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Artificial Intelligence: The New Boardroom Challenge

Executives of major U.S. technology companies and labor leaders gathered at the Capitol last week to discuss the regulation of artificial intelligence with ranking members of Congress. On the agenda? Nearly everything — the impact of AI on the future of industrial organization; on the future of work and labor relations; on the future of capitalism and the U.S. economy; and, according to some, on the future of human civilization itself. The gathering was notable, but no longer unusual, as every week brings news of significant developments in AI capabilities and the legal rules that will govern them.

The promise and risks of AI for business will come into focus over the coming years. The implications will cut across every aspect of corporate activity and require attention across the widest span of corporate and board attention:

- *Risk and reward.* No company and no director can fail to consider the implications of AI for the enterprise. The technology's potential to create economic dislocation, and the attendant opportunities and risks, cannot be overstated. Every company must ask: how can we benefit from AI? And: what are the risks AI poses to our business, and how can they be mitigated?
- *Regulation.* Governments of every major jurisdiction are contemplating significant regulation of AI. In the United States, multiple branches of government and overlapping regulatory bodies, including the [IRS](#), the [SEC](#), the [FTC](#), and [The White House](#) are calibrating new rules for the new technology. Every company must monitor and prepare for the coming compliance challenge.
- *Privacy and data protection.* [State](#), [federal](#) and [international](#) governments are increasingly focused on the privacy and data protection implications of all technology, and AI will become a focal point — giving rise to new risks, not only for compliance but also private litigation exposure.
- *Caremark and corporate governance.* For any company that comes to face AI-related liability, board practices related to AI will come under fierce scrutiny. Under the *Caremark* standard (which we have written about [here](#), [here](#), and [here](#)), directors must identify key enterprise risks and establish a reasonable oversight structure to address them. Board-level oversight calibrated to AI's significance for each particular business is a new imperative.

This list is merely a beginning. AI has the foreseeable potential to affect every aspect of the workplace, to upend labor relations and the relationship between corporations and their stakeholders, to create new species of tort liability, and to disrupt entire industries. As with all economic disruptions, vigilant boards will seize opportunity and manage risk. That familiar challenge, applicable to all boards at all times, is now acute as to this complex new technology.

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