Skadden

The Informed Board

Summer 2025

In a highly uncertain environment, managing political risk entails much more than simply planning for the outcome of the next election, our latest *Informed Board* podcast makes clear.

Also in this issue of our newsletter, we explain why activist investors are increasingly pressing "Vote No" campaigns, how they work and what companies can do to prevent them from gaining traction.

We also take a deep dive into the expansive new White House program to promote AI and highlight the many business opportunities it could create — opportunities that companies could have overlooked. At the individual level, meanwhile, directors who use AI in their corporate role should be aware of the potential pitfalls, and ways to avoid them.

We also offer some guiding principles for boards considering whether their company should hold cryptocurrency on its balance sheet.

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Podcast:
Board Oversight at a Time of Political and Geopolitical Uncertainty

Listen to the podcast

With the post-WWII economic order eroding, managing political risk no longer consists simply of planning for the outcome of the next election. Today boards need to take an expansive view of geopolitical risks globally to plan for a wide range of new threats and opportunities, from sanctions to tariffs and counter-tariffs and other disruptions to established supply chains.

Teneo's Kevin Kajiwara and Michael Leiter of Skadden's National Security practice discuss these issues and their ramifications in the latest *Informed Board* podcast with host Ann Beth Stebbins, a Skadden M&A partner. They also ask whether companies may need to update their risk discussions more frequently in the current environment.

Host

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Guests

Michael Leiter / Washington, D.C.
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Activists Say 'Yes' to 'Vote No' Campaigns in 2025

- The 2025 proxy season has seen a marked rise in "vote-no" or withhold campaigns against directors.
- These campaigns, which can be launched any time, without warning, can result in high withhold votes against directors, even when the activist only issues a single press release, creating significant pressure on boards to voluntarily effect board, management or strategic change in response.
- Companies that regularly assess director skill sets, engage early and often with key investors, communicate their strategy and explain why each director has been selected to serve, will be better positioned to confront these potential activist attacks.

Withhold campaigns are not new. However, according to Diligent Market Intelligence, 33 distinct activist withhold campaigns took place in the 12 months ended June 30, 2025, up from 23 in the same period of 2023–24 and 24 campaigns over the same span in 2022–23.

In a "vote-no," or withhold, campaign, an activist encourages other shareholders to vote against the election of one or more directors at a shareholders' annual meeting. The strategy is particularly effective at companies that combine (a) a requirement that each director in an uncontested vote win a majority of votes cast with (b) a director resignation policy. In those cases, any incumbent director who falls short of a majority must promptly tender a conditional resignation, leaving the remaining board members to decide whether to accept the resignation (typically upon recommendation of the board's nominating and governance committee).

While the primary objective for a vote-no campaign is to force the resignation of one or more directors from the board for failure to achieve a majority of the votes cast, a secondary goal is often to demonstrate strong shareholder dissatisfaction with the company's performance if enough votes are withheld. Recent notable withhold campaigns illustrate how even a "loss" can be a win in catalyzing change at a company to thwart a full proxy fight in the following year.

What's Driving the Increase in Withhold Campaigns

Three principal forces seem to be driving this trend, with cost chief among them.

According to Deal Point Data, through the first half of 2025, the eight proxy contests that went to a shareholder vote in the U.S. cost activists a combined $45.9 million, while the target companies spent $69.1 million defending against such efforts.[1]

A withhold campaign can significantly reduce these expenditures by eliminating the need for an activist to identify, vet and promote alternate director nominees, while still exerting pressure on target boards if the activist is able to achieve high withhold votes against incumbent directors.

Timing is another factor. Activists who miss advance-notice deadlines, or who identify a new issue after the nomination window closes, can still coalesce investor dissatisfaction around a vote-no narrative.

Finally, persistent tariff uncertainty and market volatility in 2025 may have made some fund managers reluctant to bankroll full proxy fights, even as they remain convinced that board refreshment is warranted at the companies they have targeted.

