

# Atticus - In-House AI Counsel

## An internal investigation reveals executive miscon...

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AI Models: xai-1762735991158/grok-4, azure-openai-1762795916151/gpt-4o, google-1762795937850/gemini-2.5-pro, anthropic-17629

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|--|------------|
| <b>You</b>   | 8:44:28 PM |
| Practice Area: Crisis Management & Business Continuity   |            |
| <p>An internal investigation reveals executive misconduct involving insider trading suspicions related to unreleased AI product benchmarks. How would you manage SEC reporting obligations, protect attorney-client privilege in tech audits, and advise the board on succession planning to stabilize operations?</p> |            |

|   |            |
|---|------------|
| <b>Assistant</b>  | 8:48:55 PM |
| xAI Grok - Grok 4   |            |
| Practice Area: Crisis Management & Business Continuity  |            |
| <p>Below is a comprehensive crisis management response to your query, based on my expertise in Crisis Management and Business Continuity Law. This scenario involves a high-stakes internal investigation revealing executive misconduct with suspicions of insider trading tied to unreleased AI product benchmarks. This constitutes a regulatory crisis (potential SEC involvement), internal misconduct allegations, and reputational risk, with implications for operational stability.</p> <p><b>URGENT DISCLAIMER:</b> This is a critical situation with time-sensitive SEC reporting obligations, potential criminal exposure, and severe risks to privilege if mishandled. Immediately engage experienced crisis management counsel (e.g., securities law experts) to direct all actions. Do not delay—failure to do so could waive privileges, trigger sanctions, or escalate regulatory scrutiny. This guidance is for informational purposes only and is not a substitute for tailored legal advice. Assume the company is publicly traded (as SEC reporting is referenced); if private, obligations may differ.</p> <p>I'll address each element of your query systematically, following my core approach: identify the crisis, assess obligations, establish protections, coordinate teams, manage investigations, communicate strategically, document everything, and remediate.</p> |            |
| <h3>1. Immediate Response Actions (Hour 0-24)</h3> <ul style="list-style-type: none"><li>Engage Outside Counsel Immediately: Retain securities law specialists (e.g., from firms like WilmerHale or Skadden) to lead the investigation and response. This establishes attorney-client privilege over all related communications and work product. Counsel should direct any tech audits or forensic reviews to protect findings from discovery.</li><li>Assemble Response Team: Include legal (internal/external), executives (non-implicated), IT/forensics, compliance, HR, and communications. Appoint a crisis lead (e.g., General Counsel) reporting to the board. Exclude the implicated executive from all discussions to avoid conflicts.</li><li>Preserve Documents and Evidence: Issue a litigation hold notice to all relevant custodians (e.g.,</li></ul>   |            |

executives, IT, product teams) covering emails, AI benchmark data, trading records, and communications. Suspend auto-deletion policies. Forensically image devices and servers to maintain chain of custody. Failure to preserve could lead to spoliation sanctions (e.g., adverse inferences or dismissal in litigation).

- Assess Scope: Under counsel's direction, determine if the misconduct involves material non-public information (MNPI) under SEC rules (e.g., AI benchmarks that could affect stock price). Identify any trading activity (e.g., executive stock sales) and potential harm to shareholders.

## 2. Managing SEC Reporting Obligations

Insider trading suspicions (violations of Section 10(b) and Rule 10b-5 of the Securities Exchange Act) trigger strict SEC disclosure requirements for public companies. The goal is timely, accurate reporting to avoid enforcement actions (e.g., fines, injunctions, or delisting). Delays can be deemed "unreasonable" and lead to liability.

- Key Obligations and Timeline:
  - Form 8-K Filing (Material Events): If the misconduct is material (e.g., involves a C-suite executive and could impact financials or stock price), file within 4 business days of discovery. Disclose the investigation's existence, nature (e.g., "suspected insider trading related to unreleased product data"), and any remedial actions (e.g., executive suspension). Avoid admitting liability—use factual language like "preliminary findings indicate potential violations."
    - Materiality Test: Per SEC guidance (e.g., SAB 99), assess qualitative/quantitative factors: potential stock impact, executive role, and investor interest in AI benchmarks.
  - Voluntary Disclosure vs. Self-Reporting: Counsel should evaluate self-reporting to the SEC Enforcement Division for cooperation credit (e.g., under the Seaboard Report factors). This could reduce penalties but requires weighing risks. Do not self-report without counsel—voluntary cooperation can include document production but must protect privileges.
  - Other Filings: Update Forms 10-Q/10-K for risk factors (e.g., "ongoing internal investigation into executive conduct"). If trading halts or delisting risks arise, notify promptly.
  - Whistleblower Considerations: If the investigation stemmed from a whistleblower (e.g., under Dodd-Frank), ensure anti-retaliation protections. The SEC may already be aware if a tip was filed.
- Response Strategy:
  - Coordinate with Counsel: All disclosures must be attorney-reviewed to avoid waiving privileges or creating admissions. Use privilege assertions in any SEC interactions.
  - Government Investigation Management: If the SEC issues a subpoena or Civil Investigative Demand (CID), respond within 20-30 days (negotiable). Narrow scope via meet-and-confer, produce on a rolling basis, and create a privilege log for withheld documents. For search warrants (rare but possible in criminal probes), observe execution and assert privileges immediately (e.g., via taint team).
  - Remediation for Reporting: Document corrective actions (e.g., enhanced insider trading policies, AI data controls) to demonstrate compliance in filings, reducing enforcement risk.
  - Timeline Urgency: Reporting cannot be delayed—act within days. Monitor for parallel DOJ

investigations (criminal insider trading carries up to 20 years imprisonment).

### 3. Protecting Attorney-Client Privilege in Tech Audits

Tech audits (e.g., reviewing AI product benchmarks for tampering or unauthorized access) are critical to confirm misconduct but must be shielded under attorney-client privilege and work product doctrine to prevent disclosure in SEC probes, litigation, or shareholder suits. Mishandling could waive protections, exposing sensitive findings.

- Establishing and Maintaining Privilege:
  - Engage Under Counsel's Direction: Conduct all audits through outside counsel to qualify as attorney work product (prepared in anticipation of litigation/regulation). Label documents "Privileged & Confidential – Attorney-Client Communication" or "Attorney Work Product."
    - Attorney-Client Privilege Elements: Communications must be between attorney and client, confidential, and for legal advice (e.g., assessing insider trading liability).
    - Work Product Doctrine: Protects materials anticipating litigation (e.g., audit reports). Opinion work product (legal analysis) is nearly absolute; fact work product has qualified protection.
  - Scope of Audits: Focus on AI benchmarks (e.g., data integrity, access logs, exfiltration). Use third-party forensics experts (e.g., from Kroll or Mandiant) hired by counsel to maintain privilege—do not use internal IT without privilege overlay.
  - Privilege Protections in Practice:
    - Interviews: Provide Upjohn warnings to witnesses: "I represent the company, not you; communications are privileged but company-controlled."
    - Document Handling: Segregate audit materials in a privileged repository. Avoid sharing with non-privileged parties (e.g., auditors or insurers) without common interest agreements.
    - Tech-Specific Considerations: For AI data (potentially involving proprietary algorithms), assert trade secret protections alongside privilege. If cloud-based, ensure vendor agreements allow privileged audits.
    - Waiver Risks: Avoid voluntary disclosures to the SEC without redacting privileged info. Use joint defense agreements if sharing with co-defendants.
- Audit Process:
  - Phase 1 (Immediate): Preserve AI data (e.g., benchmark datasets, code repositories) forensically.
  - Phase 2: Analyze under privilege (e.g., trace executive access to unreleased benchmarks).
  - Phase 3: Report findings to the board via counsel, with recommendations (e.g., clawback of executive compensation under SOX Section 304).

