FINANCIAL SERVICES AT THE CROSSROADS
OF DIGITAL TRANSFORMATION



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INTRODUCTION

he financial services sector is at a crossroads, disrupted by digital transformation and burdened by an increasingly complex web of regulatory regimes. This challenging combination of factors is complicating the jobs of legal and business executives worldwide.

Technological developments such as artificial intelligence (AI), blockchain, and data capture and analytic tools are generating terabytes of data on everything from financial markets to customer behavior. Although they may represent potential treasure troves of market insights, these data sets also carry frighteningly severe consequences if they are misused or subject to an unauthorized data breach. The regulatory response to these technologies has been multifaceted, multilayered, and multi jurisdictional, creating a harrowing minefield for financial services executives and their legal advisors.

Meanwhile, traditional business models at financial services firms are facing disruption from innovative technologies deployed by nimble startups and cash-laden technology giants alike, each with millions of dedicated users, eager to expand into banking, investment management, and other financial services. These FinTech technologies are changing everything, including the front-end customer experience, the manner, and speed at which financial services are delivered to the back office, and how companies use new systems, such as RegTech, to monitor and comply with legal and regulatory requirements.

At the same time, digital assets, like cryptocurrencies, are altering the very nature of what we think of as money. Industry stalwarts are responding by developing, and aggressively patenting, their own tools and technologies via acquisition and "co-opetition" alliances with FinTech companies. Thriving in this new world requires that financial and legal executives broaden their skill sets to meet current market demands—becoming more adaptable, consumer-centric, tech-savvy, and compliance-committed.

To discover what it takes to prosper in changing times, Forbes Insights and K&L Gates conducted a survey of 200 U.S.-based business and legal executives within the broad financial services industry. These executives hail from organizations large and small in a variety of sectors ranging from asset management and capital markets to financial technology and economic development banking.

By surveying a wide array of participants and interviewing some of today's leaders in this space, we set out to discover how these executives are responding to rapid change in the marketplace brought about by disruptive FinTech technologies and companies, new regulations, and other key trends. This report, which is based on the survey findings and interviewee insights, outlines how organizations have been impacted by these changes, how they have responded, how they plan to address these changes in the near future, and how these changes are redefining financial and legal roles.

KEY FINDINGS



FINTECH HAS TRANSFORMED FINANCIAL SERVICES, with 82% of respondents noting that it has significantly or very significantly impacted their business model. In fact, every respondent notes some material impact, with zero respondents noting that FinTech has had little or no impact.



THE IMPACT OF DISRUPTIVE TECHNOLOGY IS FRONT AND CENTER IN THE MINDS OF EXECUTIVES.

When asked to identify the most important trends affecting their organization over the next three years, 68% of respondents cite factors relating to technological disruption, including FinTech, digital transformation, omni-channel customer experiences, and competition from non-financial companies.



STIFLING REGULATIONS OCCUPY TREMENDOUS MINDSHARE AMONG SURVEY RESPONDENTS.

Sixty-two percent of executives cite a stringent regulatory environment generally or data-related regulations as the most important trend affecting the industry. In fact, data-related issues are far and away the biggest area of legal risk facing the financial services industry, with more than 68% of respondents citing "dealing with data" as an issue presenting the most potential for legal risks. Nearly half of respondents cite cybersecurity (47%) and an intense/changing regulatory environment (46%) as high-risk factors.



TECHNOLOGICAL AND REGULATORY CHALLENGES ARE DEMANDING NEW SKILLS FROM LEGAL AND BUSINESS EXECUTIVES. Second only to knowledge of regulatory compliance (57% of respondents), executives cite data protection and privacy expertise (55%) as the most valued skill needed over the next three years, with knowledge of payment systems ranking alongside more traditional areas such as consumer class actions and fraud prevention.



CRYPTOCURRENCIES ARE MOST COMMONLY CITED AS THE NEW TECHNOLOGY presenting the highest legal risk, according to 69% of respondents.



THE MORE WIDELY ADOPTED A TECHNOLOGY, THE LOWER THE PERCEIVED RISK AMONG RESPONDENTS. For instance, more than 80% of respondents note using technologies such as mobile and mobile payments, cloud, encryption, biometric identification and RegTech. However, few (less than 13%) believe they present the highest legal risk. Conversely, blockchain is cited as one of the highest-risk technologies by 50% of respondents and displays low adoption rates (only 16% of respondents).



THE ROLE OF GENERAL COUNSEL IS CHANGING, ACCORDING TO 91% OF SURVEY RESPONDENTS.

