generate customer, vendor, shareholder, public social media, supplier, local community, reputational, and employee reaction.

IMPORTANCE AND IMPACT OF INVESTIGATIONS

- Misinformation or bad information can often times create more problems than the underlying acts.
- An immediate factual investigation is imperative.
- Information disclosure - advertent and inadvertent.
- The impact of these investigations and the facts for the company and the employees can be paralyzing and distracting. The political and public relations issues are overwhelming. But there is customer, consumer, producer, shareholder and public reaction as well.
- Must proactively monitor social media and blogs to gather intelligence on what is happening and what messaging is going on, including allegations or facts that may impact the investigative process.

Failure of boards and companies in responding can result in creditors, suppliers, shareholders, employees, customers and other stakeholders all acting irrationally that can quickly send a company into a death spiral. What are the quick step actions that all crisis plans should include?

- A predetermined list of advisors who know the company, and immediate fact-finding -- a careful, truthful, deliberate response is necessary-no matter how painful.
- The Board should decide ahead of time what its role will be -- how involved it will be. In this environment a Board, or a committee, must be intimately and actively involved with management. Communications and information flow to the Board are critical. There can be no surprises.

BOARD’S ROLE DURING THE CRISIS - LEVEL OF INVOLVEMENT-- How Much and How

- Chair/Lead Director/Audit Committee Chair/ Special Committee Chair
- Updates, Special meetings
- Information flow
- Key decisions, alternatives, implications

COMMUNICATION PLAN

- A communications plan to all stakeholders and constituencies including employees, vendors, customers, suppliers, shareholders, and regulators -- is imperative. Again there must be confirmed, fact-based, open and honest communication.

COMMUNICATION PLAN

Keys:

- Must get the facts:
- Must be confirmed and irrefutable to maintain credibility and trust as soon as possible.
- No premature or false or misleading statements.

WHAT ARE THE LOOMING RISKS THAT MAY THREATEN COMPANIES AND QUICKLY CHANGE BOARD AGENDAS?

- Varies industry to industry but --

  a. Volatile financial environment - short selling, volatility and stock price pressure

  b. Chief executive conduct

  c. Succession

  d. Environmental and product liability

a. Data security breaches

b. Financial markets disruption

WHAT ARE THE LOOMING RISKS THAT SEEM TO BE THE UP AND COMING THAT WILL THREATEN COMPANIES AND QUICKLY CHANGE BOARD AGENDAS?

a. Whistleblowers

b. Cyber attacks

c. Industrial espionage, labor events – strikes, stoppages

d. Government enforcement action

e. Actions of business partners or third party service providers

f. Shareholder activism

g. “Me Too”

h. Political or social positions that generate public hostility

LOOMING RISKS – UNANTICIPATED OR UNKNOWN

- But the biggest worry is that you cannot anticipate all the high severity/low probability events. It is critical to have a crisis management process that enables a company to react to an event that it cannot predict, prevent or that the probability of occurrence is so low it cannot ration resources to seek to mitigate.

ADVICE TO MANAGEMENT AND BOARD'S OF DIRECTORS ON MITIGATING RISKS AND REDUCING LITIGATION EXPOSURE

FIRST --

Prevention, Prevention, Prevention.

- I believe many crises could be prevented or mitigated by effective tone at the top, ethics and compliance programs that detect a crisis before it materializes. Many crises are the result of long-standing business behavior that has been tolerated or rationalized by management.

- An effective ERM Program is a critical component of prevention – by identifying, assessing and implementing risk mitigation efforts some events can be prevented and others mitigated.

ADVICE TO MANAGEMENT AND BOARD'S OF DIRECTORS ON MITIGATING RISKS AND REDUCING LITIGATION EXPOSURE AND MAKING SOUND BUSINESS DECISIONS

SECOND --

- Carefully establish effective ERM systems that
  - can identify and assess risks and put risk mitigation programs in place, including business continuity plans, and that there is an adequate level of stress testing; and
  - provide risk adjusted analysis of a company's existing and proposed business lines, products, activities and geographic operations.

ADVICE TO MANAGEMENT AND BOARD’S OF DIRECTORS ON MITIGATING RISKS AND REDUCING LITIGATION EXPOSURE

THIRD --

- Be prepared for what you cannot anticipate, have a crisis management process in place.

THE ROLE OF IN-HOUSE COUNSEL

1. Executive Management ERM Process

- Persuade Executive Management and the Board of Directors to create a holistic, empowered substantive Enterprise Risk Management process at the executive management level as described in this presentation reporting directly to the Board of Directors to mitigate liability and risk exposure, and

THE ROLE OF IN-HOUSE COUNSEL

- Analyze best practices and advise and counsel executive management how ERM should be structured and the business benefits of risk identification and assessment of business expansion and activities so that they can be assessed for profitability on a risk adjusted basis.

THE ROLE OF IN-HOUSE COUNSEL

1. Legal Risk and the ERM Process

- As part of the executive management ERM process in-house counsel should identify assess, prioritize and take steps to prevent or mitigate legal risk and liability.

THE ROLE OF IN-HOUSE COUNSEL

1. Board of Directors ERM Process

- Analyze and advise the Board of Directors with respect to its roles of oversight and responsibility for ERM.
- Advise the Board of Directors as to a corporate governance structure at the Board level to oversee and assess the executive management ERM process and appropriate independent reporting lines from the chief risk officer and executive management ERM committee to the Board or a Board Committee.

BOARD’S DUTIES

The Board’s duties with respect to its roles of oversight and responsibility for risk management include:

1. Oversight and review of the company’s risk appetite and risk tolerance and assessing whether the company’s strategy is consistent with the agreed-upon risk appetite and tolerance;

BOARD’S DUTIES

1. reviewing with management the categories of risk the company faces, including any risk concentrations and risk interrelationships, as well as the likelihood of occurrence, the potential impact of those risks, mitigating measures;

2. reviewing with management the analysis and determination of the company’s principal risks and whether adequate procedures are in place to ensure that new or materially changed risks are properly and promptly identified and addressed;

BOARD’S DUTIES

1. reviewing the company’s compensation structure to ensure it is consistent with risk appetite and risk culture and to ensure it is creating appropriate incentives;
2. reviewing the risk policies and procedures adopted by management, including procedures for reporting matters to the board and appropriate committees and providing updates;

BOARD’S DUTIES

1. reviewing management’s implementation of its risk policies and processes, to assess whether they are being followed and are effective;

2. receiving regular reports from the ERM Committee Chair or the Chief Risk Officer regarding the ERM process and reviewing the quality, type and format of risk-related information provided to directors;

3. reviewing the independence of the risk management function and the processes for resolution and escalation of differences that might arise between risk management and business functions,

BOARD’S DUTIES

1. reviewing the design of the company’s risk management process, as well as the qualifications and backgrounds of senior officers with responsibility for risk management, to assess whether they are appropriate given the company’s size and scope of operations;

BOARD’S DUTIES

1. reviewing with management the primary elements comprising the company’s risk culture, including establishing “a tone from the top” that reflects the company’s core values and the expectation that employees act with integrity and promptly escalate non-compliance in and outside of the organization.

BOARD’S DUTIES

1. Reviewing the company’s crisis management plan and process to be sure that a robust plan and a process is in place to respond to a crisis.

THANK YOU