

The Informed Board

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This proxy season, companies may have a harder time getting a handle on how their shareholders will vote as the federal government and a number of states move to limit the power of proxy advisors, and some large institutional investors are taking decision-making in-house that they once delegated to firms like ISS and Glass Lewis. That could force a rethink of everything from shareholder engagement strategies to the wording of financial disclosures.

Also in this issue of *The Informed Board*: As board self-evaluations gain popularity, we talk to a director about what she has learned from leading these. Her practical tips will help boards get the most out of the process. Spoiler alert: Ditch the multiple-choice questionnaires.

And, in an article and our podcast, we look at the nature of board oversight when it comes to AI — how boards can educate themselves, the need to inventory a company's different AI applications, and how corporate AI uses are in fact already regulated by multiple existing laws even though there is no comprehensive federal regulatory framework in the U.S.

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Will Curbs on Proxy Advisors Make Shareholder Votes Less Predictable?

- The role of proxy advisors in shareholder voting is changing, as some institutional investors take that decision-making in-house and regulators challenge the use of DEI and ESG factors in voting recommendations.
- Some votes may now be determined by internal stewardship teams, in part with the use of AI tools.
- As decision-making by institutional investors becomes less centralized, companies will need to reassess the way they build support for important votes.
- Companies may also need to refine proxy and other disclosures to make sure that rationales and explanations are clear, with an eye to the way they could be read by AI models.

Proxy advisory firms have increasingly come under attack by regulators and were the targets of a White House executive order in December that may significantly impact their influence over the entire proxy voting ecosystem.

Most recently, it was reported that JPMorgan and Wells Fargo would stop using the services of proxy advisory firms, including Institutional Shareholder Services (ISS) and Glass Lewis, for research on public companies and voting recommendations on shareholder proposals and director elections. JPMorgan will instead rely on its own in-house stewardship team to make voting decisions with the assistance of proprietary artificial intelligence (AI) tools. Wells Fargo cut ties with ISS and will instead rely on a new internal proxy-voting platform powered by technology provided by Broadridge Financial Solutions.

As we head into the 2026 proxy season, these changes could make shareholder votes less predictable. Moreover, if shareholder decision-making is less centralized, boards and management teams will need to rethink their investor outreach programs and disclosures to reach a wider audience.

Why Proxy Advisors Mattered – and Why the Ground Is Shifting

In recent decades, proxy advisors have become a central feature of the proxy ecosystem, providing cost-effective advice to diversified portfolio managers whose lean business models could not support independent analysis across thousands of shareholder meetings. By some estimates, ISS and Glass Lewis account for roughly 90% of the proxy advisory market, and their recommendations can swing voting outcomes by significant margins.



If shareholder decision-making is less centralized, companies will need to rethink their investor outreach programs and disclosures.

As their influence has grown, proxy advisors have faced criticism, both about the quality and rigidity of their analyses and about the perceived non-financial policy priorities that may underlie their recommendations. In particular, the Trump administration and GOP legislators have made a concerted effort to reduce the influence of proxy advisory firms on public companies with respect to their diversity, equity and inclusion (DEI) and environmental, social and governance (ESG) initiatives.

What Has Changed

In June 2025, Texas enacted Senate Bill 2337 requiring proxy advisors to disclose when their voting recommendations involving companies incorporated in Texas are based in part on nonfinancial factors. (ISS and Glass Lewis won a preliminary injunction barring enforcement of the bill pending a trial that has not yet been scheduled.) Proposals to restrict proxy advisors in various ways have also been introduced in several other states.

The most sweeping bid to limit proxy advisory firms' influence has come from the White House, which issued an [executive order](#) on December 11, 2025, directing federal regulators, among other things, including the Securities and Exchange Commission and the Federal Trade Commission, to consider revising or rescinding all rules and regulations relating to proxy advisory firms and shareholder proposals that implicate DEI and ESG priorities that are inconsistent with the purpose of the executive order, and enforcing antifraud provisions

in securities laws against proxy advisory firms with respect to their voting recommendations.