It has become broader and more demanding, and it has also gained in significance due to the intense regulatory environment. Another catalyst: 89% of respondents believe that legal risks are factored into decisions about growth strategies, and 85% think that top management's concern about legal issues has increased significantly over the last three years.

A PERFECT STORM:

REGULATORY COMPLIANCE, DATA DELUGE, DIGITAL TRANSFORMATION

Various circumstances have created a legal environment for financial institutions that is no longer business as usual, according to two-thirds of legal and C-level executives surveyed by Forbes Insights and K&L Gates. First, an increasingly stringent regulatory environment is prompting financial organizations to shift from managing systemic risk to ensuring the highest levels of consumer protection. In fact, 45% of respondents cite today's regulatory environment as the most important trend over the next three years.

Case in point: The recently introduced General Data Protection Regulation (GDPR) requires companies handling the data of European Union citizens to comply with strict data privacy regulations or face steep penalties.

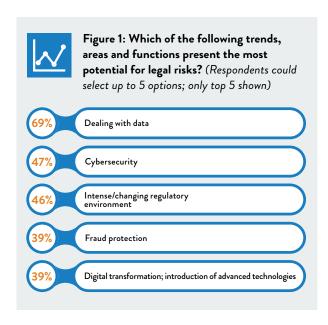
Also daunting is the speed at which today's regulatory environment is changing. "We're in a very different environment now," says John Beccia, CEO of FS Vector, a FinTech consultancy in Washington, D.C., adding that in the past five years alone, regulatory concerns have shifted from "blockchain and bitcoin to initial coin offerings (ICOs) and cryptocurrencies."

Another cause for upheaval in the financial services sector: big data. From Al to blockchain, disruptive technologies are revolutionizing workflows while generating vast volumes of data. By examining these bits and bytes using sophisticated analytics tools, organizations can identify suspicious patterns, thwart insider sabotage, and avoid other risks of regulatory non-compliance.

"Regulatory compliance hinges on good data," says Keith Atkinson, managing director and associate general counsel at Nuveen, the assetmanagement unit of TIAA, situated in Boston. "Data can be used by legal and compliance teams to determine whether a certain regulation applies, how it applies, and what compliance infrastructure is needed."

But big data also presents dangers. Sixty-nine percent of respondents cite dealing with data as an area that presents the most potential for legal risks (Figure 1). To put that in perspective, only 47% of respondents cite cybersecurity as a concern despite cybercrimes typically, costing financial services companies \$18 million in 2017, according to Accenture.

And then there are today's FinTech companies. These startups are permeating the marketplace, reimagining traditional banking business models and—in some cases—taking a portion of the banks' profits. New loan platforms that provide same-day quotes, peer-to-peer money transfer solutions that eliminate the middleman, payment tools that let small businesses sell their wares through point-of-sale apps—they're all innovative FinTech services that are winning consumers' trust and challenging established giants to partner with them or strategically invest in them—or risk becoming obsolete.



"In the asset management industry, there is a clear opportunity to offer digitally delivered services, such as robo-advisors," says Tom Merchant, general counsel at Legg Mason, an investment management firm in Baltimore. "But there's also a threat. If you fall too far behind, you may find yourself unable to catch up."

To continue to thrive, many of today's financial institutions—and the legal professionals that work for them—must find new ways forward or risk regulatory penalties, data breaches, and technological shortcomings. Knowledge of regulatory compliance still leads the charge, as 57% of respondents say it's the area of legal expertise most needed over the next three years. But data protection and privacy expertise are a close second (55%), followed by risk management (43%) (Figure 2).



Figure 2: Which areas of legal expertise will be the most needed over the next three years? (Only top 5 shown)



Regulatory compliance



Data protection/privacy



Risk management



Fraud protection



Class action litigation/consumer law compliance

THE BRAVE NEW WORLD:

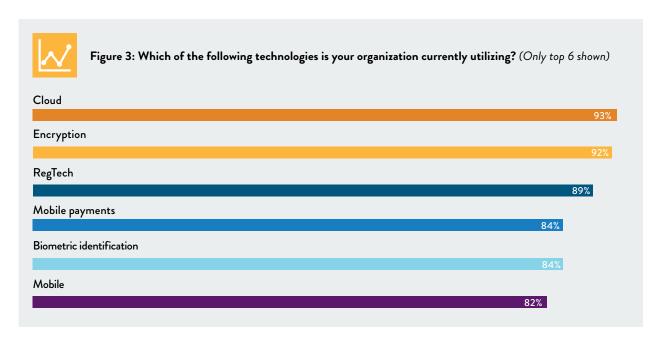
NEW TECHNOLOGIES TRANSFORMING THE FINANCIAL SERVICES SECTOR

Powerful technologies such as AI, blockchain, robotic process automation (RPA), cloud, and mobile are guiding financial institutions toward new processes and innovative business models. These capabilities allow banks to act faster and with greater agility and free up employees from mundane tasks to focus on core competencies. The benefits extend to legal teams within the sector.

