

## Artificial Intelligence and Corporate Governance Issues

This update will explain why corporate directors should keep abreast of AI concepts to effectively fulfill their fiduciary duties.

### Introduction to AI

In the context of this update, let's define AI as the use by computer and machine devices of characteristics commonly associated with human intelligence, including reasoning and learning. Through algorithms, machine learning, or even deep learning, the devices process significant amounts of data to detect patterns, solve problems, or to provide additional data for human consideration. Netflix, Pandora, Amazon, all use AI to recommend entertainment and products based on prior selections. Self-driving cars also utilize AI to detect and understand its surroundings and drive the car in a safe manner.

### Fiduciary Duties and Considerations of AI

Members of a corporate board are required to comply with the fiduciary duties of loyalty and care. They have a duty to act in the best interests of the corporation and its shareholders, and must be fully informed before making decisions on behalf of the company. This includes the subsidiary duty of oversight, which requires that directors have in place an effective reporting or monitoring system and an information system that allows them to detect potential risks to the company.

Board members should keep informed about developments regarding AI that may have transformative effects, or might make a particular business model or product either obsolete or less necessary. For example, use of ubiquitous free GPS apps that adapt to wrong turns, and online live traffic mapping, have largely displaced the necessity for printed maps. Board members of companies that sold traditional maps should have seen this development around the bend.

Utilizing AI to both enhance the board's decision-making capabilities and analyze data may soon be more commonplace. For example, in 2014, a venture capital firm claimed to have ["appointed" an AI program called Vital to its board of directors](#). Vital sifted through data about drugs used to test age-related diseases and would then advise as to whether or not the firm should invest in the drugs. Although Vital was not a voting member, and although all boards can consider experts or various sources of information to assist in decision-making, appointing an AI program to the board was indicative of the role AI can play in the governance of a corporation.

It is important to note, however, that in Delaware, board members must be "natural persons." Thus, "appointing an AI program" as a board member for a Delaware corporation would be impermissible. See DGCL Section 141(b).

To the extent a board moves forward to adopt AI, it is crucial that the board does not delegate its essential management functions and rely solely upon AI in making decisions for the corporation. Doing so would be a prohibited delegation of its duties.

## Conclusion

This post has only skimmed the surface of why board members should consider the potential impact of AI. Every board, regardless of industry, should consider how AI might transform its business.