The executive order also directed federal regulators to assess whether ISS and Glass Lewis subscribers who are registered investment advisers have breached their fiduciary duties by following the recommendations of proxy advisory firms on nonpecuniary factors such as DEI and ESG. This part of the executive order is likely putting considerable pressure on institutional investors to shift their reliance away from ISS and Glass Lewis and lean into their own internal voting processes.

In response to this pressure, the proxy advisory firms are reconfiguring the services they offer in ways that are also likely to lead to less conformity in voting. Glass Lewis, for instance, will stop offering its standard benchmark proxy voting guidelines in 2027, making recommendations based on more client-specific factors such as investment philosophies and stewardship priorities.

The New Variable: AI in Proxy Voting

JPMorgan's move to use AI is unlikely to be the last. Whether other institutions follow will turn on the same factors that made proxy advisors central in the first place: cost, scale and the need for a defensible "informed voting" process.

AI can lower barriers, but it is not yet a substitute for stewardship. Investors will still need a policy framework, controls and documen-

tation to support voting decisions at scale. As a result, we expect more institutional managers to take steps to internalize the voting process and gradually integrate AI solutions into their voting infrastructure, which could further fragment voting outcomes across investors.

When it comes to contested elections, it is not clear whether the use of AI will result in dramatically different recommendations than those of ISS and Glass Lewis. In contested elections, when determining whether board change is warranted, ISS and Glass Lewis have focused heavily on whether a company's total shareholder return (TSR) has underperformed on a multiyear basis.

As shareholder activists target companies they perceive are underperforming, proxy advisory firms, given their focus on TSR, have been more predisposed to supporting activists, leading to many criticisms that not enough weight is given to company-specific factors that may be contributing to the underperformance. As more institutional investors rely on AI-powered tools to help shape their voting decisions, companies may need to be more deliberate in their disclosures to explain idiosyncratic circumstances to avoid similar outcomes.

In the meantime, we expect stewardship teams that continue to rely on proxy advisory firm recommendations will closely monitor how these firms are integrating AI into their proxy voting infrastructure and assess the efficacy of their AI-driven or

-influenced voting recommendations. Glass Lewis recently announced that it has been incorporating AI into its research and that it is "ramping up this investment in 2026."

However, recognizing that some of its competitors, including smaller new entrants into the proxy voting arena, are beginning to take a "completely AI-driven" approach to providing voting solutions, Glass Lewis believes these platforms are unproven and "currently lack the ability to automate support for voting decisions that require global scale and nuanced analysis." Instead, Glass Lewis posits that the future for the proxy advisory industry will be a hybrid model that harnesses both the experience of analysts and the power of AI, rather than total automation.

Practical Guidance for Boards

As institutional investors continue to take their voting processes in-house, the net effect will likely be less uniformity in voting decisions and reduced reliability on any single "house view," making outcomes harder to handicap. As such, we recommend boards focus on the following:

Upgrade proxy disclosures for clarity and context. Assume more voting decisions will be consolidated through internal tools and, potentially, AI-assisted workflows. Make key rationales easy to find and hard to misread by using consistent terminology, clear cross-references and plain-language explanations for any "outliers."

Engage earlier and more precisely. Start shareholder engagement before positions harden and focus on the few issues that most often drive opposition in director elections and other key votes.

Expect more peer-comparison benchmarking. Assume more votes will turn on how the company and board compare to peers on performance, governance, executive compensation and responsiveness to investor feedback. If you benchmark well, highlight the strengths clearly. If you do not, explain the rationale for differentiation and tie it to the company's long-term financial horizon and strategy.

Customize messaging. Tailor communications to investors' differing priorities — financial, sustainability or governance-driven — rather than rely on a single narrative.

Reassess activism vulnerability with counsel. In light of the company's specific shareholder base and evolving investor voting patterns, work with legal and financial advisors to evaluate how these changes may affect the company's exposure to activist campaigns and potential defensive readiness.