Rather than spend weeks "finding a needle in a haystack," Legg Mason's Merchant says new and improved analytics tools are helping legal teams research and review documents "much more efficiently" than with manual review processes.

There are other use cases for disruptive technologies. For example, self-service software lets legal professionals generate organizationally compliant contracts and monitor their status. And cloud-based apps allow for client onboarding, scheduling deadlines, storing files, and managing contacts.



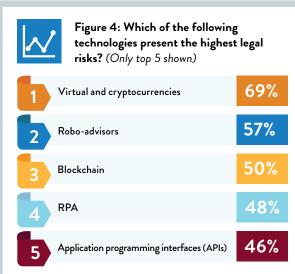


Not surprisingly, a significant majority, 93%, of survey respondents consider cloud one of the top technologies enabling digital transformation, closely followed by encryption (92%)—a natural fit for the financial services sector, which demands a high level of confidentiality and security (Figure 3).

RegTech is also carving out a space in the industry. By providing services such as monitoring, warehousing, archiving, and retrieving data, this cloud-based software can help companies overcome the biggest challenge presented by the use of new technologies, which is, according to 40% of survey respondents, compliance and monitoring.

Despite considerable advantages, technology can heighten risks for financial institutions. Transactions, communications, and internal processes are happening on multiple channels and platforms, often in real time, making them harder to monitor and secure. At the same time, technology solutions are emerging so quickly that legal governance and compliance teams are struggling to keep up. Consider, for example, virtual and cryptocurrencies, which present the highest legal risks, according to 69% of respondents (Figure 4).

Part of the problem is that blockchain and cryptocurrencies are "such emerging technologies, there isn't a whole lot of legal precedent for them,"



says Tiana Laurence, a managing partner at Laurence Ventures and author of *Blockchain for Dummies*. If there is legal precedent, it's often not positive. For example, an increasing number of companies are using blockchain technology to raise funds in the form of cryptocurrencies. However, by failing to fully comply with securities laws, ICOs, a type of funding using cryptocurrencies, continue to spark class-action lawsuits and regulatory action.

"There were a lot of law firms that helped facilitate ICOs that were pretty much negligent," says Laurence. Now that the SEC is "pushing back," she says, financial institutions

and the legal teams that represent them must tread carefully. "A lot of companies are looking at blockchain as a way of raising undiluted financing in what looks like an overnight launch, at a fraction of the cost of going public. But that doesn't mean we don't have securities laws. General counsel need to think about that."

But while regulatory concerns have delayed widespread adoption, a new mindset is emerging: 72% of respondents view blockchain as one of the most promising technologies, closely followed by virtual and cryptocurrencies (55%) (Figure 5).

Eager to innovate but risk-averse, some financial institutions are taking a wait-and-see approach to digital transformation. Says Merchant: "We are looking carefully at how cryptocurrencies work, what their promise is, and if there's a future application, especially when regulators get more comfortable with them."

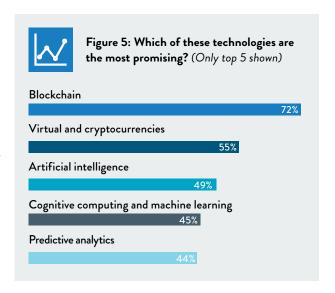
Similarly, Atkinson of Nuveen says, "We're keeping an eye on cryptocurrencies and how they could potentially disintermediate even treasury markets."

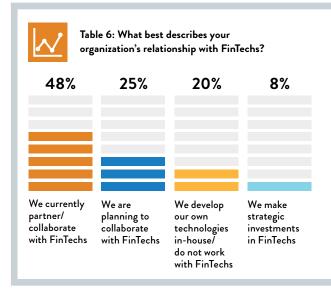
COURTING CONSUMERS WITH FINTECHS:

A TWO-WAY STREET

Another catalyst for sweeping changes in the financial services sector: a consumer-centric culture demanding personalized communications, targeted products, fast and convenient access to accounts, and round-the-clock service. Many FinTech companies are responding with advanced software solutions that range from mobile payment applications to investment platforms.