Variations on 'Vote No'

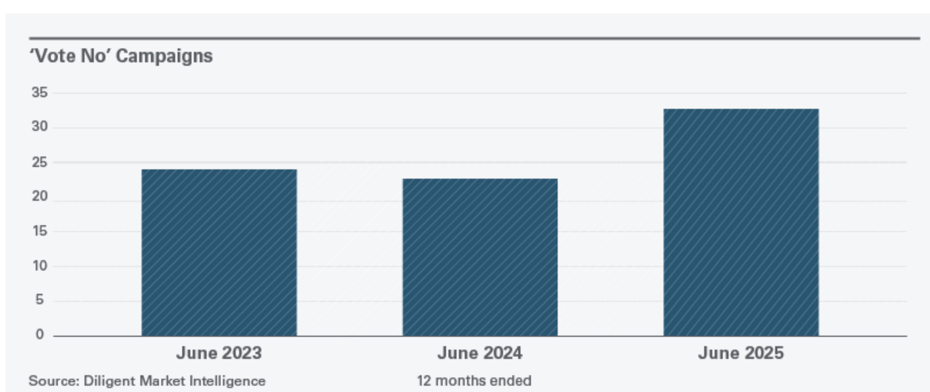
Tactically, activists have three principal approaches to withhold campaigns at their disposal.

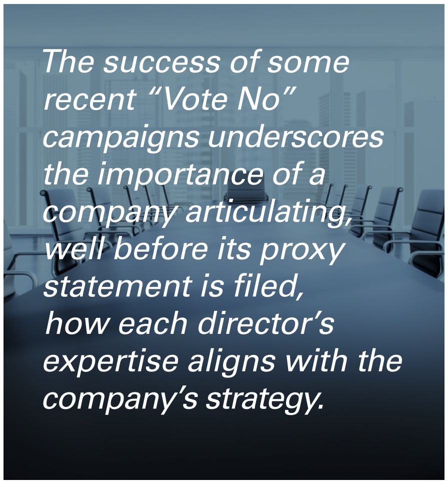
A single letter or press release. The most minimalist and cost-effective campaign is to issue a single communication announcing the activist's intention to vote against specified directors and explaining why. Because the Securities and Exchange Commission's (SEC) proxy rules do not consider the issuance of a public statement that merely communicates a shareholder's voting intent and the reasons for it as a "solicitation," this approach entails virtually no regulatory hurdles and can be undertaken at minimal cost.

Historically, this type of minimalist withhold campaign has not had great success. However, the recent withhold campaign launched by Impactive Capital at WEX Inc. shows that more established activists who are able to get their message amplified by the media can have an outsized effect on election results with minimal effort.

Impactive, a 7% shareholder of WEX, issued a single press release just three weeks before the company's 2025 annual meeting, announcing its plan to vote against three long-tenured directors because it claimed that

[1] Data is for campaigns targeting U.S.-domiciled companies with market capitalizations greater than $500 million.





its "value enhancing ideas" (*e.g.*, to split up the company's three business segments) and request for a board seat had been dismissed. Notwithstanding the absence of a formal solicitation, all three of the directors targeted saw their support from shareholders decline by more than 30 percentage points, including WEX's CEO and chair, who received just 64.3% of "for" votes cast.

While none of these directors resigned as a result of the election, Impactive argued in a subsequent press release that the significant withhold votes demonstrated a "crisis of confidence" in the board. Impactive also disclosed that it intends "to nominate at least four directors for election at next year's annual meeting, barring a significant reversal of WEX's underperformance or approach to engagement in the coming months," creating significant pressure on the company for the upcoming year to improved its performance or rationalize its strategy with the larger shareholder base.

Multiple letters or press releases. An activist can also launch a withhold campaign through an exempt solicitation, which involves the issuance of several public letters or press releases urging shareholders to withhold support from incumbent directors standing for election, yet stops short of furnishing them with a proxy card or means to vote.

Under the SEC's proxy rules, if the activist's stake in the target company exceeds $5 million, the activist must file most written communications with the commission, which can help to provide a larger platform for the activist's campaign, but the activist does not need to file its own proxy statement before soliciting votes.

Generally, these types of exempt solicitations have had mixed results, as the activist must rely solely on the company's proxy card to obtain support. But in one successful effort, Ancora Holdings Group pursued an exempt solicitation at Forward Air Corp. in May 2025, contending that directors who approved the 2023 acquisition of Omni Logistics should be removed. Successive filings, amplified by supportive recommendations from proxy advisory firms Institutional Shareholder Services (ISS) and Glass Lewis, culminated in the board chair's resignation after he failed to receive a majority of "for" votes cast and the voluntary departure of two additional directors after they received high withhold votes, even though they technically survived the vote.

