



Cybersecurity and Privacy Considerations for Boards of Directors and C-Suite Executives

Our “Fiduciary Duty of Care” Value Add

A company’s Board of Directors and senior-level management executives face mounting pressure to demonstrate awareness of privacy and security risks, as well as an understanding of appropriate measures to be taken in light of those risks. As part of a company’s enterprise-wide corporate compliance program, regulatory agencies expect that companies no longer view these areas as “just an IT issue” and integrate privacy and security awareness and training as part of their corporate culture. This has resulted in boards of directors becoming increasingly involved in cybersecurity governance.

Studies suggest that board attention to data security decisions can dramatically improve data safeguarding. The Federal Trade Commission (FTC) reports in its January 6, 2022, blog article entitled, [“New and improved FTC data security orders: Better guidance for companies, better protection for consumers,”](#) that one recent study “found a 35% decrease in the probability of information security breaches when companies include the Chief Information Security Officer (or equivalent) in the top management team and the CISO has access to the Board.” In 2022, the FTC issued orders against an array of different companies that are consistent with this research in that “they create additional incentives for high-level oversight of, and appropriate attention to, data security.”

Despite their increasing level of involvement, however, in our experience board and senior management individuals continue to be overwhelmed and express concern over how to exercise their duty of care as well as meet their fiduciary responsibilities with respect to privacy and cybersecurity issues, particularly when:

“*I do not understand technical jargon and I am concerned I do not have the perspective to assess our cyber risk, provide oversight of management, and evaluate whether the allocation of resources to defend against and mitigate the risk is appropriate.*”

“Although I understand privacy risks and can brainstorm solutions, the legal requirements are changing so fast that I am concerned our data practices are not compliant.”

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KEY QUESTIONS: ENTERPRISE-WIDE RISK

Proactive Defense Posture:

- *How are we prepared to detect and incident and handle a breach?*

Response and Recovery

- *Are we resilient if our systems are shut down from an attack?*

Public Disclosures

- *What are our protocols?*

Best Practices and Data Strategy

- *Does our privacy and cybersecurity program meet best practices?*
- *How does data fit into our strategic plan?*

We can work directly with your company's board members and senior management team to ensure they concentrate their oversight on key questions related to enterprise-wide risk as well as understand and meet their fiduciary duties per these five core principles outlined in the *NACD Director's Handbook on Cyber-Risk Oversight*, which our full suite of data privacy and security services also aligns to:

1 Understand and Approach Cybersecurity as an Enterprise-wide **Risk Management Issue**, Not Just an IT Issue

2 Understand the Legal Implications of **Cyber Risks** as They Relate to the Company's Specific Circumstances

3 Have Adequate Access to Cybersecurity Expertise and **Give Cyber Risk Management** Regular and Adequate Time on Board Meeting Agendas

4 Set the Expectation That Management Will Establish and **Enterprise-wide Risk Management Framework** With Adequate Staffing and Budget

5 Management Discussions Should Include **Identification** and **Quantification of Financial Exposure to Cyber Risks** and **Which Risks to Accept, Mitigate, or Transfer** (e.g., Through Insurance), as well as **Specific Plans** Associated with Each Approach

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