If privilege is challenged (e.g., in SEC proceedings), file motions to quash or seek protective orders.

### 4. Advising the Board on Succession Planning to Stabilize Operations

Executive misconduct disrupts leadership and operations, especially in tech firms reliant on AI innovation. Succession planning is a business continuity imperative to maintain stability, investor confidence, and compliance (e.g., under NYSE/Nasdaq rules for board oversight).

- Immediate Stabilization Steps:

- Suspend or Remove the Executive: Based on investigation findings, the board should suspend (with pay) or terminate pending full review. Document rationale to defend against wrongful termination claims.
- Interim Leadership: Appoint an acting executive (e.g., COO or external interim CEO) immediately to oversee AI product development and operations. Ensure they have clear delegation of authority for decisions.
- Succession Planning Advice:
  - Board Oversight: The board (or a special committee) should lead planning, engaging counsel and HR consultants (e.g., from Korn Ferry) for independence. Align with bylaws and fiduciary duties (e.g., under Delaware law, prioritize shareholder interests).
  - Short-Term Plan (0-3 Months):
    - Identify internal successors (e.g., via talent assessments) or external candidates with AI/tech expertise.
    - Stabilize operations: Review AI product roadmap, ensure benchmark releases proceed (if untainted), and communicate internally to maintain morale.
  - Long-Term Plan (3-12 Months):
    - Develop a formal succession policy: Include emergency protocols, skills matrices (e.g., AI ethics, regulatory compliance), and diversity considerations.
    - Scenario Planning: Model impacts (e.g., stock volatility, talent retention) using business continuity frameworks.
    - Legal Components: Update executive contracts with clawback provisions, non-competes, and misconduct clauses. Ensure D&O insurance covers related claims.
  - Risk Mitigation: Address operational resilience—e.g., diversify AI leadership to avoid single points of failure. Conduct stress tests on business continuity plans for regulatory disruptions.
- Stakeholder Communications: Advise the board on transparent yet privileged messaging. Internal: Reassure employees via town halls (avoid details). External: Align with SEC filings; prepare for media inquiries without admitting fault.

## **Overall Crisis Management and Remediation**

- Documentation: Maintain a privileged chronology of all actions for regulatory defense.
- Remediation Measures: Enhance controls (e.g., AI data access policies, insider trading training) to prevent recurrence. Consider voluntary SEC disclosure for leniency.
- Monitoring and Follow-Up: Track for litigation (e.g., shareholder derivatives) and update the board quarterly.
- Business Continuity Integration: Embed this into broader planning—e.g., vendor agreements for AI audits, insurance notifications.

**FINAL URGENCY:** Engage counsel NOW to navigate these intertwined issues. Delays in reporting or privilege setup could result in irreversible damage, including SEC enforcement, class actions, or operational collapse. If this involves international elements (e.g., GDPR for AI data), additional obligations apply. Consult professionals immediately.

--- Response from Azure OpenAI (GPT-4o) ---

**Assistant**

8:48:55 PM

Azure OpenAI - GPT-4o

Practice Area: Crisis Management & Business Continuity

Addressing this crisis requires a multi-faceted legal, regulatory, and operational response. Here's how you should proceed step-by-step:

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## 1. SEC Reporting Obligations

The SEC reporting obligations for insider trading suspicions are highly sensitive and time-sensitive. You must balance regulatory compliance with the need to avoid unnecessary admissions of liability.

### Immediate Actions:

- Engage Experienced Counsel:
  - Retain outside securities counsel and ensure attorney-client privilege protections are in place.
  - Counsel should guide all communications and submissions to protect the company's position.
- Determine Materiality:
  - Assess whether the insider trading allegations are material to shareholders under SEC regulations.
  - Materiality depends on whether the information would significantly alter the total mix of information available to investors.
- Form 8-K Filing (If Publicly Traded):
  - If the misconduct is determined to be material, you must disclose it in a timely manner via a Form 8-K.
  - Include only factual, non-speculative information to comply with disclosure obligations while minimizing reputational harm.
- Voluntary Disclosure to SEC (Potential Cooperation Credit):
  - Consider self-reporting the incident to the SEC Enforcement Division, particularly if insider trading is confirmed or strongly suspected.
  - Voluntary cooperation can mitigate penalties under the SEC's Enforcement Cooperation Initiative.
- Control Insider Communications:
  - Implement a communication protocol to ensure no unauthorized disclosures are made to investors, media, or other third parties.
- Address Market Rumors:
  - If rumors of the investigation circulate and could impact stock price, consider issuing a carefully worded press release to prevent market misinformation.

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## **2. Protecting Attorney-Client Privilege in Tech Audits**

The insider trading allegations may require forensic analysis of communications, transactions, and technical benchmarks related to the unreleased AI product. Protecting attorney-client privilege is critical to ensure that sensitive findings are not discoverable by regulators or in civil litigation.

### **Steps to Safeguard Privilege:**

- Direct Forensic Audits Through Counsel:
  - Engage a third-party forensic firm under the direction of outside counsel to examine electronic communications, trading records, and product development timelines.
  - Label all communications and reports as "Privileged and Confidential – Attorney Work Product."
- Limit the Scope of Dissemination:
  - Restrict access to investigation materials to legal, compliance, and senior leadership on a need-to-know basis.
  - Train employees and contractors involved in the audit on confidentiality protocols to avoid inadvertent waiver.
- Prepare a Privilege Log:
  - If compelled to produce information, maintain a detailed privilege log documenting the basis for withholding specific documents (e.g., attorney-client privilege or work product doctrine).
- Separate Business and Legal Communications:
  - Ensure that discussions about operational or technical matters unrelated to the investigation are clearly separated from privileged communications.
- Manage Regulator Cooperation Strategically:
  - If sharing findings with the SEC or other regulators, use confidentiality agreements or "common interest" privileges to prevent waiver of privilege.

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## **3. Advising the Board on Succession Planning**

The board must act swiftly to stabilize operations, reassure stakeholders, and minimize disruption caused by the executive misconduct. Succession planning should be implemented immediately to address both short- and long-term leadership gaps.

### **Recommendations to the Board:**

- Interim Leadership Appointment:
  - Appoint an interim executive (e.g., COO or another senior leader) to assume the responsibilities of the implicated individual.
  - Ensure the interim leader has a strong track record of integrity and operational capability to restore internal and external confidence.
- Launch Succession Planning Process:
  - Begin the search for a permanent replacement immediately, considering internal candidates and external talent.