Full solicitation, but without alternative nominees. The most aggressive path, and generally the most effective type of withhold campaign, is a full solicitation. Through this method, the activist disseminates its own proxy statement and card, replicating many elements of a contested election but urging "withhold" or "against" votes rather than urging shareholders to vote "for" alternative nominees.

For example, H Partners Management, a beneficial owner of approximately 9.3% of Harley-Davidson, Inc., solicited proxies from shareholders on H Partners' blue proxy card to "withhold" their votes against three directors with 17-, 18- and 29-year tenures. In advance of the 2025 annual meeting, Egan Jones and Glass Lewis reportedly sided with H Partners, while ISS recommended that shareholders vote in favor of all of Harley-Davidson's nine nominees standing for re-election.

All incumbent directors ultimately received a majority of votes cast. However, H Partners declared a "partial victory," noting that, as a result of its campaign, Harley-Davidson had reportedly committed to several other shareholders that three directors would resign by next year's annual meeting, the board would appoint a new, external CEO and the outgoing CEO would not serve in an executive chair role.

H Partners incurred approximately $1.5 million in solicitation costs through its campaign at Harley-Davidson and, while ultimately unsuccessful at the ballot box in the abstract, within three months of the annual meeting, Harley-Davidson announced the appointments of a new, external CEO and chair of the board.

What Companies Can Do To Prepare for 'Vote No' Campaigns

For boards, the use of withhold campaigns by activists who are achieving meaningful results with less expense underscores the importance of articulating, well before a company's proxy statement is filed, how each director's expertise aligns with, and advances, the company's strategy.

- Director biographies should emphasize expertise germane to the company's industry and strategic direction, and proxy materials — particularly director matrices — should explicitly connect each director's experience to concrete value drivers.
- Continuous, proactive engagement with top investors remains essential regarding the company's strategy and board composition.
- Where appropriate, boards may wish to preview succession planning and board refreshment initiatives to demonstrate responsiveness to shareholders.

In short, the 2025 proxy season shows that boards need to remain vigilant even after a nomination deadline passes, as vote-no campaigns are likely to continue to remain an important and cost-effective lever in the activist tool kit. Boards that anticipate the underlying critiques, and address them proactively and transparently, will be best positioned to preserve investor confidence and avoid being caught off guard next proxy season.

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Opening the Door to the Opportunities in the White House AI Action Plan

- The White House's recent "AI Action Plan" lays out a blueprint for maintaining the U.S.'s role as the global leader in AI development and deployment. The plan's multi-sector approach, led by government engagement, could create business opportunities across the economy.
- Companies should review and track the various subsidies, tax breaks and other incentives that are proposed, and consider how they can take advantage of them if they are rolled out.
- The plan sets relatively short timelines for government agencies to issue reports, make recommendations and promulgate rules on AI adoption, so companies need to be prepared to pivot quickly to capitalize on new opportunities as policy implementations are revealed in coming months.

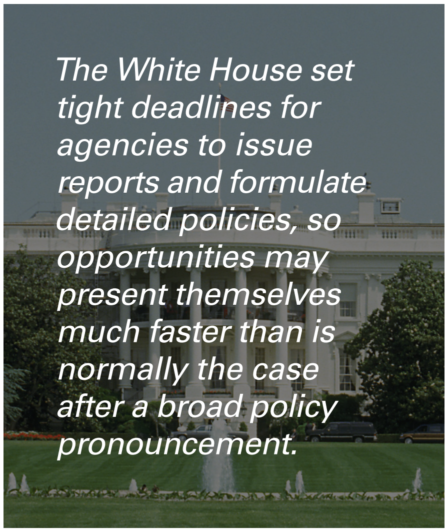
During the Biden administration, boards of directors needed to be mindful of the potential for AI regulations that could constrain widespread AI adoption. This has now changed with the Trump administration, which has adopted an aggressive pro-innovation and antiregulation approach to AI, potentially creating new opportunities for businesses across multiple sectors.

The centerpiece of the Trump administration's approach is an AI "action plan" released on July 23, 2025: "Winning the AI Race: America's AI Action Plan" (Plan). The Plan provides a comprehensive federal roadmap to AI adoption, outlining over 90 near-term actions including ways to accelerate innovation, build out AI infrastructure and capture international AI leadership. Most importantly, the Plan envisions an activist federal policy to drive AI business opportunities, not only for AI developers, but also for companies across the economy. Boards will need to factor this new government approach into their risk/reward calculus when analyzing current AI use cases and when strategizing about future AI business opportunities.