Because of the complexity of these disruptive technologies, more and more traditional financial services firms are choosing to join forces with new entrants. Nearly half, 48%, of respondents count FinTech firms as partners, whereas a scant 20% are developing their own technologies in-house (Table 6). Without





such collaboration, established financial institutions are likely to find it hard to compete with the cutting-edge services delivered by technology companies.

Yet collaboration between today's established financial institutions and FinTechs is a two-way street. It is not based on fear, as only 39% of respondents see FinTech as necessary for their survival. A solid 72% of organizations, however, fully recognize that they need FinTech to stay competitive in a market characterized by the increased use of technology and changing demographics (Figure 7). Both sides benefit from this partnership: Established financial institutions, often bound by red tape and governed

by decades-old processes, get an injection of agility from collaboration with smaller and fast-moving FinTechs, while FinTech companies pick up a more mature approach to processes and governance from those companies who have been in the industry for some time.

Beccia is all too familiar with this industry quid pro quo. As former general counsel for Circle Internet Financial, a global crypto finance company, and having spent years in the private banking arena, he's seen both sides of the cryptocurrency coin. "In the early days, there was a reticence on the part of banks to work with FinTech firms because of the risks." However, he says, that's changed as the mutual benefits of such a partnership materialize. "A lot of companies in the FinTech space either need to directly partner with a bank or they need to get some kind of bank license themselves to get to market," he says. In turn, traditional banks "want to learn from these FinTech firms and potentially leverage the technology themselves in the long term."

Even still, collaboration between FinTechs and traditional financial institutions raises some tough questions. With its built-in regulation, clearing and

Figure 7: To what extent do you agree with the following statements about established financial institutions and FinTechs?

(Respondents who "agree" and "strongly agree")

They can help us compete with large technology players' financial/payment services

72%

We can benefit from their agility

64%

They can benefit from our established processes/governance
64%

They benefit from the trust that we have built with our customers

62%

It's very hard to solve all the legal issues associated with working with/acquiring FinTechs

56%

If we don't collaborate with them in some way, they pose a serious threat to our existence

66

Technology has really given us advantages, but it also creates a lot of challenges. What excites me [about the FinTech space] is the ability for all types of products and services to get to market. But there aren't a lot of experts out there who can advise companies and help them work out issues around policy and regulations."

JOHN BECCIA

CEO, FS VECTOR

settling capabilities, blockchain enables consumers to gain speedy and direct access to funds, thereby eliminating the need for intermediaries—a role that traditional banks have long played, and continue to profit from.

"A lot of our industry is intermediated where you're selling your product through a broker or a dealer," says Merchant. "So are you disrupting those relationships [by embracing blockchain] or are you delivering services that complement those relationships? How do you protect your distribution relationship while at the same time not falling behind on the technology side?"

Legal risks can also arise when testing FinTech waters. "FinTechs are less mature companies, and they're not as regulatory-oriented," warns Merchant. "You have to reach the right middle ground on regulatory compliance and make sure that what you're doing doesn't get you in trouble down the road."

That's easier said than done. "Technology has really given us advantages, but it also creates a lot of challenges," says Beccia. "What excites me [about the FinTech space] is the ability for all types of products and services to get to market. But there aren't a

lot of experts out there who can advise companies and help them work out issues around policy and regulations." Beccia hopes to change that with FS Vector, a consultancy that aims to "help policymakers understand the risks and challenges of cryptocurrencies, and help companies navigate those murky waters."

Even regulators have their work cut out for them. The challenge for them, says Beccia, is "to allow these FinTech technologies to develop but also fulfill their mission as a regulator to protect against risks. That's a real issue." Especially given the rapid-fire pace at which these technologies are developing and the snail's pace of regulatory reform.

The good news is regulators, FinTech companies, and traditional financial institutions are working closely to establish best practices and advance innovation. "I've been very encouraged with the collaboration, especially between industry and regulators," says Beccia. "[Technology] is moving very quickly, and there's a need for everybody to work very closely. At the end of the day, we need clarity from a regulatory perspective for this to move forward and for people to innovate in this space in a responsible manner. That starts with collaboration."