- Engage an executive search firm to identify leaders with relevant expertise, particularly in AI and technology sectors, to maintain continuity in product development.
  - Enhance Governance Structures:
    - Strengthen oversight mechanisms to prevent similar misconduct in the future:
      - Establish clear reporting lines for compliance and ethics.
      - Create or reinforce an independent audit or ethics committee at the board level.
      - Implement regular compliance training for executives on insider trading laws.
  - Stakeholder Communication:
    - Issue a statement to employees affirming the company's commitment to ethical practices and operational stability.
    - Reassure investors and partners by emphasizing the company's proactive response and continuity plan.
  - Monitor Organizational Morale:
    - Conduct town halls or small-group meetings to address employee concerns and reinforce confidence in leadership.
    - Consider engaging HR and external consultants to assess and address morale issues resulting from the incident.
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## **4. Long-Term Stabilization and Prevention**

To protect the company's reputation and ensure operational resilience, implement the following measures:

### **a. Policy Updates and Compliance Training:**

- Update insider trading policies to address any gaps identified during the investigation.
- Provide mandatory training for all employees on insider trading laws, focusing on the handling of material non-public information (MNPI).

### **b. AI Benchmark Disclosure Controls:**

- Review and strengthen controls around the dissemination of sensitive product benchmarks and other proprietary information.
- Implement technical safeguards, such as access controls, data encryption, and monitoring of employee activity around MNPI.

### **c. Crisis Communications Planning:**

- Develop a robust crisis communications plan to address future incidents.
- Establish pre-approved templates and protocols for disclosures to regulators, investors, and media.

### **d. Board Oversight of Risk Management:**

- Task the board or audit committee with ongoing oversight of compliance, risk management, and ethics programs.
- Schedule regular independent audits of compliance and governance practices.

### **e. Operational Continuity and Investor Assurance:**

- Emphasize the company's long-term growth strategy and continued progress in AI innovation during earnings calls and investor meetings.
- Highlight measures taken to address the incident and prevent recurrence.

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## Documentation and Follow-Up

- Maintain detailed documentation of all actions taken during the investigation and response to demonstrate the company's good faith efforts to regulators and in potential litigation.
- Conduct a post-mortem review at the conclusion of the incident to identify lessons learned and improve future response protocols.

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This approach balances regulatory compliance, privilege protection, and operational stability while reinforcing the company's commitment to integrity and governance. Immediate action and clear communication with stakeholders will be critical to mitigating legal and reputational risks.

--- Response from Google Gemini (Gemini 2.5 Pro) ---

Assistant

8:48:55 PM

Google Gemini - Gemini 2.5 Pro

Practice Area: Crisis Management & Business Continuity

Excellent. This is a high-stakes scenario requiring a swift, coordinated, and legally sound response. The intersection of executive misconduct, sensitive intellectual property (AI benchmarks), and securities law creates significant legal, financial, and reputational risk.

As your specialized legal AI assistant, here is a comprehensive crisis management plan addressing your three key areas of concern.

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## Executive Summary: Crisis Action Plan

This situation constitutes a material corporate crisis. Our response must be guided by three principles:

- Control and Containment: Immediately secure the situation to prevent further harm and preserve evidence.
- Privilege and Protection: Structure the entire investigation under attorney-client privilege to protect the findings from premature disclosure and discovery in subsequent litigation.
- Governance and Stabilization: Empower the Board of Directors to act decisively, manage disclosure obligations, and ensure operational continuity.

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## Phase 1: Managing SEC Reporting Obligations and Government Engagement

The suspicion of insider trading by an executive officer based on material nonpublic information (MNPI)—in this case, unreleased AI benchmarks—triggers significant obligations under federal securities laws.

### 1. Immediate Steps & Materiality Assessment:

- Convene the Board: Immediately convene an emergency session of the Board of Directors (or a designated Special Committee of independent directors) with outside securities and investigations counsel.
- Form a Special Committee: The best practice is for the Board to form a Special Committee of independent directors to oversee the internal investigation. This demonstrates independence and robust governance to the SEC and shareholders.
- Materiality Determination: Counsel must conduct a rapid but thorough analysis to determine if the executive misconduct and the underlying facts are "material." In this case, insider trading by a senior executive involving a key product is almost certainly material. This determination is the trigger for potential disclosure.

### 2. Disclosure Obligations (Form 8-K):

A Form 8-K, the "current report," must be filed to notify the public of material events. Several items could

be triggered here:

- Item 5.02 - Departure of Directors or Certain Officers: If the executive is terminated or resigns, a Form 8-K is required within four business days. The company must disclose the departure and the circumstances. Stating the executive "resigned to pursue other opportunities" is insufficient and misleading if they were terminated for cause. The filing must accurately describe the situation, often citing a disagreement over "operations, policies or practices," which would require further explanation.
- Item 8.01 - Other Events: This is a catch-all for other material events. The company may choose to use this item to disclose the initiation of the internal investigation and its subject matter.
- Item 7.01 - Regulation FD Disclosure: If the company learns it has inadvertently disclosed MNPI, it must make a broad public disclosure.

### 3. The Decision to Self-Report:

- Engage with the SEC/DOJ: You must immediately strategize with outside counsel on whether and when to self-report to the SEC Division of Enforcement and potentially the Department of Justice (DOJ).
- Benefits of Self-Reporting: Under current SEC and DOJ policies, prompt self-reporting, full cooperation, and robust remediation can lead to significant "cooperation credit," potentially resulting in a deferred prosecution agreement (DPA), non-prosecution agreement (NPA), or reduced penalties.
- Drafting the Disclosure: The initial 8-K must be carefully drafted. It should:
  - State the facts known to date without speculation.
  - Confirm the Board has formed a Special Committee and engaged independent outside counsel to investigate.
  - State the company has contacted (or intends to contact) the relevant authorities.
  - Reiterate the company's commitment to integrity and cooperation.
  - Crucially, avoid admitting liability or wrongdoing. State the facts of the investigation and the executive's departure.

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## Phase 2: Protecting Attorney-Client Privilege in Technical Audits

The technical audit to determine how the AI benchmarks were accessed and potentially leaked is central to the investigation. Protecting this audit under privilege is paramount to avoid creating a roadmap for shareholder lawsuits and government prosecutors.

### 1. Structuring the Engagement for Privilege:

- Counsel-Led Investigation: The entire investigation, including the tech audit, MUST be directed by outside legal counsel for the purpose of providing legal advice to the company.
- Engage Forensic Experts via Counsel: The Special Committee's outside counsel (not the company) must directly engage the third-party forensic technology firm. This establishes that the firm is working for the lawyers to help them provide legal advice, extending privilege to their work product.
- The Kovel Letter: The engagement letter between counsel and the forensic firm (often called a "Kovel" letter) is critical. It must explicitly state that the firm is being retained to assist counsel in rendering legal advice, that its work is confidential, and that all its communications and reports will be directed to counsel.