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This article is from *The Informed Board*, Skadden's quarterly newsletter for corporate directors.

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No Loopholes for AI: Putting Legal Guardrails on Your Company's Use of AI

- While no comprehensive AI regulatory framework has been enacted in the U.S., the use of AI is governed by many existing laws, with new laws coming into force across the U.S. In their oversight roles, boards need to be aware of the spectrum of laws that may govern their companies.
- Existing laws and their application to companies need to be re-examined in light of AI advances, and new laws will need to be assessed against a business's AI needs and ambitions.
- With the rapid and prolific expansion of AI, companies need to implement agile and strategic compliance frameworks to keep pace with the business, and allow valuable and limited legal resources to be focused on those AI tools presenting the highest risk.

As board members, you've likely heard conflicting messages about U.S. artificial intelligence (AI) regulation. Some claim that AI is simply not regulated in the U.S. The truth is more nuanced, and more immediately important, than you might think.

While it's true Congress hasn't passed sweeping AI-specific legislation, your company's use of AI is almost certainly regulated already. Here's why: The law doesn't care how you break the rules, only that you broke them.

Deploying New Technology Doesn't Create Legal Immunity

Let's begin with a simple proposition: Using artificial intelligence to perform a task doesn't exempt you from the regulations that already govern that task. This principle seems obvious when stated plainly,

yet sophisticated companies risk stumbling over it repeatedly.

Consider a financial services firm that deploys an AI system to evaluate loan applications. The Fair Lending laws — including the Equal Credit Opportunity Act and Fair Housing Act — will apply whether it is an algorithm making the decision or a loan officer. The fact that the discrimination may have emerged from biases built into a neural network rather than explicit human prejudices is likely irrelevant for purposes of the act.

This concept extends across every regulated sector. Health care companies using AI remain bound by the privacy and security obligations and standards of the Health Insurance Portability and Accountability Act (HIPAA), informed consent requirements and medical malpractice standards. Employers using AI screening tools for hiring must still



Industry regulators haven't been sitting idle while AI proliferates. They've been asserting jurisdiction over AI systems using their existing statutory authority — often in ways that create real enforcement risk.

comply with Title VII of the Civil Rights Act and the Americans with Disabilities Act. Public companies using AI to generate financial disclosures remain subject to securities law requirements for accuracy and completeness.

Regulators Are Already Regulating AI – Sector by Sector

Industry regulators haven't been sitting idle while AI proliferates. They've been asserting jurisdiction over AI systems using their existing statutory authority — often in ways that create real enforcement risk and making it abundantly clear that their regulation and jurisdiction equally applies to AI.

The financial services sector illustrates this clearly. The Consumer Financial Protection Bureau has brought enforcement actions against companies whose algorithms produced discriminatory outcomes. The Securities and Exchange Commission has signaled heightened scrutiny of AI-driven trading systems. Banking regulators expect the same model risk management frameworks for AI that apply to traditional credit models, including robust validation, ongoing monitoring and clear governance.

In health care, the Food and Drug Administration now regulates certain AI and machine learning-based medical devices as software as a medical device (SaMD), requiring pre-market review for higher-risk applications. The Centers for Medicare and Medicaid Services has

begun grappling with reimbursement policies for AI-enabled diagnostic tools. State medical boards are clarifying that physicians remain professionally responsible for AI-assisted clinical decisions.

Employment regulators are similarly engaged. The Equal Employment Opportunity Commission has issued guidance on AI hiring tools, emphasizing that employment discrimination laws fully apply regardless of whether a human or algorithm makes the selection. Several states and localities have gone further, enacting laws requiring specific transparency and audit requirements for automated employment decision tools.

Why 'We Didn't Know What the AI Would Do' Isn't a Defense

Some companies assume that the "black box" nature of some AI systems creates plausible deniability for adverse outcomes. It doesn't.