Most of the commentary about the Plan has focused on its direct support of the AI sector and U.S. hegemony in AI, often overlooking the ancillary goals and incentives aimed at all U.S. enterprises.

While specific regulations need to be drafted and implemented, we set forth below some key areas to for companies to watch in the coming months:

- **Federal RFIs aimed at stimulating AI adoption in the private sector.** Given the mandate to federal agencies to encourage AI adoption, we expect a number of Requests for Information (RFIs) in the coming months seeking industry comments about AI adoption



The White House set tight deadlines for agencies to issue reports and formulate detailed policies, so opportunities may present themselves much faster than is normally the case after a broad policy pronouncement.

and how the government can be supportive. Companies will want to monitor RFIs in their respective industries and weigh in on key topics to help shape government policies.

- **AI workforce training and upskilling programs.** The Plan proposes federal funding and tax incentives for employer-sponsored retraining. Companies should monitor the introduction of these incentives, and when adopted, shape their training programs to take advantage of them. The Plan also calls for expansion of AI training in the education system, which could create opportunities for businesses servicing that sector.
- **AI infrastructure projects.** The Plan's focus on expanding the country's AI infrastructure could create incentives for projects that build out data centers, modernize the U.S. electric grid, upgrade transmission systems, or deploy new energy sources (*e.g.*, nuclear, geothermal), possibly creating openings for companies in a range of related industries.
- **Opportunities in next-generation manufacturing.** The Plan calls on the federal government to prioritize investment in emerging technologies enabled by AI, such as drones, self-driving cars and robotics. Companies in related sectors should track incentives, research grants and other support the government may offer.
- **Opportunities in AI-enabled science.** The plan calls for prioritizing investment in theoretical, computational and experimental research to "discover[] new and transformative paradigms that advance the capabilities of AI," adding that a National AI R&D Strategic Plan is forthcoming. It also calls for the Defense Advanced Research Projects Agency and other federal agencies to develop research programs to understand better how large language models work. More broadly, it envisions a comprehensive set of initiatives to bring AI to bear across the sciences, mandating federal agencies to explore investing "in automated cloud-enabled labs for a range of scientific fields, including engineering, materials science, chemistry, biology and neuroscience," built by either the private sector or the federal government, or in collaboration. If implemented, this will open up a variety of avenues for private sector players to participate.
- **Regulatory sandboxes and industry groups.** The plan proposes regulatory sandboxes enabled by agencies such as the Securities and Exchange Commission and Food and Drug Administration, as well as domain-specific public-private efforts, to accelerate AI adoption across all sectors of the economy. Companies should consider how they can take advantage of these

regulatory sandboxes to test new products, and how they can participate in industry groups to shape government policy.

The Plan also includes a number of potential opportunities for AI developers:

– **Federal AI procurement contracts.** The Plan calls on government agencies to adopt new AI tools and find ways to reduce regulatory barriers to its adoption. AI developers will want to monitor and plan responses to government RFIs and the procurement opportunities they are likely to create.
– **Development and operation of data centers.** As noted, the Plan calls for the development of more robust AI infrastructure. AI developers and other technology companies may have the opportunity to leverage pro-innovation policies, such as expedited permitting processes, potential access to federal lands and grants for the AI infrastructure build-out.
– **Relaxed export controls.** Companies that develop and export integrated AI solutions — including software, hardware and technical support — may be able to take advantage of new federal initiatives to promote American AI technology abroad.
– **Secure AI infrastructure for critical sectors.** In response to the Plan's call for the design and implementation of AI-specific cybersecurity solutions, there will likely be increased demand for those providing model red-teaming, secure-by-design features, incident response protocols and the like for critical infrastructure operators.
– **Partnerships for semiconductor manufacturing and AI tool integration.** The Plan aims to stimulate collaboration with or supply to semiconductor manufacturers, focusing on integrating advanced AI tools into manufacturing processes and benefiting from CHIPS-funded projects. This would benefit chipmakers, their vendors and other companies adjacent to them.

Given that the Plan sets tight deadlines for government agencies to issue reports and formulate detailed policies, the foregoing opportunities may present themselves much faster than is normally the case after an administration makes a pronouncement about its policy goals. Companies should therefore monitor policy developments closely and be ready to respond quickly to opportunities to help frame policies, and to take advantage of the new business opportunities that may be created.

