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Board Minutes Are Not a Job for AI

Well-drafted minutes protect the board from hostile challenges to board action and, thus, should still be prepared by a human corporate secretary.

BY DOUG RAYMOND

It was bound to happen, but in the middle of a board meeting focused on an important strategic discussion, it still came as a surprise that the corporate secretary was recording the meeting using a generative AI program they were then going to use

to create the meeting minutes. AI-based board tools are becoming increasingly popular in boardrooms and are being marketed as reducing the often-substantial effort required for setting agendas and preparing minutes. There are now dozens

of programs that perform similar functions, though it is not clear whether this development benefits the company or its board.

The principal concern regarding usage of AI tools in the boardroom remains their current lack of reliability. Even though some programs advertise their ability to identify individual speakers and take verbatim notes, the risk of error and hallucinations is still far from trivial, and the presence of the tool may naturally lead to decreased

vigilance by the corporate secretary on important details, allowing meaningful mistakes to persist.

In addition, these tools inevitably create a record of the meeting, if not an actual transcript, which raises additional concerns. First, this sensitive information may be stored in cloud-based systems where security cannot be guaranteed. The data could potentially be used to train other AI tools — in doing so, becoming publicly available. Or it could be accessed by the provider

of the AI tool or by others who legitimately, or covertly, gain access to the information, including through hacking, data leaks or other cyberattacks. Second, if this information from the board meeting is retained by the tool, it could waive the attorney-client privilege of otherwise protected discussions that occurred during the meeting. This means, if that information becomes relevant in a lawsuit, the information (or even the testimony from directors regarding the board discussions or presentations) may be discoverable by hostile parties. As a result, retaining AI-created transcripts or other materials reflecting board deliberations can create unwelcome risks and should generally be avoided.

More fundamentally, this approach can subtly undermine the proper role of board minutes. When prepared correctly, board minutes not only memorialize the proceedings, but reflect the tone and broader context of board deliberations. While AI excels at processing data, it lacks the ability to interpret context, tone and nuance — critical limitations in reporting on board meetings, in which discussions often involve complex, high-stakes decisions that can require close judgments based on multiple factors.

For example, an AI-generated transcription or summary of a board discussion about a sensitive issue, such as executive compensation or corporate restructuring, may miss the subtleties of the conversation, such as the concerns or reservations expressed by board members. And AI is not very good at interpreting sarcasm or humor. This lack of nuance can lead to documentation that, even if technically accurate and non-hallucinatory, is nonetheless incomplete in terms of capturing the full context of a discussion or the decision-making process.

tasks, the human touch is necessary so the final product accurately captures the essence of the meeting. The corporate secretary should tailor the minutes to the significance of the specific matters being considered and the risk that they may later be examined by unfriendly eyes. The secretary should start by deciding which agenda items require board action. Less detail is generally appropriate where the board is not taking action, especially when agenda items, such as reporting on historical financial results, are reflected in other reports or filings. However,

way into the company's risk factor disclosures in its securities filings.

A similar principle applies when the board does take action. For example, the minutes should be more detailed for discussions concerning significant actions, such as recapitalizations or mergers, or the compensation arrangements for the new CEO. On the other hand, discussions about the regular quarterly dividend need not be particularly detailed.

Because well-drafted minutes are needed to protect the board from hostile challengers to board action,

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Moreover, AI cannot yet replace human judgment in interpreting ambiguous or contradictory statements. In situations where directors disagree or where the conversation takes unexpected turns, AI protocols may struggle to accurately reflect the discussion in the minutes.

To address these limitations, human oversight remains central to the preparation of board minutes. While AI tools can be useful to assist with routine

even where specific action is not being taken, if the matters being discussed are important or out of the ordinary, more discussion may be appropriate. For example, even if the directors are not taking action, more detail should ordinarily be provided about a discussion of the challenges facing an important new business initiative than may be typical for ordinary quarterly reporting, particularly if the risks are likely to find their

they need to be prepared thoughtfully and, at least in part, with an eye and ear to how they may be seen in hindsight by an unfriendly reader. While AI tools are more and more prevalent, they are not yet up to the task of protecting the board and should be used with care. ■

Doug Raymond is a partner at *Faegre Drinker Biddle & Reath*. He can be reached at douglas.raymond@faegredrinker.com.