From a legal perspective, you are responsible for the systems you deploy. If a company puts an AI tool into production that affects customers, employees, patients or investors, it owns the consequences. As regulators grapple with AI, it is becoming clear that saying "the algorithm did it" carries roughly the same legal weight as saying "the spreadsheet did it" or "the calculator did it."

In fact, deploying systems you don't fully understand may create additional liability. Regulators and courts

expect companies to conduct appropriate due diligence before implementing technologies that affect people's rights or economic interests, and fully understand how they work and the potential risks they cause. If you cannot explain how your AI system makes decisions, you may struggle to demonstrate that you've met your duty of care or your obligation to ensure non-discriminatory outcomes.

This is particularly salient for board members. Directors have fiduciary duties to exercise reasonable oversight of corporate operations. Allowing the deployment of AI systems without adequate governance, testing or monitoring could constitute a breach of the duty of care, especially if problems were foreseeable and preventable.

The Compliance Framework

Rather than waiting for comprehensive federal AI legislation, boards should be asking management to implement governance frameworks now. Here's what mature AI governance looks like in regulated industries:

Define what you mean by AI. The term AI encompasses a lot of technology, much of which is low risk and can be used with no additional concern or legal governance. So determine what type of AI, and what use cases, would actually trigger risks for your business (higher risk AI, such as direct customer-facing AI tools with high reputational risk if they malfunction) and what systems your business absolutely relies on (key AI, such as a business-critical

pricing system). This allows you to focus legal and compliance resources on the higher risk and key use cases.

Inventory and risk classification.

You cannot govern what you don't know exists. Companies need clear processes for identifying where higher risk and key AI is being used across the organization and classifying systems based on their risk profile. And, because AI tools' risk often changes rapidly as new features are released and employees discover new uses for existing features, you also need processes to make sure that this inventory is kept up to date.

Domain-specific compliance

integration. For each higher risk and key AI system, identify which existing regulations apply and build compliance requirements into the development and deployment process.

Building on what you already have.

Integrate AI governance into existing compliance processes where possible, rather than "starting from scratch" with new AI policies that add complexity and don't tie in to existing processes. For example, AI governance required to address anti-discrimination laws can be baked into existing anti-discrimination policies and processes, rather than siloed in an AI policy. Update your vendor management policy to deal with risks of vendors relying on AI when providing services to you, or using your data within the AI, rather than having a vendor section of an AI policy.

Validation and testing protocols.

Before deployment, higher risk and key AI systems should be tested for accuracy, fairness and robustness. Many regulators also expect ongoing monitoring after deployment as well, since AI systems may drift over time.

Human oversight and accountability.

While AI can augment decision-making, high-stakes decisions in regulated contexts typically require meaningful human involvement. Moreover, someone accountable must often be assigned responsibility for each AI system. You need to consider in what circumstances human oversight is required, what level of human oversight will occur, how you will train the humans delivering this oversight and (perhaps most difficult) how you will document that oversight. Regulators will expect to see evidence of what you've implemented and evidence that it is an appropriate level of human control.

Transparency and explainability.

Even if you can't fully explain every output of a complex model, you should be able to articulate what the system does, what data it uses, what it's designed to accomplish and what guardrails exist, particularly methods to identify when AI has gone wrong and to rectify quickly. This matters for regulatory examinations, customer complaints and litigation.

The Board's Role: Ask the Right Questions

Board members don't need to become AI experts, but you should be asking management pointed questions about AI governance:

- Do we have a comprehensive inventory of higher risk and key AI systems used across the organization, particularly in customer-facing or regulated functions?
- What governance framework ensures AI systems comply with applicable regulations before (and during) deployment?
- Who is accountable for higher risk and key AI systems, and do they have appropriate expertise in both the technology and the relevant regulatory requirements?
- What testing do we conduct, and what safeguards do we have in place, to ensure AI systems don't produce problematic outcomes? And if they do go wrong, how will we identify this quickly and rectify any errors?
- How do we monitor AI systems post-deployment?
- What training have employees received about appropriate AI use in their specific regulatory context?

