

C++ to C-Suite – The Future of AI in Corporate Governance

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On September 12, 2024, BOTS Inc. (OTC: BTZI), a company specializing in artificial intelligence (AI), blockchain, and cyber security services, unveiled their new President – GROK, an AI system developed by Elon Musk's xAI that is also integrated into X (formerly known as Twitter).¹

As the world's first AI President, BOTS Inc. claims that GROK's unique characteristics, such as speed, capability, personality, and real-time information processing, make it an ideal candidate to be the President of the corporation. BOTS Inc. states that the benefits of an AI President include "24/7 operational capabilities, instant decision-making, and data-driven insights,"² all of which can inform efficient and effective governance.

However, BOTS Inc. is not the first public company to introduce AI into a leadership role, as China-based video game company NetDragon Websoft Holdings Limited (Hong Kong Stock Code: 0777) appointed Tang Yu, an AI program, as its CEO in August 2022.³ This appointment appears to be fruitful as it raised the company's share price by 10% as of March 2023, and received national recognition with Tang Yu being awarded "China's Best Virtual Employee of the Year" by the China Digital Human Industry Forum.⁴

But outside of garnering media attention as an industry disruptor, does AI have a place in the C-suite?

Corporate Executives and AI

The coveted positions of C-suite executives have historically been reserved for experienced, business-savvy individuals, with the belief that their experience and intelligence will facilitate innovation and act as the most effective catalyst for growth within the corporation. However, this trend is poised to be disrupted by strides in AI technology over the course of the past five years. Hypothetically, the utilization of an AI executive presents an opportunity to blend strategic thought with analytical data and real-time data to provide a corporation with directives that could lead to growth to at least the same, if not a better, level than can be provided by a human executive member.

As controversial as this may sound, in a 2023 poll conducted by edX, a for-profit online education platform, almost half (49%) of polled CEOs agreed that a substantial amount, if not all, of their duties should be either automated or replaced by AI entirely.⁵ With more corporations integrating AI positions in corporate leadership roles, it is important to consider the benefits and concerns of instating an AI as an executive member.

What Implications Can AI Appointments have on Corporate Governance?

Benefits

When comparing an AI executive to its human counterpart, there are a few notable benefits that stand out. An understated benefit is AI's ability for impartial decision-making. The absolute impartiality of AI is up for debate, and ultimately the risk of biased data is a substantial issue in the AI community, but within the narrow scope of corporate growth, it is possible for AI to remain unhindered by the same unconscious bias or emotion-based decisions that its human executive counterparts may be constrained by. This allows an AI executive to provide informed and effective direction that is solely targeted towards the best interests of the corporation. For example, "short-termism," the process by which corporate executives push for short-term corporate growth at the expense of long-term sustainability, is often driven by a need to respond to market pressures and satisfy shareholders with short-term performance.⁶ Conversely, AI operates on the mandate it is provided. As such, if the AI executive is mandated to protect the long-term interests of the corporation, it will tend to avoid corporate strategies that are focused solely on short-term returns. This is a facet of the impartial decision-making potential of AI, as AI is generally programmed to be unconcerned with any influences that fall outside of its provided mandate.

Another benefit of an AI executive is the sheer processing power possessed by AI systems. AI has a greater breadth of knowledge at its disposal, including historical and real-time data in the case of GROK, the ability to process and rationalize the data to the prompt at hand, and provide tailored results in a cohesive and comprehensive manner. These results would be available around the clock and could be produced in a matter of seconds or minutes. This level of speed and efficiency is particularly useful in time-sensitive transactions. For example, if a corporation is considering merging with, or acquiring, another business, an AI executive would be able to process relevant due diligence, review definitive legal documentation, account for current market trends, and analyze the benefits and drawbacks of the transaction to provide a response in a fraction of the time it would require its human counterparts to reach a similar conclusion.

Concerns

In theory, AI satisfies the CEO caricature that is expected of corporate executives; but a major concern of this approach to corporate governance is that it may lack the human element necessary for effective leadership and decision making. Decisions based on human emotion can be a design instead of a flaw – when there is a corporate mishap, executives may be better served with an appeal to emotion rather than an appeal to logic, and currently AI still struggles with connecting to human emotionality.⁷ The concern regarding AI's lack of humanity is coupled with the concern that AI is unable to approach moral and ethical concerns in the same ways as humans. It is possible that AI could recommend and implement strategies that simply prioritize the corporation over, or at the expense of, humanity, which is both socially undesirable and could ultimately lead to public disparagement of the corporation.