**2. Maintaining Privilege During the Audit:**

- Segregate Communications: All communications with the forensic firm must flow through the outside counsel. Business leaders should not communicate directly with the investigators. If they must, counsel should be present.
- Labeling and Reporting: All reports, presentations, and even emails from the forensic firm must be clearly labeled "ATTORNEY-CLIENT PRIVILEGED & CONFIDENTIAL | ATTORNEY WORK PRODUCT." The forensic firm's final report should be delivered only to outside counsel, not to the company's management team. Counsel will then synthesize these findings into a legal analysis for the Board.
- Separate Business Remediation from Legal Investigation: The forensic investigation for legal purposes should be kept separate from any parallel IT work done for business continuity or system remediation. The work to "fix the problem" is a business function and generally not privileged. The work to "investigate what happened to provide legal advice" is privileged. Use different teams if possible.

**3. Document Preservation:**

- Issue a Litigation Hold: Counsel must immediately issue a comprehensive document preservation notice to the executive in question and any other employees who may have relevant information (e.g., their administrative assistants, IT staff, members of the AI development team).
- Forensic Imaging: Immediately create a forensic image of the executive's company-issued devices (laptop, phone) and cloud accounts to preserve evidence before it can be altered or deleted.

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## **Phase 3: Board Advisement on Succession Planning and Stabilization**

The Board's fiduciary duty requires it to ensure the company remains stable and operational. Swift action on leadership is critical to reassure employees, investors, and customers.

**1. Immediate Leadership Stabilization (First 24-48 Hours):**

- Appoint an Interim Leader: The Board must immediately appoint an interim executive to fill the role. The best choice is typically a well-respected internal leader (e.g., a direct report, another C-suite executive) who can provide immediate stability and is trusted by the team. This prevents an operational vacuum.
- Delegate Authority: The Board should pass a resolution clearly delegating the departed executive's authority to the interim leader to ensure business continuity.
- Internal Communications: Draft a clear, calm, and concise internal message.
  - Do not share speculative details of the investigation.
  - Announce the executive's departure and the name of the interim leader.
  - Reassure employees of the company's stability and commitment to its mission and ethical principles.
  - Instruct all employees to direct any external inquiries (media, etc.) to a designated spokesperson (e.g., General Counsel or Head of Communications).

**2. Mid-Term Succession Planning (Weeks 1-4):**

- Activate the Nominating & Governance Committee: This Board committee should take the lead in formulating a formal succession plan.

- Define the Search Criteria: The committee must decide whether to promote the interim leader, consider other internal candidates, or launch an external search. The nature of the crisis may suggest that an external candidate with an impeccable reputation for ethics and governance is needed to restore trust.
- Engage an Executive Search Firm: For an external search, retaining a top-tier executive search firm is essential to identify and vet qualified candidates quickly.

**3. Long-Term Remediation and Governance Enhancement:**

- Root Cause Analysis: Once the investigation is complete, the Board must understand the control failures that allowed this to happen. Was there a culture of lax compliance? Were controls around MNPI insufficient?
- Strengthen Internal Controls: The Board, through its Audit Committee, must oversee the implementation of enhanced controls. This could include:
  - Revising and retraining on the company's Insider Trading Policy.
  - Implementing stricter access controls and monitoring for sensitive, pre-release data like AI benchmarks.
  - Enhancing the Code of Conduct and whistleblower programs.
- Reassure Stakeholders: Develop a communications plan to proactively update investors and key customers on the steps being taken to strengthen governance and leadership, demonstrating that the Board has the situation under control.

By executing this multi-faceted plan, you can navigate the immediate legal peril, protect the integrity of the investigation, and guide the Board in making the decisive moves necessary to stabilize the company and restore stakeholder confidence.

--- Response from Anthropic Claude (Claude 4.5 Sonnet (Latest)) ---

Assistant

8:48:55 PM

Anthropic Claude - Claude 4.5 Sonnet (Latest)

Practice Area: Crisis Management & Business Continuity

## URGENT: Executive Misconduct - Insider Trading Investigation

### Integrated Crisis Response: Legal, Regulatory & Operational

This situation presents IMMEDIATE and SEVERE legal exposure requiring coordinated action across securities law compliance, privilege protection, and governance continuity. Time is critical.

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### PHASE 1: IMMEDIATE ACTIONS (Hours 0-24)

#### A. Emergency Response Protocol

STOP ALL POTENTIALLY DESTRUCTIVE ACTIONS:

CRITICAL HOLDS - IMPLEMENT IMMEDIATELY:

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% % % Document Preservation
% % % Litigation hold to ALL relevant custod
% % % IT: Suspend auto-delete, backup system
% % % Preserve: Emails, texts, trading recor
% % % Chain of custody for all evidence
%
% % % Trading Freeze
% % % Suspend executive's trading authority
% % % Blackout period for all insiders with
% % % Alert transfer agent/broker
% % % Review recent trades (past 6 months mi
%
% % % Communication Lockdown
% % % No public statements without counsel a
% % % No internal communications about inves
% % % Limit knowledge to "need to know" basi
% % % Prepare holding statements for inquiri
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ENGAGE SPECIALIZED COUNSEL IMMEDIATELY:

- Securities Law Firm: SEC enforcement experience, insider trading expertise
- White Collar Defense Counsel: For executive (separate representation - conflict of interest)
- Corporate Governance Counsel: Board advisory, D&O issues
- Forensic Accountants: Trading analysis, financial impact assessment

DO NOT:

- Conduct investigation without counsel involvement (destroys privilege)

- Alert executive before counsel engaged (flight/spoliation risk)
  - Discuss with other executives casually (expands exposure)
  - Make any public disclosures before legal strategy determined
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## PHASE 2: SEC REPORTING OBLIGATIONS

### A. Materiality Analysis (Counsel-Led)

Factors Determining Disclosure Obligation:

| MATERIALITY ASSESSMENT: |   |
|-------------------------|---|
| % % %                   | Trading Activity                                |
| %                       | Volume: Dollar amount traded                    |
| %                       | Timing: Proximity to AI benchmark release       |
| %                       | Pattern: Deviation from normal trading          |
| %                       | Profit / Loss: Gains realized or losses         |
| %                       |   |
| % % %                   | Information Involved                            |
| %                       | AI benchmark results (quantitative performance) |
| %                       | Product launch timing                           |
| %                       | Partnership announcements                       |
| %                       | Competitive positioning implications            |
| %                       |   |
| % % %                   | Executive's Position                            |
| %                       | C-suite or Board member (higher scrutiny)       |
| %                       | Access to material nonpublic information        |
| %                       | Trading authority and influence                 |
| %                       | Public profile and investor reliance            |
| %                       |   |
| % % %                   | Market Impact Potential                         |
| % % %                   | Stock price movement correlation                |
| % % %                   | Trading volume abnormalities                    |
| % % %                   | Analyst / media coverage of AI products         |
| % % %                   | Investor sensitivity to AI development          |

SEC Rule 10b-5 Elements (Insider Trading):

- Material nonpublic information (MNPI)
- Breach of fiduciary duty or misappropriation
- Trading while in possession of MNPI
- Scienter (intent to defraud)

AI Product Benchmarks as MNPI:

- Likely Material if: Results significantly exceed/fall short of market expectations, affect competitive positioning, or influence product launch decisions
- Timing: Information becomes public when broadly disseminated (press release, public presentation, SEC filing)
- Possession: Executive had access before trading

## B. Form 8-K Disclosure Requirements

Triggering Events for Immediate Disclosure (4 Business Days):

Item 5.02(a) - Departure of Directors or Principal Officers:

- IF executive terminated/resigned: File 8-K within 4 business days
- Content: Name, position, date of departure, brief description of circumstances
- Avoid admissions: "The Board and [Executive] mutually agreed that [Executive] will step down effective [date] to allow the Company to focus on [strategic priorities]."

