

# Technology in the Board Room

## *How Electronic Portals Affect Fiduciary Duties*

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The basic fiduciary standard that directors must exercise “due care” in overseeing their banking organizations hasn’t changed in the last century. However, the concept of what is required for directors to meet this fiduciary duty has changed dramatically. A generation ago, directors could be satisfied that they had discharged their duty of due care adequately by showing up for an hour-long meeting once a quarter, being reasonably attentive during the meeting, and voting on matters when called to do so.

In the banking world today, directors are expected to have reviewed and be knowledgeable about hundreds of pages of monthly reports and have an ongoing working knowledge of a multitude of detailed bank policies that can easily be thousands of pages long. With little or no time to absorb such massive amounts of information, directors then are expected to actively participate in meetings and decide upon matters with the expectation that they fully understand all of the information provided to them.

Technology can make a director’s job less difficult because of the ease in which information can be provided, but it also has had the effect of inundating directors with so much information that they can lose sight of how to oversee a banking organization effectively. The challenge is how to use technology in a manner

that assists directors in meeting their fiduciary duties rather than burying them in a mountain of paper.

Electronic portals, if established and managed properly, can be an effective tool to help directors meet their fiduciary duties. A secure means for directors to access board reports and other pertinent bank information electronically, an electronic portal can be developed internally by a bank’s IT department or may

be obtained from one of a number of third-party service providers.

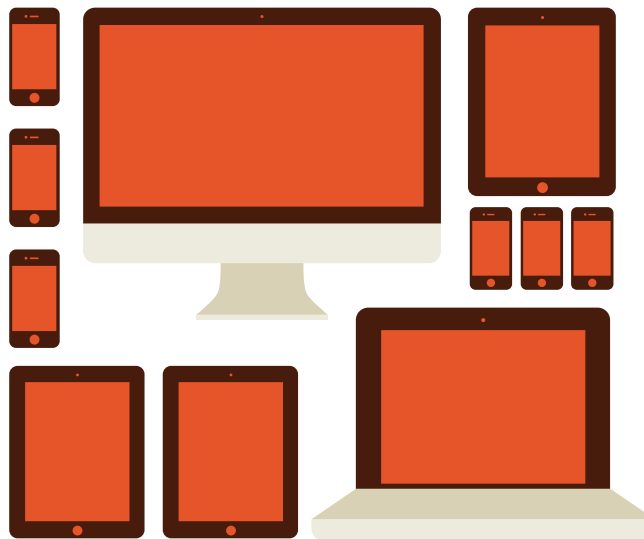
Such portals can be as simple as a secure means for directors to access board packet materials or can be an elaborate electronic site containing bank policies, calendars, directories, and training modules. Some electronic portals give directors the capability to communicate with each other electronically, which provides a level of security higher than unencrypted e-mails

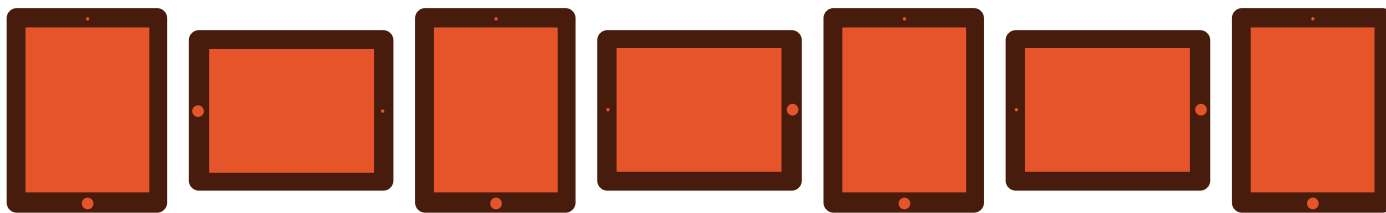
between directors.