The Bottom Line

The absence of comprehensive federal AI legislation doesn't mean there is an absence of AI regulation. It means AI regulation is happening through the application of existing law — sometimes predictably, sometimes in novel ways that create uncertainty.

For boards, this reality requires active engagement. The risks aren't hypothetical. Companies have already faced enforcement actions, litigation and reputational damage from the deployment of AI systems. These risks will only intensify as AI adoption accelerates and regulators develop more sophisticated approaches to oversight.

The companies that will navigate this landscape successfully are those that recognize a simple truth: AI is a tool, and you remain responsible for what that tool does. Governance frameworks should reflect that reality, ensuring that innovation proceeds within the boundaries that law and regulation have established for your industry.

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This article is from *The Informed Board*, Skadden's quarterly newsletter for corporate directors.

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Interview

Effective Board Evaluations: A Director's Practical Tips

Beth Vanderslice serves on the boards of AMD Inc., AESC Group Ltd. and Boston College. She was previously a director of Xilinx, Inc., where she chaired the nominating and governance committee, served on the compensation committee, participated in two CEO transitions and created a board evaluation process. Since 2019, she has also been a partner at Trewstar Corporate Board Services, which specializes in corporate board placements and board advisory services.

Both as a director and as a consultant at Trewstar, you've been involved in a number of board evaluations. What lessons have you learned along the way? How do you go about the process?

Traditional board evaluations have tended to rely on standardized, multiple-choice surveys. In my experience, these often result in uniformly high scores — everyone rates themselves a 4 or 5 — which discourages honest reflection and fails to surface substantive issues or opportunities for improvement. Check-the-box approaches do not drive meaningful change.

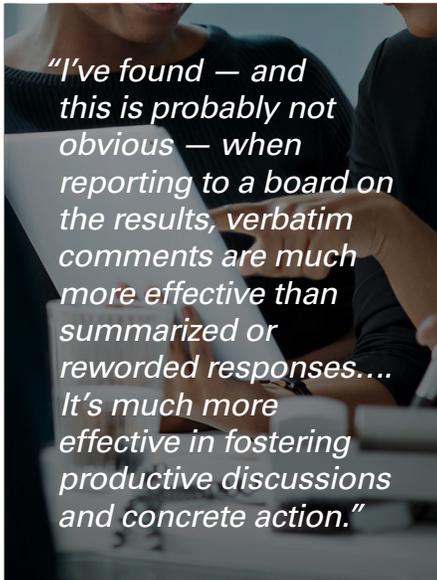
Instead, the process should center on confidential, in-depth interviews with each board member, including the CEO. Those interviews should be conducted by an independent evaluator, ideally someone with board experience, who can recognize

important themes, ask probing follow-up questions, and ensure objectivity and anonymity.

When I lead evaluations, I use a detailed questionnaire that probes all aspects of board governance, focusing on five core areas.

First is board structure — whether the board's composition, size and committee structure are optimal for the company's current needs. This includes asking about the mix of skills and backgrounds of the directors, the role of the chair of the board or lead independent director, and the effectiveness of committee organization.

Next is board meetings, evaluating the quality and effectiveness of meetings, including agenda setting, the usefulness of materials and management presentations, time management, and the balance between full board and committee



work. I pay special attention to the time independent directors spend together and with the CEO.

Board responsibilities are also a focus — the board's involvement in setting and monitoring strategy, management development, succession planning, crisis preparedness, and the identification of risks and opportunities. Is the board actively engaged in creating shareholder value and staying abreast of industry trends?

The relationship between the board and management is also important. How open and effective is their communication, and does the board support and challenge management constructively?

Finally, information and resources — does the board receive timely, relevant information and have access to necessary resources, including non-company-specific data, and opportunities for site visits and product demonstrations.

Each area is explored through eight to 12 questions.