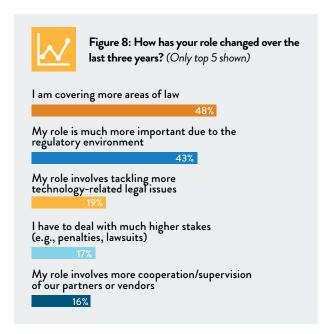
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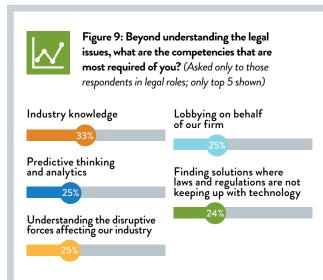
NEW GROUND RULES CALL FOR A NEW GENERAL COUNSEL

Clearly, financial services firms must embrace innovative technologies and explore new partnerships or risk falling behind fast-moving competitors. It's a call to action that requires general counsel to embrace new roles and responsibilities. In fact, the role of the general counsel has changed significantly over the last three years, according to 91% of survey respondents. It has become much broader and more demanding, and it has also gained in significance due to the intense regulatory environment (Figure 8).

Another factor raising the general counsel profile: Legal issues are top of mind for organizations, as 89% of respondents believe that legal risks are factored into decisions about growth strategies, and 85% think that top management's concern about legal issues has increased significantly over the last three years.

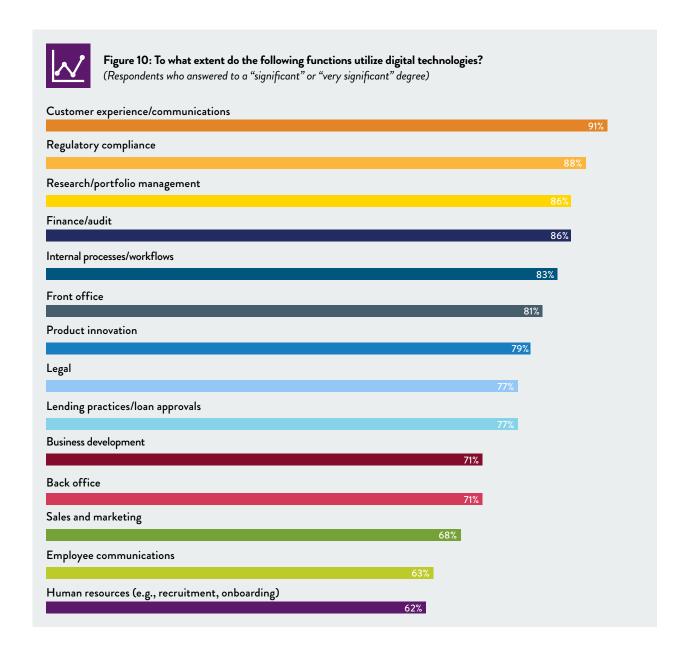
As general counsel inch closer to the C-suite, Atkinson of Nuveen says they "have to become much more conversant in a broader set of issues than ever before. We really





have pivoted much more to become business lawyers, to really understand the desired outcomes of our clients, to understand what our peers and competitors are doing, but also understand the regulatory risks of taking certain actions." That's a tall order, though, for most legal teams. In fact, survey respondents cite a wide array of competencies now required of general counsel, from industry knowledge (33%) and predictive thinking (25%) to an understanding of the disruptive forces affecting the financial services industry (25%) (Figure 9).

Mastering these skills requires knowing how to use technology solutions, including RegTech and data analytics tools. "When I first started at our company, people typed on IBM electric typewriters," recalls Peter Germain, executive vice president and chief legal officer for financial services firm Federated Investors. "But the next phase will be even more revolutionary with the power that's going to be put at the fingertips of legal and compliance professionals."



These new powers and demands promise to reshape the career trajectories of legal professionals, ushering in a "new wave of general counsel," predicts Helen Howard, director of Taylor Root North America, a recruitment agency for global, legal, compliance, and risk professionals in New York. "Ten years ago, it was quite common for general counsel to get to the top of the organization by having been there for 30 or 40 years. That's different now as organizations look for individuals with subject matter expertise in the sector."

Another emerging expectation of general counsel: tech savviness. The legal department sits roughly in the middle in terms of its utilization of technology. More than three-quarters (77%) of respondents say their legal function uses digital technologies to a significant or very significant degree—somewhere between sales and marketing teams (68%) and an organization's front office (81%) (Figure 10).

But with regulatory compliance near the top of the usage of digital technologies (88%) and many more technologies aimed at making it easier for companies to comply with regulations, general counsel will have no choice but to hone their technical skills.

"An old-school general counsel who may not have grown up with technology and isn't very familiar with new developments isn't going to cut it in today's world," says Howard. "Having that understanding and agility with technology is definitely required."