For boards, the imperative is not only to capture growth opportunities, but also to ensure management is prepared to manage the compliance, reputational and competitive risks as federal AI policy accelerates implementation on a tight timeline.

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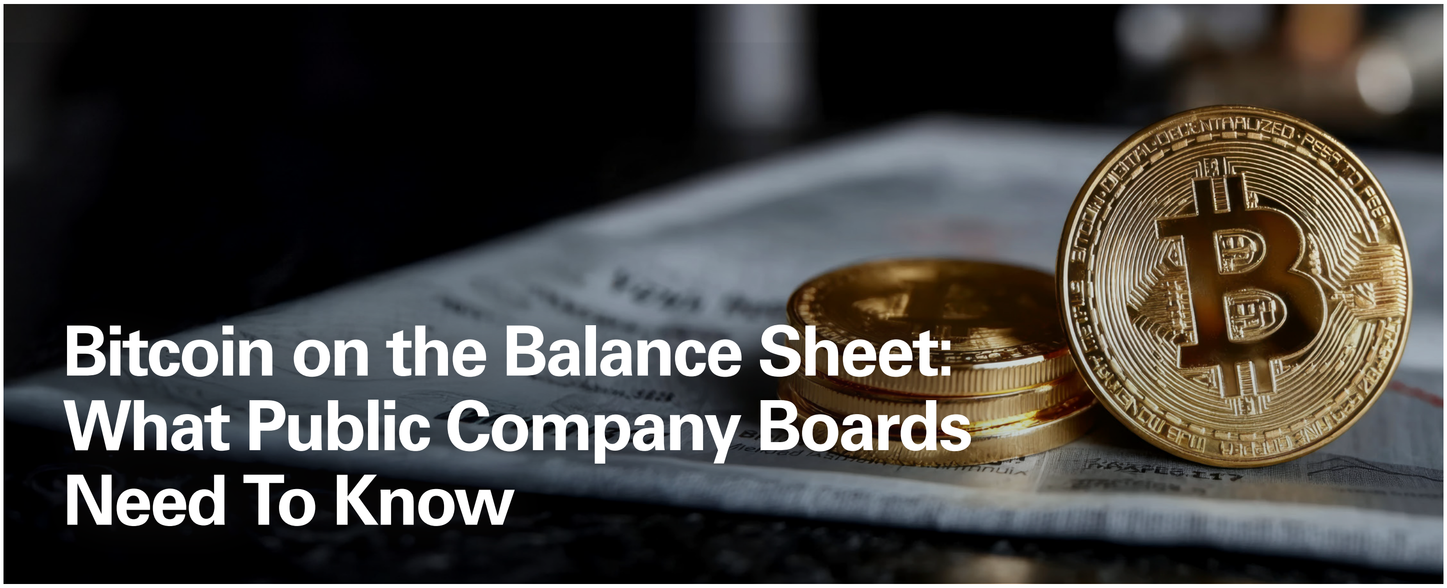

Bitcoin on the Balance Sheet: What Public Company Boards Need To Know

- Companies planning to hold cryptocurrency on their balance sheets should formulate clear policies regarding these assets and ensure that appropriate governance mechanisms and controls are in place.
- Boards weighing whether to hold crypto treasury assets will need to anticipate the reporting issues that will rise, and how the market and various stakeholders may react.
- Because regulators are just formulating their responses to crypto assets, it is essential to monitor their actions in this area closely.

As digital assets continue to capture headlines and market attention — in part because of the surging number of public companies dedicated exclusively to holding cryptocurrency — a growing number of public operating companies are weighing whether to hold bitcoin, ether or other cryptocurrency on their balance sheets.

While the allure of innovation, potential returns and marketing cachet is real, the decision to hold crypto assets comes with distinct risks and complexities, especially for operating businesses outside the crypto sector. This article explores the key considerations for boards of directors in the U.S. and U.K., offering practical guidance and a forward-looking perspective.

Why Hold Crypto? The Board's Strategic Lens

The stated rationale for holding cryptocurrency varies. Some companies see it as a hedge against inflation or currency risk, others as a means to signal technological leadership or appeal to younger consumers. There is also the potential for outsized financial returns. But boards considering this move must ask themselves some questions and keep a few guiding principles in mind.