That's the substance. What tips can you offer about the process of asking these questions and compiling the results?

The design and execution of the process are critical. Using an independent interviewer with board experience not only ensures objectivity, but also allows the interviewer to draw on best practices observed across multiple boards.

For committee evaluations, input from external advisers such as compensation consultants or audit firm partners can provide valuable perspective and benchmarking against best practices.

Confidentiality and anonymity are crucial. Board members are more candid when assured that their feedback will remain confidential and anonymous, and evaluations are most valuable when they surface honest, sometimes delicate, feedback that might not otherwise be voiced.

I've found — and this is probably not obvious — when reporting to a board on the results, verbatim comments are much more effective than summarized or reworded responses. The authenticity of participants' own words, even though anonymous, makes the feedback more impactful and irrefutable. It's much more effective in fostering productive discussions and concrete action.

Typically, the process spans six to eight weeks.

Apart from verbatim quotes, what else would you recommend in presenting findings?

It's best to first share the results with the board chair, lead independent director or nominating and governance chair, and the CEO before presenting them to the full board. This sequencing helps manage sensitive issues and avoids surprises in the boardroom. In some cases, outside counsel may be involved in delivering particularly sensitive feedback.

What about evaluating individuals?

This varies among companies. It is important to establish at the start whether the evaluation will include an invitation for each director to provide individual feedback. Even when the interviewer does not solicit individual assessments, respondents may offer it. However it's gathered, feedback about individuals should be conveyed privately — never in front of the full board. Typically, the chair or lead independent director communicates this one on one, sometimes using a script we prepare when the feedback is sensitive. This approach ensures discretion and encourages constructive dialogue about how the director can improve.

It's also important in many cases to evaluate the chair of the board or lead independent director role. That helps clarify roles and expectations, reducing confusion and potential conflict between board leadership positions.

Any potential pitfalls that companies and evaluators should be particularly attuned to?

I would caution against collecting or storing sensitive feedback in ways that could make it discoverable in legal proceedings. Specifically, I avoid email and board platforms for sensitive feedback, preferring verbal communication for follow-up. You need to be especially careful to avoid verbatim comments that could be misinterpreted or become problematic if taken out of context. All notes from evaluation convers-

ations should be destroyed after the process, although it's common to send a single hard copy of the final report to the general counsel in a way that ensures it's covered by the attorney-client privilege.

It's one thing to prepare a report. It's another thing to effect change. What can you tell us about implementing improvements suggested by the evaluation process?

The real work begins after the assessment. A thorough evaluation generates a substantial list of ideas for improvement. Action items can range from minor process tweaks to significant governance changes.

We encourage boards to prioritize recommendations, assign responsibility for their implementation, and track progress. Some companies form temporary board effectiveness working groups to evaluate and implement recommendations, meeting regularly over the following six months to maintain momentum.

Effective evaluations require active participation and ownership by the board itself. The board — not just management or outside consultants — should own the process of implementing recommendations. A subset of the board can take the lead on tracking and grading progress, with regular updates to the full board. Obviously, the process is most effective when supported by the board chair, and/or the lead independent director, and relevant committee chairs.

You've described a time-consuming process. How often should boards conduct self-evaluations?

I am a strong advocate for conducting board evaluations annually, rather than every two or three years. Each year brings new themes and learning opportunities, even for well-functioning boards. Regular evaluations keep the board engaged and focused on ongoing improvement. And the evaluation process should evolve to address new areas of oversight, such as technology strategy and risk, including AI, as these become increasingly important for boards.

Can you give examples of concrete changes that resulted from evaluations that have increased a board's effectiveness?