66

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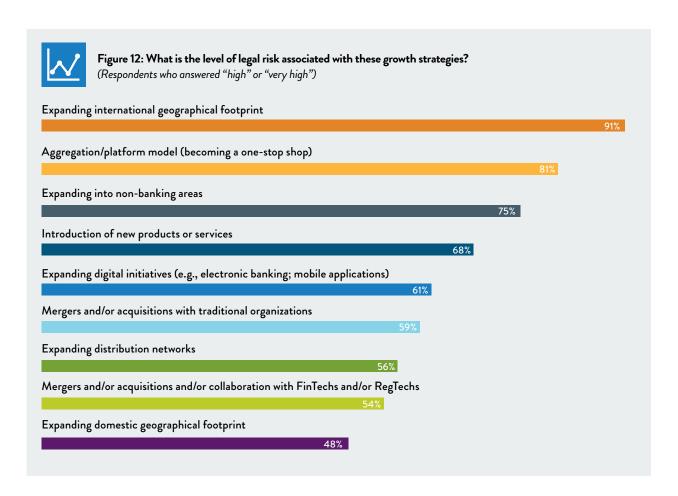
HELEN HOWARD, DIRECTOR, TAYLOR ROOT NORTH AMERICA



Beccia agrees: "If you're general counsel, you really have to understand technology. It's about working more closely with all the parts of the organization, especially those that are developing products and services, and really having a seat at the table."

NEXT: STAYING ON THE CUTTING EDGE

The next three years will bring more transformation, putting even greater demands on general counsel. Notably, 92% of survey respondents believe that they will have to deal with a lot of issues that will be new to them. And more than half see their role changing as the legal environment only makes it more difficult to stay on the cutting edge.



"Ten years after the financial crisis, we thought we'd see the number of new regulations slowing down," says Germain. "But that doesn't appear to be the case." As a result, he says Federated Investors' legal team "spends a lot of time reading the new rules, digesting them, determining how to comply with them, drafting new policies and procedures, and getting them approved."

In addition to a fast-paced, continuously evolving regulatory climate, a big reason for the general counsel's role transformation will be moving into technology-heavy business models. Case in point: 40% of survey respondents are pursuing digital initiatives as part of their growth strategy, and another 46% are expanding into non-banking areas (Figure 11).

These high-priority growth strategies carry significant legal risks. In fact, 75% of respondents associate expansion into non-banking areas with high or very

high legal risks. Introducing new products and services (68%) and expanding digital initiatives (61%) are also setting off alarm bells among survey respondents (Figure 12).

For those with a traditional banking background, Merchant says digital transformation, and its inherent legal risks to the financial services sector, can pose "a steep learning curve," requiring legal teams to take steps such as "attend more seminars" and "supervise more cross-functional teams." Perhaps the toughest lesson, though, will be acknowledging the new role of general counsel. "It's legal and compliance and operations and sales," says Merchant. "It's no longer just the usual suspects getting together to deal with regulations."



NEW WAYS FORWARD

New regulations, new competition, and new technologies demand a new way of thinking. Here are a few things to consider moving forward:

- Today's top legal and C-level executives are using disruptive technologies, such as blockchain, automation, and the cloud, to automate mundane tasks, improve customer engagement, and accelerate business processes. The key is to recognize both the rewards and the risks of these new tools before deploying them.
- Many organizations are forming valuable partnerships with up-and-coming FinTechs to expand their technology capabilities and better understand the changing landscape. Others are building a better brain trust by hiring tech-savvy legal executives.
- All of today's financial institutions face heightened legal risks. In response, for the first time in history, traditional banks and startups are working alongside regulatory authorities to better balance the competing goals of greater innovation and increased consumer protection.

But these considerations are only a start. The legal environment in which financial institutions operate challenges financial and legal executives to forge a new path forward—one that is willing to partner with competitors, one that is tech-savvy, and one that is steeped in industry knowledge. Because, warns Merchant, "as the world changes quickly, people have to change quickly with it."

METHODOLOGY

The data in this report is based on a survey of 200 U.S.-based legal and non-legal executives from the financial services sector conducted by Forbes Insights in August 2018. Seventy-five percent of survey respondents were chief legal counsel/ officer, general counsel, or top legal officers. A majority of companies (60%) had revenue of \$1 billion or more. The financial services segments represented were: asset management and investment services, commercial banking, investment and private equity funds, mortgage financing, financial technology, capital markets, payment systems/emerging payments, and economic development banking.

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