



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



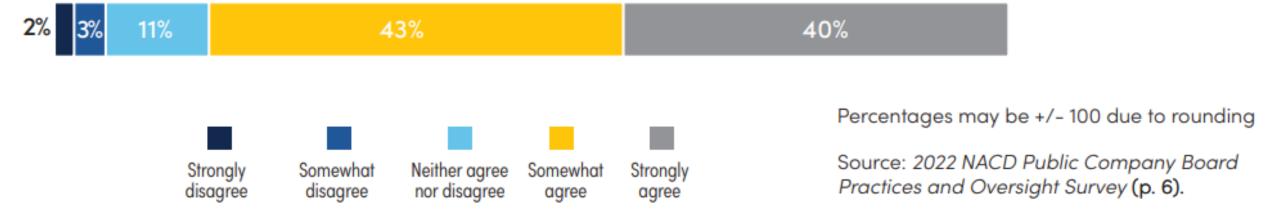
Evolution of Director Involvement



Pre-Incident Board Reporting and Training



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



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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