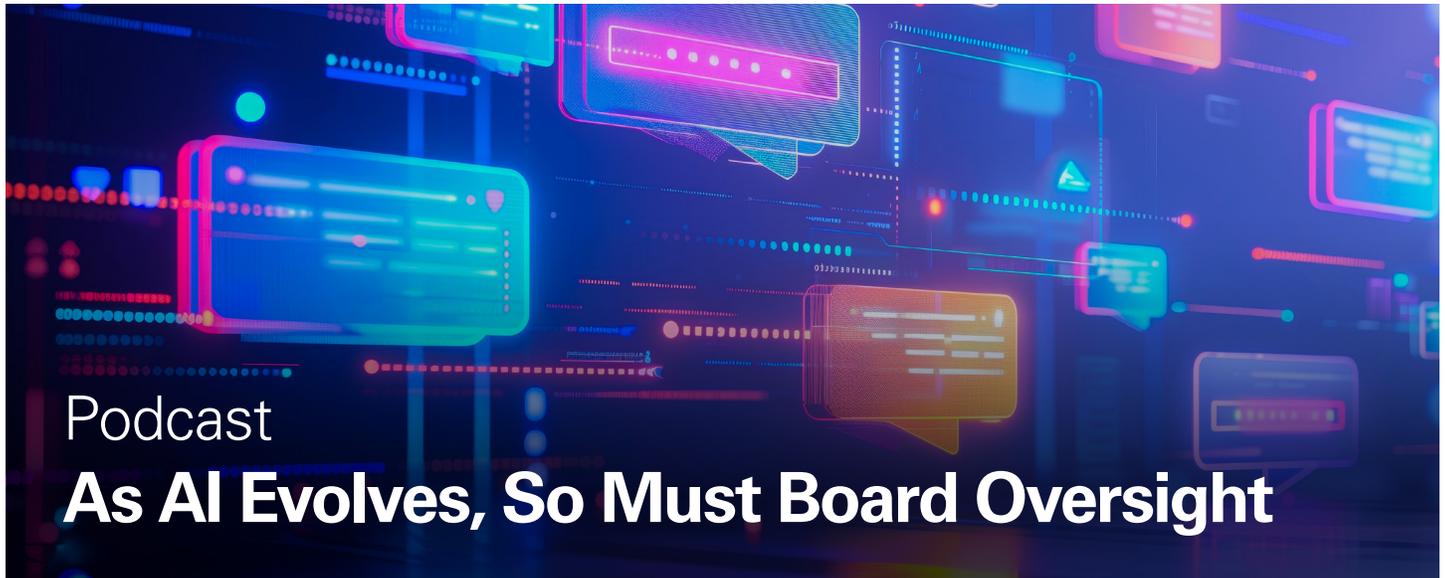
Sure. I can think of several. We have been involved in numerous situations where some of these specific recommendations have been made:

- Changing the templates for board materials and presentations.
- Holding pre-meeting sessions for independent directors to allow for candid discussion of priorities and focus areas, ensuring that the full board meeting is more productive.

- Providing clear feedback to the CEO after board meetings, especially regarding discussions held in independent director sessions, to ensure management understands the board's perspectives and expectations.
- Revising the committee structure and specific charters to clarify and delegate duties more appropriately, particularly with regard to strategy and technology oversight. Related to this topic is developing a process for committee chair rotations.
- Developing a code of conduct and boardroom principles around boardroom behavior.
- Protocols for the way board members interact with the CEO's direct reports.

In some cases, evaluations have helped prompt boards to articulate expectations for director tenure, even in the absence of formal age or tenure limits.

When done thoughtfully, a board evaluation is a powerful tool for governance, not just a compliance exercise. It can drive real change, lead to meaningful improvements in board performance and company oversight, and foster a culture of continuous improvement and engagement among directors.



Podcast As AI Evolves, So Must Board Oversight



**Listen to
the podcast**

AI is advancing so quickly that directors need to familiarize themselves with the technology and regularly reevaluate their company's use of it to stay on top of its potential and risks. *The Informed Board* podcast host Ann Beth Stebbins is joined by Don Vieira, head of Skadden's tech policy practice and Sumaiya Balbale, director at Shake Shack, to discuss how boards are overseeing their companies' use of AI — and how they can use AI themselves in their oversight role.

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