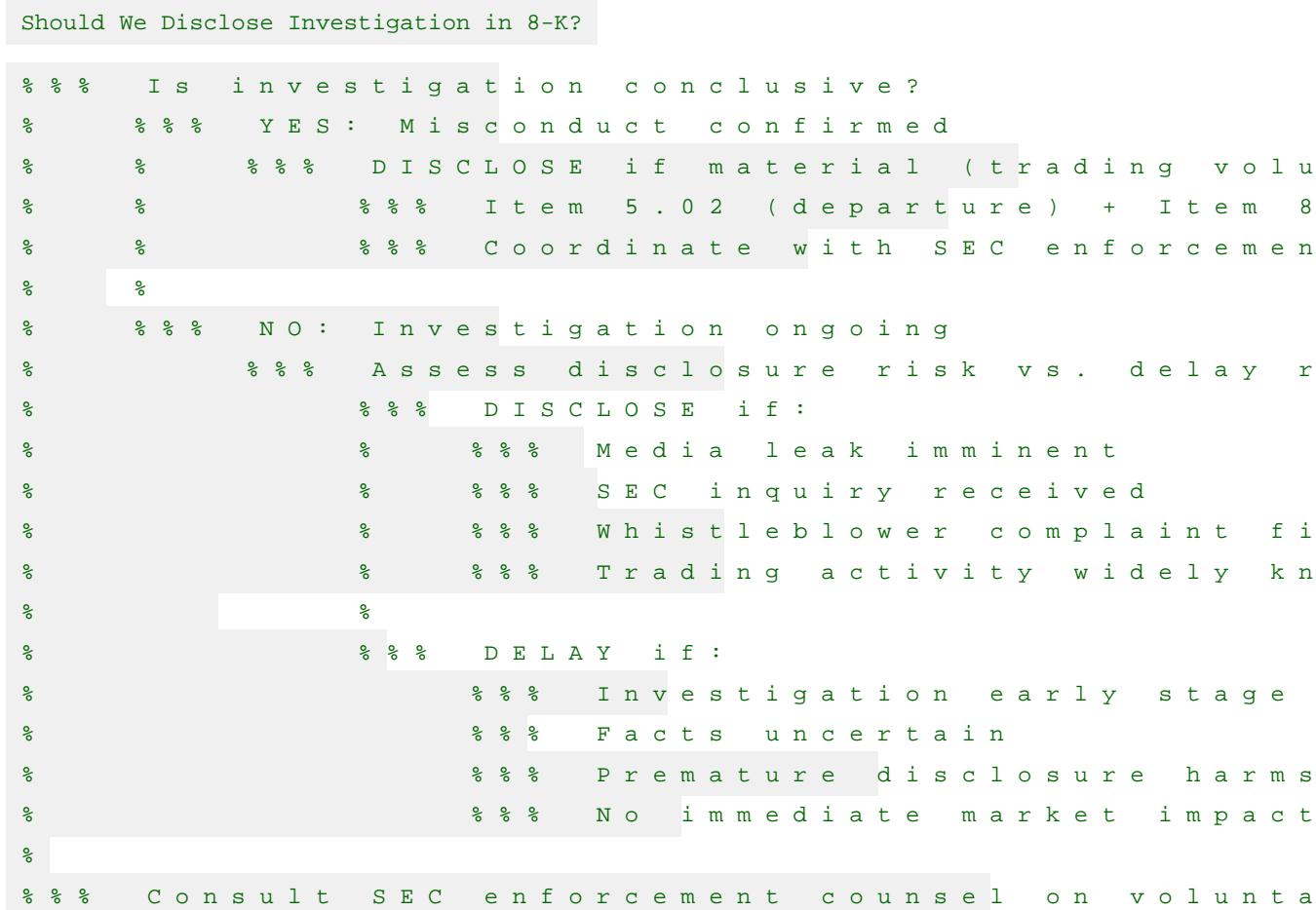
Item 5.02(b) - Appointment of Directors or Principal Officers:

- IF successor appointed: Disclose biographical information, material plan/arrangement terms

Item 8.01 - Other Events (Discretionary):

- Use for voluntary disclosure if investigation itself is material
- Considerations:
  - Investigation scope and findings (preliminary vs. conclusive)
  - Potential financial impact
  - Regulatory inquiry status
  - Reputational impact on company

STRATEGIC DISCLOSURE DECISION TREE:



Sample 8-K Disclosure Language (If Required):

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Item 5.02 Departure of Directors or Certain Officers
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On [Date], [Executive Name], [Title] of [Company], resigned from his/her position effective immediately. The Board of Directors has appointed [Interim Name] as Interim [Title] while conducting a search for a permanent replacement.

#### Item 8.01 Other Events

The Company has engaged outside counsel to conduct an internal investigation into potential violations of the Company's securities trading policies. The investigation is ongoing, and the Company is cooperating fully with regulatory authorities. The Company will provide updates as appropriate.

The Company's Board of Directors is committed to the highest standards of corporate governance and ethical conduct.

**KEY PRINCIPLE:** Disclose what you know when you know it if material. Avoid:

- Speculation or incomplete facts
- Legal conclusions ("insider trading occurred")
- Admissions of liability
- Prejudging investigation outcomes

## C. Voluntary Self-Disclosure to SEC

SEC Enforcement Division - Voluntary Disclosure Considerations:

Benefits of Self-Reporting:

- Cooperation credit (reduced penalties under SEC Enforcement Manual)
- Influence over investigation scope and timing
- Demonstrates good faith and robust compliance culture
- May avoid charges against company (focus on individual)
- Potential for non-prosecution agreement (NPA) or deferred prosecution agreement (DPA)

Risks of Self-Reporting:

- Triggers formal investigation (vs. remaining under radar)
- Admits knowledge of potential violation
- Waives certain defenses (lack of knowledge)
- Creates timeline pressure for remediation

SEC Cooperation Framework (2010 Seaboard Report Factors):

- Self-policing: Compliance program adequacy before misconduct
- Self-reporting: Prompt disclosure to SEC
- Remediation: Corrective actions taken
- Cooperation: Full cooperation with SEC investigation

Voluntary Disclosure Process:

- Engage SEC enforcement counsel (former SEC staff ideal)
- Prepare disclosure memo: Facts, timeline, individuals involved, company actions
- Proffer meeting: Counsel meets with SEC staff (no sworn testimony)
- Negotiate cooperation terms: Scope of document production, witness interviews
- Ongoing updates: Keep SEC informed of investigation progress

## RECOMMENDATION:

- If trading pattern is clear and material: Voluntary disclosure likely beneficial (demonstrates governance, limits company liability)
- If facts uncertain or executive's trading explainable: Complete investigation before approaching SEC
- Coordinate with D&O insurers: Notify before SEC contact (policy may require)