Three Steps To Avoid Problems With Crypto Holdings

1. **Define the purpose and policy.** Boards should ask if holding crypto aligns with the company's core business strategy and risk appetite. They should articulate a clear rationale for holding crypto assets, documented in a new formal policy or in an updated treasury policy or investment plan. Is the goal to diversify treasury assets, facilitate customer payments or simply to serve as a marketing tool? The policy should address permissible types of crypto assets, limits on exposure (*e.g.*, as a percentage of liquid assets), and the process for

acquisition, custody and disposal. Importantly, boards should consider whether they can afford to lose the entire value of the crypto asset, which is a real-world possibility for any asset, but may be of particular interest to shareholders and other interested parties, given crypto's volatility.

2. **Establish robust custody, governance and controls.** Crypto assets are highly volatile and subject to heightened operational risks, including theft, hacking and loss of access. Boards must ensure that internal controls are fit for purpose. This includes segregation of duties, secure custody arrangements (whether self-custody or via a reputable third party) and regular board-level reporting. Consideration should also be given to whether crypto assets are held on- or off-chain (*i.e.*, whether transactions are recorded on the main blockchain or not), or in a cold wallet, balancing the frequency of use against the risk of hacking or theft. The transparency of blockchain transactions means that company activity may become public, so directors should anticipate and plan for scrutiny.

3. **Anticipate disclosure requirements and prepare for stakeholder engagement.** Public companies must consider how crypto holdings will be reported in financial statements and public filings. This includes fair value measurement, disclosure of risk factors and the impact on earnings. Boards should also be prepared to address questions from investors, analysts and the media about the rationale, risks and environmental impact of crypto holdings.

Considerations for US Boards

In the U.S., the legal framework for corporate crypto holdings is slowly developing, particularly in light of the rise of dedicated public cryptocurrency treasury companies, but it remains unsettled. Key points include:

Fiduciary duties and board oversight. Directors must act in the best interests of the company and its shareholders, exercising care, skill and diligence. Given the volatility and regulatory uncertainty of crypto, boards should ensure that any decision to hold digital assets is well-documented, informed and consistent with the company's overall risk profile.

Disclosure and reporting. The Securities and Exchange Commission expects transparent disclosure of material risks and exposures. Crypto asset holdings may trigger additional risk factor disclosures, and boards should consider whether existing internal controls over financial reporting are sufficient to address the special risks of digital assets.

Custody and security. The choice between self-custody and third-party custody is critical. Each option carries distinct risks — loss of private keys, hacking or counterparty risk. Boards should require a thorough assessment of custody solutions, including insurance coverage and contingency planning.

Environmental and social considerations. Bitcoin mining's energy consumption is a growing concern. Companies with ESG commitments must consider whether holding crypto is consistent with their public stance on sustainability.

Considerations for UK Boards

The legal and regulatory framework in the U.K. is similarly in flux, but several principles are clear.

Directors' duties under the Companies Act 2006. U.K. directors must promote the success of the company, exercise independent judgment and avoid conflicts of interest. The high-risk, speculative nature of crypto means that directors should be able to demonstrate a reasoned, well-informed decision-making process.

Financial reporting and audit. Crypto assets are not considered cash or cash equivalents under International Financial Reporting Standards. Boards must ensure that accounting treatment is appropriate and that auditors are comfortable with valuations and the existence of the assets.

Regulatory scrutiny. The Financial Conduct Authority (FCA) is in the process of developing new rules for cyrpto assets. While holding crypto on the balance sheet is not prohibited, boards should anticipate questions from regulators and be prepared to justify their approach to risk management and disclosure. Consideration also needs to be given to a company's activity involving crypto assets and whether any licenses or authorizations are needed.

Taxation. Questions remain about the treatment of crypto assets by HM Revenue and Customs in the U.K., so companies must consider the tax implications of holding crypto assets on balance sheet and using them for payments or trading activity.

Reputational and stakeholder risks. Sensitivities regarding ESG issues and corporate reputation should be at the forefront of directors' minds. Boards should consider the potential for negative publicity or stakeholder backlash, especially if crypto holdings are perceived as speculative or inconsistent with stated values, or suffer a significant loss of value.

Forward-Looking: What Boards Should Watch For

Unfolding regulation. Both U.S. and U.K. regulators are actively considering new rules for digital assets. Boards should monitor developments and be prepared to adapt policies and disclosures as the legal landscape changes.