Cassels

Another concern is that while AI can compile, analyze, and extrapolate swathes of relevant data, it has not yet proven to be capable of independent business strategy. AI cannot yet automate strategy development, meaning that while AI may be positioned to aid in the development of a sound strategy, it is not yet effective at deciding which strategy to implement.⁸ In part, this is due to another overlapping concern, that when providing results, AI is largely a black box regarding its “thought process.” Namely, we have no idea how AI systems make their decisions. Human intervenors are able to see the prompt and the result, but there is no reliable method of retracing an AI’s steps in coming to its conclusion. Strategic corporate decisions often have substantial consequences which necessitate this level of transparency in order to establish confidence in making such decisions. In turn, AI can make useful suggestions, but without the context of how AI reached its conclusion, it still may be necessary for a human interpreter to make the final decision.

Finally, a growing concern exists with the concept of “AI washing” – when organizations exaggerate or falsely advertise the extent of their usage or development of AI. While the appointment of an AI executive member is sure to make headlines and intrigue the public, corporations should be certain that they are not making false or misleading statements regarding their disclosure obligations in relation to their AI usage. Making such statements may result in legal repercussions. For example, misrepresentations and misleading or untrue statements, are expressly prohibited pursuant to securities legislation in Canada.⁹ Although AI washing has yet to be enforced by Canadian securities regulators, in the United States, the Securities and Exchange Commission (SEC) has released two enforcement actions against investment advisor firms for AI washing.¹⁰ The Nova Scotia Securities Commission published an article in response to the SEC’s enforcement actions against AI washing and noted that they are monitoring corporations under their jurisdiction for instances of false or misleading statements in relation to AI.¹¹ Accordingly, corporations and executives should remain vigilant in their disclosure practices related to the use of AI in their organizations, in order to ensure that all relevant statements and public disclosure is in compliance with applicable securities laws.

Broader Ethical Issues with Artificial Intelligence Use in Corporate Governance

As with many emerging technologies, the issues surrounding AI extend beyond the C-suite but are still important to address as they may still impact corporate governance. These issues are relevant for corporations utilizing AI as a tool or as an executive.

A top-of-mind concern for corporations should be that corporations are often bound by ethical rules and regulations that govern their business practices; however, AI models, such as GROK, are not necessarily subject to these same regulations or accountability. For example, it is ultimately unclear where the legal responsibilities are assigned for actions taken by an AI executive or an AI executive tool that produces a sanctionable action.

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Moreover, despite the possibility of AI producing impartial decision-making as discussed above, AI systems can be compromised when the input data is inherently biased by its users, resulting in machine learning outputs that are biased. Because an AI's output depends on the data upon which it is trained, if the AI is trained on a biased input, it can unintentionally replicate the same racial, gender, communal, and ethnic biases.¹² As such, if the AI system's human intervenors or users are unaware of these concerns, the output may reflect the status quo. Additionally, there are major privacy issues that include data persistence and the right to be forgotten (data existing longer than the humans that created it and the inability for people to request that data be wiped off servers), data repurposing (data being used beyond its original purpose), and data spillovers (when data is collected from people who are not the target of data collection).¹³ Certain AI and machine learning tools may not have clear guidelines on how input information is shared with third parties or destroyed and de-identified.

Lastly, in Canada, it is unclear, but unlikely, that any work created by AI algorithms will be protected under any copyright laws.¹⁴ However, because of the rapid proliferation of protected AI-generated works over the past few years, it has become more difficult for users of AI to avoid risk.¹⁵ The copyright doctrine of independent creation means that a work that is produced independently will not infringe copyright even if it is coincidentally identical. However, if an AI is trained on a dataset that includes a protected work and produces a substantially similar output, then it can be argued that the AI had access to the protected work and the similarity may not be considered a coincidence.¹⁶ For example, if an AI replaced the role of an executive in a creative or marketing role, such as the Chief Marketing Officer (CMO), the resulting work may not be protected by copyright. The benefit of utilizing an AI CMO would be the ease of use in the creation of promotional materials, and the ability to blend real-time analytics with promotional campaigns to adjust marketing on the fly. However, if the AI CMO's output is substantially similar to a protected work and if it can be shown that the AI's input included the protected work, then the AI CMO, and any of its creations, may not be protected under copyright laws and the corporation may be exposed to legal liabilities.