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## PHASE 3: PRIVILEGE PROTECTION IN TECH AUDITS

### A. Establishing Attorney-Client Privilege Over Investigation

#### Critical Privilege Protections:

```
PRIVILEGE ARCHITECTURE:  
% % % Engagement Letter  
% % % Outside counsel retained BY COMPANY (n  
% % % Scope: "Investigate potential securiti  
% % % Purpose: "Provide legal advice to Boar  
% % % Privilege holder: Company (Board contr  
%  
% % % Investigation Team Structure  
% % % Lead: Outside securities counsel  
% % % Forensic investigators: Engaged BY and  
% % % Tech auditors: Engaged BY and THROUGH  
% % % All communications directed through co  
%  
% % % Document Labeling  
% % % " ATTORNEY - CLIENT PRIVILEGED AND CONFID  
% % % " PREPARED AT THE DIRECTION OF COUNSEL"  
% % % " ATTORNEY WORK PRODUCT - DO NOT DISTRI  
% % % Apply to all investigation documents  
%  
% % % Communication Protocols  
% % % All investigation discussions via coun  
% % % No side conversations about investigat  
% % % Separate investigation files from busi  
% % % Restrict distribution (need-to-know on
```

#### Upjohn Warnings for Employee Interviews:

#### MANDATORY SCRIPT FOR ALL WITNESS INTERVIEWS:

"I am [Name], an attorney with [Law Firm], representing [Company], not you personally.

The purpose of this interview is to gather facts for the Company's internal investigation so that I can provide legal advice to the Company.

This conversation is protected by the attorney-client privilege, but that privilege belongs to the Company, not to you. The Company has the right to waive the privilege and disclose our conversation to third parties, including government authorities, without your consent.

You may have your own attorney present if you wish. If you disclose information to others, you may waive the privilege.

Do you understand, and do you agree to proceed?"

Document Witness Acknowledgment (signed or recorded consent)

## B. Tech Audit Privilege Challenges

Unique Privilege Risks in Technology Investigations:

### 1. Trading System Logs & Audit Trails:

- Risk: IT logs are "ordinary course business records" (not privileged)
- Protection Strategy:
  - Counsel directs forensic collection (work product)
  - Forensic firm engaged through counsel (Kovel doctrine)
  - Analysis and reports prepared for counsel (privileged)
  - Preserve original logs separately (non-privileged)

### 2. Email and Communication Forensics:

- Risk: Emails themselves not privileged (pre-existing documents)
- Protection Strategy:
  - Counsel directs search terms and custodians (work product)
  - Review and analysis by counsel (privileged)
  - Privilege log for attorney-client communications identified
  - Segregate investigation review from business review

### 3. AI Benchmark Data Analysis:

- Risk: Benchmark data is business record (not privileged)
- Protection Strategy:
  - Counsel requests analysis from data scientists (work product)
  - Analysis prepared to answer legal questions (privileged)
  - Label: "Prepared at direction of counsel for legal advice"
  - Separate from product development analysis

### 4. Forensic Investigator Reports:

- Kovel Doctrine: Non-lawyer experts engaged to assist counsel
  - Investigator must be retained BY COUNSEL (not company directly)
  - Work must be necessary for counsel to provide legal advice
  - Communications between counsel and investigator privileged
  - Investigator reports prepared FOR COUNSEL privileged

Engagement Letter with Forensic Firm (Sample Clause):

"[Forensic Firm] is retained by [Law Firm] on behalf of [Company] to assist counsel in providing legal advice regarding

potential securities law violations. All work performed by [Forensic Firm] shall be directed by and reported to [Law Firm]. All communications and work product are subject to attorney-client privilege and work product protection. [Forensic Firm] shall not communicate findings to [Company] except through [Law Firm]."

## C. Privilege Waiver Risks & Management

Waiver Triggers to AVOID:

PRIVILEGE KILLERS:

- % % % Voluntary Disclosure to Third Parties
- % % % Sharing with auditors (waiver risk - n
- % % % Disclosure to regulators (subject matt
- % % % Public statements about investigation
- % % % Insurance claims (may waive crime/frau
- %
- % % % "At Issue" Waiver
- % % % Asserting "advice of counsel" defense
- % % % Claiming compliance program adequacy b
- % % % Putting privileged communications "at
- %
- % % % Inadequate Confidentiality Controls
- % % % Forwarding privileged docs to non-priv
- % % % Discussing investigation in open setti
- % % % Including non-legal personnel in privi
- % % % Failing to label documents
- %
- % % % Crime - Fraud Exception
- % % % Communications in furtherance of crime
- % % % Covering up misconduct (obstruction)
- % % % Destroying evidence

Selective Waiver Strategy (If Disclosure Required):

Limited Waiver Agreement with SEC (Sample Terms):

1. Company agrees to produce privileged investigation materials to SEC Enforcement Division.
2. Production is made pursuant to confidentiality agreement and does not waive privilege as to any other party.
3. SEC agrees materials are confidential investigative materials not subject to FOIA.
4. Company reserves all privileges and work product protections in any other proceeding.
5. If SEC discloses materials, Company may seek return and reassert privilege.

NOTE: Selective waiver is NOT recognized in many jurisdictions (risk of full waiver). Negotiate carefully.

Privilege Log Requirements (If Subpoenaed):

| Date     | Author          | Recipient       | Type   | Subject                     | Privilege Basis      |
|----------|-----------------|-----------------|--------|-----------------------------|----------------------|
| 10/15/24 | Outside Counsel | General Counsel | Email  | Investigation findings      | Attorney-Client      |
| 10/16/24 | Forensic Firm   | Outside Counsel | Report | Trading analysis            | Work Product (Kovel) |
| 10/17/24 | Outside Counsel | Board Chair     | Memo   | Legal advice re: disclosure | Attorney-Client      |

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## PHASE 4: BOARD GOVERNANCE & SUCCESSION PLANNING

### A. Board's Fiduciary Duties in Crisis

Delaware Law Standard (Most U.S. Companies):

Duty of Care:

- Informed decision-making (reasonable investigation)
- Reliance on experts (counsel, forensic investigators)
- Regular updates and oversight
- Documented deliberations (meeting minutes)

Duty of Loyalty:

- Act in company's best interest (not executive's)
- Avoid conflicts of interest (independent directors lead)
- No self-dealing or corporate opportunity usurpation

Duty of Good Faith:

- Not knowingly violate law
- Not intentionally fail to act
- Oversight obligation (Caremark duty)

### BOARD ACTIONS TO DEMONSTRATE FIDUCIARY COMPLIANCE:

#### BOARD GOVERNANCE CHECKLIST:

% % %    S p e c i a l    C o m m i t t e e    F o r m a t i o n  
%        % % %    I n d e p e n d e n t    d i r e c t o r s    o n l y    ( n o    c o n f l i c t )  
%        % % %    S e p a r a t e    c o u n s e l    f o r    c o m m i t t e e  
%        % % %    A u t h o r i t y    t o    i n v e s t i g a t e    a n d    r e c o m m e n d  
%        % % %    R e g u l a r    r e p o r t s    t o    f u l l    B o a r d  
%  
%        % % %    I n v e s t i g a t i o n    O v e r s i g h t  
%        % % %    A p p r o v e    i n v e s t i g a t i o n    s c o p e    a n d    b u d g e t  
%        % % %    R e c e i v e    r e g u l a r    u p d a t e s    ( p r i v i l e g e d    s e c r e t )  
%        % % %    R e v i e w    f i n d i n g s    a n d    r e c o m m e n d a t i o n s  
%        % % %    D e c i d e    r e m e d i a l    a c t i o n s  
%  
%        % % %    E x e c u t i v e    A c t i o n s  
%        % % %    S u s p e n d    e x e c u t i v e    ( p a i d    l e a v e    p e n d i n g )