Market and technology shifts. The crypto ecosystem is rapidly evolving. Different types of digital assets (such as stablecoins or tokenized securities) may offer different risk profiles. Boards should regularly review their approach in light of market and technological developments.

Stakeholder expectations. Investor and public attitudes toward crypto are dynamic. Boards should engage proactively with stakeholders to understand their perspectives and to communicate the company's rationale and risk management approach.

Actionable Takeaways for Directors

- **Ask the hard questions:** Why do we want to hold crypto? What are the risks and rewards? How does this fit with our strategy and values?
- **Set clear limits and controls:** Define exposure limits, custody arrangements and reporting protocols.
- **Stay informed and agile:** Monitor regulatory, market and technological developments, and be ready to adjust course as needed.

Whether to hold cryptocurrency on the balance sheet is a decision to be made with care. For many operating companies, the risks and complexities may outweigh the potential benefits unless there is a clear strategic rationale and robust governance in place. Directors of companies that do wish to take on cryptocurrency assets into their treasuries are well-advised to approach this issue with rigor, transparency and foresight.

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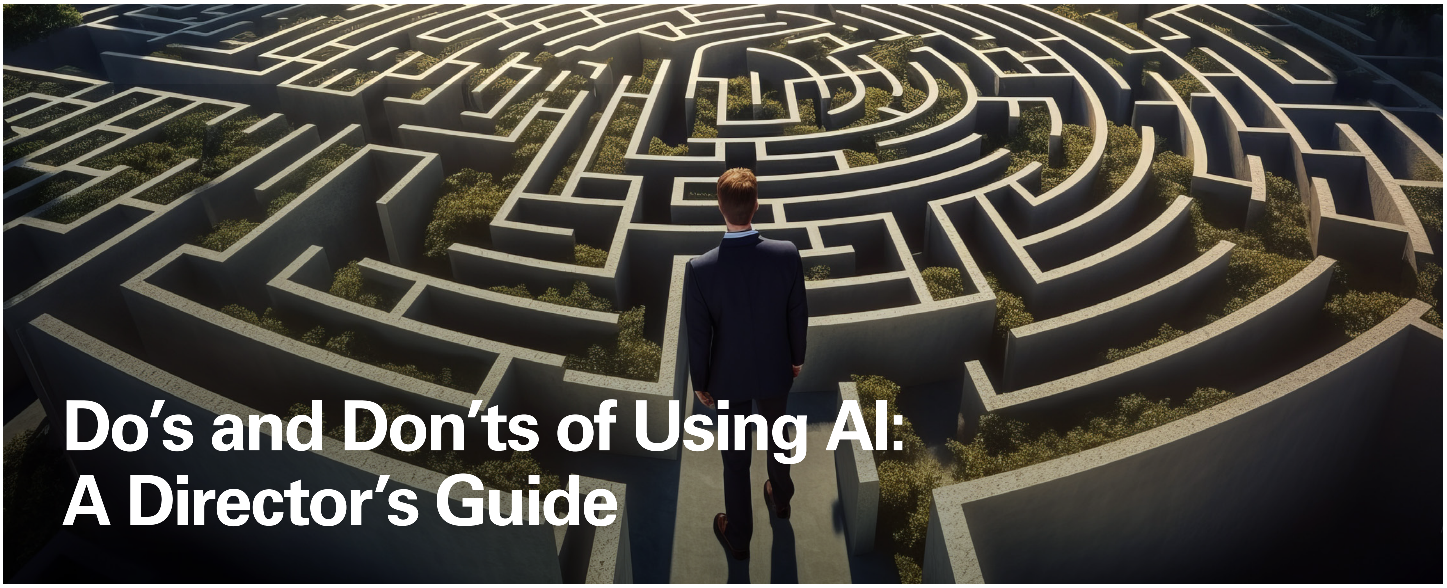


Do's and Don'ts of Using AI: A Director's Guide

– Directors who use AI on their own for corporate purposes need to be aware of some pitfalls particular to their roles.

– Sharing confidential corporate information with chatbots should be avoided until it has been confirmed that the AI model will not train on the material or make it available to chatbot employees.

– AI chats may be discoverable by regulators or litigation adversaries, potentially disclosing information that could be used against the company's interests.

– Using AI recording and transcription tools also could reveal confidential corporate information, or render the information vulnerable to disclosure from discovery or similar requests.