Key Takeaways

AI has numerous benefits to offer organizations, including as potential C-suite executives, but at present, it is not yet ready to take the reins and lead a corporation. Despite this, the use of AI as a tool is becoming, and is anticipated to be, increasingly common in corporate leadership roles. Although AI's ability to process data exceeds that of its human counterparts, the balanced decision-making offered by humans cannot yet be replicated by machines. As such, AI should inform the decisions taken by executives, not replace them.

If you or your organization are curious about the use of AI in your corporation, please reach out to members of our [Securities](#) Group and [Blockchain & Digital Assets](#) Group for advice on corporate governance.

¹ BOTS Inc., "BOTS INC. (BTZI) Appoints GROK as Its President in Historic AI Leadership Move" (12 September 2024), online: <globenewswire.com/news-release/2024/09/12/2945013/0/en/BOTS-INC-BTZI-Appoints-GROK-as-Its-President-in-Historic-AI-Leadership-Move.html>.

² *Ibid.*

³ Anthony Cuthbertson, "Company that made an AI its chief executive sees stocks climb" (16 March 2023), online: <independent.co.uk/tech/ai-ceo-artificial-intelligence-b2302091.html>.

⁴ NetDragon, "NetDragon's AI Leader Tang Yu Named China's Best Virtual Employee of 2024" (last visited 16 September 2024), online: <netdragon.com/content/2024-04-28/20240428231345555.shtml>.

⁵ edX, "edX Survey Finds Nearly Half (49%) of CEOs Believe Most or All of Their Role Should be Automated or Replaced by AI" (19 September 2023), online: <press.edx.org/edx-survey-finds-nearly-half-49-of-ceos-believe-most-or-all-of-their-role-should-be-automated-or-replaced-by-ai>.

⁶ CFA Institute – Research and Policy Centre, "Short Termism" (19 October 2019), online: <rpc.cfainstitute.org/en/policy/positions/short-termism>.

⁷ Raffaella Sadun et al, "The C-Suite Skills That Matter Most" (July – August 2022), online: <hbr.org/2022/07/the-c-suite-skills-that-matter-most>.

⁸ Yuval Atsmon, "Artificial intelligence in strategy" (11 January 2023), online: <mckinsey.com/capabilities/strategy-and-corporate-finance/our-insights/artificial-intelligence-in-strategy>.

⁹ In Ontario, RSO 1990, c S 5 at Part XXIII and s 126.2(1).

¹⁰ U.S. Securities and Exchange Commission, "SEC Charges Two Investment Advisers with Making False and Misleading Statements About Their Use of Artificial Intelligence" (18 March 2024), online: <sec.gov/newsroom/press-releases/2024-36>.

¹¹ Nova Scotia Securities Commission, "What is AI Washing?" (8 May 2024), online: <nssc.novascotia.ca/before-you-invest/what-ai-washing>.

¹² Kristen Thomasen, "Will AI revolutionize the legal profession? The jury is still out." (2 May 2023), online: <allard.ubc.ca/about-us/news-and-announcements/2023/will-ai-revolutionize-legal-profession-jury-still-out>.

¹³ Guy Pearce, "Beware the Privacy Violations in Artificial Intelligence Applications" (28 May 2021), online: <isaca.org/resources/news-and-trends/isaca-now-blog/2021/beware-the-privacy-violations-in-artificial-intelligence-applications>.

¹⁴ Kosta Mitrofskiy, "Artificial Intelligence (AI) in the Law Industry: Key Trends, Examples, & Usages" (11 August 2023), online: <intellisoft.io/artificial-intelligence-ai-in-the-law-industry-key-trends-examples-usages/>.

¹⁵ Carys J. Craig, "Chapter 1: AI and Copyright" in Florian Martin-Bariteau & Teresa Scassa, eds, *Artificial Intelligence and the Law in Canada* (Toronto: LexisNexis Canada, 2021) at 10.

¹⁶ *Ibid* at 13.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.