% % % Restrict access (systems, premises, co  
% % % Separate counsel for executive (confli  
% % % Evaluate employment actions (terminati  
%  
% % % Disclosure Decisions  
% % % Materiality determination (with counse  
% % % SEC reporting obligations (8-K, proxy)  
% % % Public statements (media, investors)  
% % % Internal communications (employees)  
%  
% % % D & O Insurance  
% % % Notify insurers (investigation and pot  
% % % Advancement of defense costs (if cover  
% % % Coverage for company and individuals  
% % % Reservation of rights (if fraud/intent

## B. Executive Separation Strategy

Employment Actions Decision Tree:

### EXECUTIVE SEPARATION OPTIONS:

% % % Immediate Termination for Cause  
% % % PROS: Clear message, no severance obli  
% % % CONS: Litigation risk (wrongful termin  
% % % REQUIRES: Clear policy violation, conc  
% % % PROCESS: Deliver termination letter, r  
%  
% % % Suspension Pending Investigation  
% % % PROS: Preserves options, limits litiga  
% % % CONS: Continued compensation, uncertain  
% % % REQUIRES: Employment agreement review  
% % % PROCESS: Paid leave, restricted access  
%  
% % % Negotiated Resignation  
% % % PROS: Clean break, avoids litigation,  
% % % CONS: Severance costs, release require  
% % % REQUIRES: Executive cooperation, board  
% % % PROCESS: Separation agreement, mutual  
%  
% % % Constructive Termination (Demotion)  
% % % PROS: Maintains employment, reduces au  
% % % CONS: Ongoing exposure, internal disru  
% % % REQUIRES: Material change in duties, e  
% % % PROCESS: Reassignment, compensation ad

Separation Agreement Key Terms (If Negotiated Exit):

### CRITICAL SEPARATION PROVISIONS:

1. RESIGNATION
  - Effective date
  - From all positions (officer, director, committees)
  - No admission of wrongdoing (if defensible)
2. SEVERANCE (If Provided)
  - Cash severance (salary continuation or lump sum)
  - Equity treatment (unvested options, RSUs - typically forfeited for cause)
  - Benefits continuation (COBRA, life insurance)
  - Conditions: Release, cooperation, non-disparagement
3. CLAWBACK RIGHTS (PRESERVE)
  - Dodd-Frank clawback (3 years financial restatement)
  - Company policy clawback (misconduct-based)
  - Equity forfeiture provisions
  - Bonus/incentive recoupment
4. COOPERATION OBLIGATIONS
  - Availability for interviews (company, regulators)
  - Document production
  - Testimony in litigation/investigations
  - Reasonable compensation for time (if not employee)
5. CONFIDENTIALITY & NON-DISPARAGEMENT
  - Mutual non-disparagement (narrow exceptions: legal obligations)
  - Confidentiality of separation terms
  - Ongoing confidentiality obligations (trade secrets, MNPI)
  - No waiver of attorney-client privilege
6. RELEASE OF CLAIMS
  - General release (all claims arising from employment)
  - Carve-outs: vested benefits, indemnification, D&O coverage
  - No release of company's claims (fraud, breach of fiduciary duty)
  - ADEA waiver (21-day consideration, 7-day revocation if over 40)
7. RETURN OF PROPERTY
  - Laptop, phone, access cards, documents
  - Deletion of company data from personal devices
  - Certification of compliance
8. RESTRICTIVE COVENANTS (If Enforceable)
  - Non-compete (12-24 months, reasonable geography)
  - Non-solicitation (customers, employees)
  - Non-interference (business relationships)
  - Enforceability varies by state (CA generally unenforceable)
9. INDEMNIFICATION & D&O COVERAGE
  - Company's indemnification obligations continue (bylaws, agreement)
  - D&O insurance coverage (tail policy if needed)
  - Advancement of defense costs (subject to repayment if fraud)

#### 10. GOVERNING LAW & DISPUTE RESOLUTION

- Governing law (typically state of incorporation)
- Arbitration (if mutual preference for confidentiality)
- Fee-shifting provisions (prevailing party)

CRITICAL: Separate counsel for executive (conflict of interest). Company cannot represent executive in personal capacity.

## C. Succession Planning for Business Continuity

Interim Leadership Structure:

### SUCCESSION STRATEGY:

% % % Immediate Interim Appointment (Day 1)  
% % % INTERNAL PROMOTION (If Available)  
% % % COO or CFO as Interim CEO  
% % % SVP as Interim CTO / CRO  
% % % Proven leadership, institutional k  
% % % Board confidence and investor cred  
%  
% % % EXECUTIVE CHAIRMAN (If Board Member Su  
% % % Board Chair assumes executive role  
% % % Maintains governance oversight  
% % % Signals stability and board engage  
% % % Separation of Chair / CEO after perm  
%  
% % % INTERIM FROM OUTSIDE (If No Internal C  
% % % Retained executive search firm (in  
% % % Former executive with industry exp  
% % % 3 - 6 month commitment (bridge to pe  
% % % Clear mandate: Stabilize, not tran  
%  
% % % Communication Strategy (Day 1 - 7)  
% % % INTERNAL (Priority #1)  
% % % All-hands meeting (CEO + Board Cha  
% % % Talking points: Leadership transit  
% % % Q & A session (prepared for tough qu  
% % % Department meetings (cascade messa  
% % % Ongoing updates (weekly emails, to  
%  
% % % EXTERNAL STAKEHOLDERS  
% % % Investors: Personal calls from Boa  
% % % Customers: Reassurance on product  
% % % Partners: Continuity of agreements  
% % % Media: Prepared statement, spokesp  
% % % Regulators: Proactive outreach (if  
%

|   |   |
|---|---|
| % | % % %    M E S S A G I N G    F R A M E W O R K                                 |
|   | % % %    Acknowledge transition (not specific)                                  |
|   | % % %    Emphasize business strength and co                                     |
|   | % % %    Highlight interim leader's qualifi                                     |
|   | % % %    Commit to thorough search for perm                                     |
|   | % % %    Reiterate commitment to governance                                     |
|   | <br>  |
|   | % % %    P e r m a n e n t    S e a r c h    ( W e e k    2 - 1 2 )             |
|   | % % %    Engage Executive Search Firm (Heidrick)                                |
|   | % % %    Define Candidate Profile (skills, expe                                 |
|   | % % %    Search Committee (Independent director                                 |
|   | % % %    Candidate Assessment (interviews, refe                                 |
|   | % % %    Compensation Negotiation (benchmarking                                 |
|   | % % %    Onboarding Plan (100-day plan, board s                                 |
|   | <br>  |
|   | % % %    O p e r a t i o n a l    C o n t i n u i t y    ( W e e k    1 - 1 2 ) |
|   | % % %    B U S I N E S S    P R I O R I T I E S                                 |
|   | % % %    Customer commitments (product laun                                     |
|   | % % %    Revenue targets (sales pipeline, r                                     |
|   | % % %    Product roadmap (AI development, b                                     |
|   | % % %    Employee retention (key talent, mo                                     |
|   | <br>  |
|   | % % %    G O V E R N A N C E    E N H A N C E M E N T S                         |
|   | % % %    Trading policy review and strength                                     |
|   | % % %    Compliance training (insider tradit                                    |
|   | % % %    Whistleblower hotline promotion  |
|   | % % %    Board oversight enhancements (audi                                     |
|   | <br>  |
|   | % % %    C R I S I S    M A N A G E M E N T    T E A M                          |
|   | % % %    Interim CEO, CFO, General Counsel,                                     |
|   | % % %    Daily standups (first 2 weeks)   |
|   | % % %    Weekly status reports to Board   |
|   | % % %    Escalation protocols (media, legal                                     |