At the same time that AI chatbots and tools have begun reshaping how businesses operate — including how they strategize, optimize workflows, perform R&D and distill large amounts of information — individuals, including directors, are routinely turning to the technology.

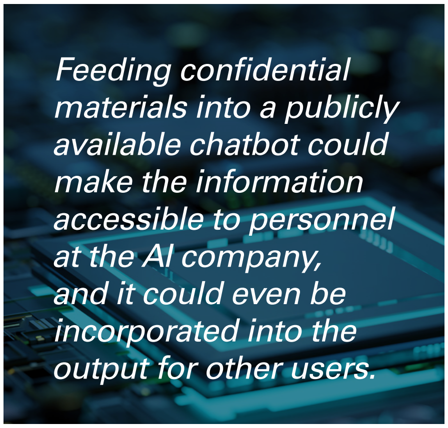
While boards are weighing the payoffs and risks of deploying the technology at their companies, individual directors also need to give thought to their own use of these tools in their corporate roles. There are potential pitfalls, some of which may not be obvious. Here's a quick overview and tips on how to avoid missteps.

Avoid uploading or inputting confidential information or personal data.

It might be tempting, for instance, to upload board materials in advance of a meeting, asking for an AI summary. But a company's personal data, trade secrets or other confidential information should only be analyzed with AI tools that have been validated by the company's internal IT team. Feeding confidential materials into a publicly available chatbot (whether or not free) could make the information accessible to R&D personnel or others at the AI company. And if the model trains on the confidential material, it could even be incorporated into the output for other users — potentially including the company's competitors. (Chatbots validated by your company likely include safeguards, including confirmation that the tool will not train on the company's inputs.)

In some cases, using AI on confidential corporate information could also violate a company's contractual obligations, its internal policies or privacy laws.

To be safe, stick to using public, nonconfidential inputs when using public AI tools, which can still be



helpful for analyzing publicly available industry trends, market data and economic indicators, or generating summaries of public financial statements or press releases.

Keep in mind that AI chats (including information you share with an AI model) may be discoverable.

Just like emails and other records, AI chats may be discoverable and could thereby end up in the hands of regulators or an adversary even if your chat history with a chatbot is no longer accessible to you; the AI vendor may still be able to produce the chat history if required to do so by a court.

For example, if a company signs a major deal to acquire a competitor, antitrust regulators reviewing the transaction could take the position that AI-generated content that exists within the files of officers or directors could be discoverable if it relates to competition or markets at issue.

AI tools should not be used to record board meetings or generate meeting minutes.

AI can be very helpful in transcribing discussions, but transcription tools may retain data, including audio recordings and generated transcripts. Given the sensitive nature of board meetings and the care that goes into drafting board minutes, third-party access to raw dialogue could pose significant legal and business risks. And, as noted above, such records may become discoverable in the case of a shareholder derivative or other lawsuit.

On a related note, avoid using third-party services to record or transcribe any communications with counsel, as this could result in the attorney-client privilege being lost if those communications are accessible to people outside the company.

On the other hand, it may be safe and helpful to use AI transcription tools to record employee training sessions, educational webinars, customer service calls and other events that don't contain privileged information and can be useful for knowledge retention or other reasons.

AI outputs need to be verified.

By now, AI's penchant for "hallucinating" untrue "facts" is well-known, but this point bears repeating. AI can make mistakes, get "confused," or provide outdated, inaccurate or biased information. No one should assume that if something looks good or sounds right, it is probably correct. Review the information cited by the AI models that form the basis for their statements to confirm that the source of the information is trustworthy and the AI model correctly interpreted and synthesized the information.

Also, AI models are only as good as their training data and the context that we give them. While superb at analyzing patterns, AI may not be able to account for unprecedented market conditions, emerging regulatory requirements or individual choices. Be aware, too, of the cutoff for a model's training material. Asking AI to evaluate an acquisition target based on historical financial metrics where the AI model only has access to data through 2023 will be likely to result in an inaccurate response.

AI augments, not replaces, human judgment.

Treat AI as a powerful tool that assists human decision-making but is not a substitute for human judgment. Chatbots are great for ideation, double-checking your thinking, and getting a second or third opinion. But do not delegate HR, strategic or other important decisions without a human "in the loop." Doing so could violate your director's duty of care and loyalty, and in some cases could be illegal.

Given all these possible pitfalls, boards may want to work with management to develop clear policies on using AI for board work, potentially including approved tools, acceptable uses and required disclosures.

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