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# The Board's Oversight Role in Cybersecurity: Trends in Preparedness and Response

# Speakers



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# Back to Basics: Overview of Directors' Fiduciary Duties

# Fiduciary Duties Related to Cybersecurity Risks

- Duty of care and duty of loyalty
- *Caremark* – Duty of loyalty includes the Board’s obligation to oversee and monitor the corporation’s significant risks and legal compliance in good faith. Directors may be liable if they:
  - Utterly failed to establish any reporting or information system or controls or
  - Consciously failed to monitor or oversee its operations
- Cyber-related shareholder litigation
  - *Construction Industry Laborers' Pension Fund vs. Mike Bingle et al.*, C.A. No. 2021-0940-SG (Del. Ch.) (SolarWinds)
  - *In Re Yahoo! Inc. Shareholder Litigation*, No. 17-CV-307054 (Ca. Sup. Court)

# Meeting Fiduciary Obligations

- Resource allocation
- Routine pre-breach reports on cybersecurity program and evolving risks
- Notification and updates on significant incidents
- Appropriate balance between management and the Board



# Evolution of Director Involvement

# Pre-Incident Board Reporting and Training



FIGURE 1 MY BOARD'S UNDERSTANDING OF CYBER RISK TODAY HAS SIGNIFICANTLY IMPROVED, COMPARED TO TWO YEARS AGO.



Strongly disagree    Somewhat disagree    Neither agree nor disagree    Somewhat agree    Strongly agree

Percentages may be +/- 100 due to rounding

Source: 2022 NACD Public Company Board Practices and Oversight Survey (p. 6).

# SEC Cybersecurity Rules

- Disclose “material” cybersecurity incidents on Form 8-K, Item 1.05, within 4 business days of materiality determination
  - Disclose nature, timing, scope, material impact or likely impact of the incident, including on financial condition and results of operation
- Disclose in annual report:
  - Cyber risk management and strategy
  - Cyber risk governance at the executive and Board level





# Board Involvement in Incident Response

# Governance Structure

# Director Expertise and Recruiting

# Questions & Contacts



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