There are two key considerations in establishing an electronic portal—ensuring the site is secure and ensuring directors will actually use the site. A well-designed site makes it easy for a director to focus on important information while providing the flexibility to access detailed information as needed. A poorly designed site can lead to frustration and make a director’s job even more difficult.

Security is paramount. In an age where cyber-attacks are commonplace and banks increasingly are viewed as attractive targets, any electronic portal containing sensitive bank information must be established and maintained using the most up-to-date security protection available. One of the key advantages of an electronic portal is that it can provide a bank with a much higher level of security compared to the traditional manner of sending information to directors, such as mailing paper packets of information or sending information electronically via unencrypted e-mail. In addition, electronic portals can be built so that only authorized personnel have access to the site compared to maintaining paper files of board information that may be accessed by unauthorized persons.

After taking into account security considerations, the next most important aspect of an electronic portal is that it be designed and maintained so





directors will actually use it. Posting critical information on a site that is never accessed by a bank's directors actually increases the risk of director liability for failure to exercise due care in reviewing the available information.

Here are some suggestions for designing and maintaining a site that directors will actually use:

**1. Keep it simple.** Ideally, the site should be easily accessible via an iPad or other portable electronic device so directors can access the site wherever they are located, including the board room at the time of a meeting. Designing the site so that the most important information is prioritized, with the ability to "click-through" information to access more detailed information, is an important aspect of any electronic site.

**2. Solicit input.** Bank directors need to receive certain information, while other information is optional. Rather than posting every piece of information a bank may have available or purchasing a system from a vendor that has a lot of high-tech features that will never be used, it is important to solicit input from directors as to what they need and want in a site, and then design the site accordingly.

**3. Provide for flexibility.** Boards often are composed of directors from diverse backgrounds, some of whom may be techno-geeks while others are devoted to paper. Depending upon the make-up of a particular board of directors, providing flexibility is key. In some instances, a few directors may prefer to receive the paper board packets while a majority of the directors are fine with accessing the information electronically. In those situations, it is important to provide options for directors so that each

director can have access to the information in a format most likely to ensure it will be reviewed.

**4. Provide training for bank staff.** It is important to train personnel who upload bank information on the site to arrange information in a systematic way to allow for easy access. Providing for "tabs" or "menus" so current information can be located easily is important to encourage directors to use the site on an ongoing basis. One of the advantages of an electronic portal is the ability to access historic information, but if the site is organized poorly, information can quickly become buried and difficult to locate.

**5. Provide training and support for directors.** Even if the site is simple to use, directors should receive basic training to encourage them to use the site. It is also important to provide "help desk" capability. If a director has problems, such as forgetting a password or is unable to connect to the site, the director knows whom to call to remedy the situation.

**6. Maintain the site.** Once a site is established and a procedure is developed to download information on a monthly basis, it is fairly easy to maintain. However, it is important to designate personnel to review the site periodically, archive or delete stale information, and monitor the overall usefulness of the site to ensure it continues to serve its purpose.

### Conclusion

An electronic portal can offer numerous benefits. It can help directors

fulfill their legal obligations in a manner that is convenient, saves time, and promotes security of confidential information. An electronic portal avoids the risk of sending sensitive documents through unprotected e-mails or printing and mailing bulky board packets. It also provides a record of director review and consideration of bank information to support that the directors are meeting their fiduciary duties in overseeing the bank's affairs.

Including information such as directories and calendars within a site provides useful tools for directors. Maintaining historic information on the site allows directors an easy means to access information when needed rather than trying to keep old paper copies of board packets.

Despite these advantages, electronic portals are not risk-free. If the bank makes the decision to use an electronic portal for posting information, it is important that the portal be secure and designed so that the bank's directors will actually use it. A poorly designed portal risks subjecting directors to additional liability if they do not review the information that is available on the site.

In addition, once the site is established, it is important to provide for ongoing maintenance of the site—deleting stale information in a systematic manner and updating the site as needed to maintain accuracy and relevance. ■



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