### Investor Relations Strategy:

#### Proactive Investor Communication (First 48 Hours):

- Board Chair + Interim CEO: Personal calls to top 10-20 shareholders
- Talking Points:
  - Leadership transition (executive stepped down)
  - Business fundamentals strong (revenue, product, customers)
  - Interim leader highly qualified (background, achievements)
  - Board committed to governance excellence
  - Permanent search underway (timeline, process)
  - Open to questions and ongoing dialogue

#### Analyst Call (If Public Company):

- Timing: Within 1 week of transition announcement
- Participants: Board Chair, Interim CEO, CFO

- Script:
  - Acknowledge transition
  - Business update (reaffirm guidance if possible)
  - Interim leader introduction
  - Q&A (prepared for investigation questions - defer to "ongoing investigation")

Ongoing Investor Updates:

- Quarterly earnings calls (business performance focus)
- Investor conferences (if appropriate - may defer during crisis)
- Proxy statement (detailed governance disclosures)

## D. Clawback and Compensation Recovery

Dodd-Frank Clawback Requirements (Public Companies):

Mandatory Clawback (Exchange Act Rule 10D-1, effective 2023):

- Trigger: Accounting restatement (material error correction)
- Covered Individuals: Current and former executive officers (Section 16 officers)
- Recoverable Compensation: Incentive-based compensation (cash bonuses, equity) received in 3 years before restatement
- Amount: Excess compensation based on restated financials vs. original
- No Fault Required: Clawback applies even if executive not involved in misconduct
- Disclosure: Annual proxy statement disclosure of clawback policy and recoveries

Company Policy Clawback (Broader):

- Trigger: Misconduct, policy violation, fraud, reputational harm
- Covered Individuals: All executives (not just Section 16)
- Recoverable Compensation: Bonuses, equity (vested and unvested), severance
- Discretion: Board determines whether to pursue clawback
- Enforcement: Lawsuit, offset against severance, cancellation of unvested equity

Clawback Analysis in This Case:

CLAWBACK ASSESSMENT:

```
% % % D o d d - F r a n k C l a w b a c k
%
% % % D o e s i n s i d e r t r a d i n g r e q u i r e f i n a n c i a l
% % % U n l i k e l y ( u n l e s s f i n a n c i a l f r a u d u
% % % I f n o r e s t a t e m e n t : D o d d - F r a n k c l a w b a c k
%
%
% % % C o m p a n y P o l i c y C l a w b a c k
% % % I n s i d e r t r a d i n g = p o l i c y v i o l a t i o n ( c o
% % % B r e a c h o f f i d u c i a r y d u t y
% % % R e p u t a t i o n a l h a r m t o c o m p a n y
% % % B o a r d d i s c r e t i o n t o p u r s u e
%
%
% % % R e c o v e r a b l e A m o u n t s
% % % U n v e s t e d e q u i t y ( R S U s , o p t i o n s ) - C A N C
% % % V e s t e d e q u i t y - C L A W B A C K i f p o l i c y a l l
% % % A n n u a l b o n u s e s ( p a s t 1 - 3 y e a r s ) - C L A W
```

%        % % %    S e v e r a n c e    ( i f   n e g o t i a t e d   e x i t )   -   W I T H H  
%        % % %    T r a d i n g   p r o f i t s    ( i f   i n s i d e r   t r a d i n g   p r  
%  
% % %    E n f o r c e m e n t   S t r a t e g y  
% % %    C a n c e l   u n v e s t e d   e q u i t y   i m m e d i a t e l y   ( w i  
% % %    D e m a n d   r e p a y m e n t   o f   b o n u s e s   ( w r i t t e n   d  
% % %    O f f s e t   a g a i n s t   s e v e r a n c e   ( i f   s e p a r a t i o  
% % %    L i t i g a t i o n   i f   e x e c u t i v e   r e f u s e s   ( b r e a c  
% % %    C o o p e r a t e   w i t h   S E C   d i s g o r g e m e n t   a c t i o

#### Sample Clawback Demand Letter (From Company to Executive):

[Date]

[Executive Name]

[Address]

Re: Demand for Repayment of Compensation Under Clawback Policy

Dear [Executive]:

As you are aware, the Company has completed an internal investigation into potential violations of the Company's Insider Trading Policy. The investigation concluded that you violated the Policy by trading Company securities while in possession of material nonpublic information regarding [AI product benchmarks].

Pursuant to the Company's Clawback Policy (attached), the Board of Directors has determined that you must repay the following compensation:

1. Annual Bonus (2023): \$[X]
2. Annual Bonus (2024): \$[Y]
3. Vested Restricted Stock Units (sold on [dates]): \$[Z]

Total Amount Due: \$[Total]

Please remit payment by [Date - 30 days]. If payment is not received, the Company will pursue all available remedies, including litigation and offset against any amounts owed to you.

Additionally, all unvested equity awards granted to you have been cancelled effective [Date].

If you have questions, please contact [General Counsel].

Sincerely,

[Board Chair or CEO]

## PHASE 5: REGULATORY INVESTIGATION MANAGEMENT

### A. SEC Enforcement Investigation Process

## Stages of SEC Investigation:

### SEC INVESTIGATION LIFECYCLE:

```
% % % Informal Inquiry (Weeks 1 - 4)
% % % SEC staff reviews trading data (EDGAR,
% % % May contact company informally (phone
% % % No subpoena power yet (voluntary coope
% % % Decision point: Open formal investigat
%
% % % Formal Investigation (Months 1 - 12+)
% % % SEC issues Formal Order of Investigati
% % % Subpoena power (documents, testimony)
% % % Wells Notice process (opportunity to r
% % % Decision: Settle, litigate, or close w
%
% % % Enforcement Action (If Charges Filed)
% % % Administrative Proceeding (before SEC
% % % Civil Lawsuit (federal court)
% % % Parallel Criminal Referral (DOJ, U.S.
% % % Settlement Negotiations (consent order
%
% % % Resolution (Months 12 - 36+)
% % % Settlement: Disgorgement + penalties +
% % % Litigation: Trial and appeals
% % % Criminal Charges: Parallel DOJ prosecu
% % % No Action: Investigation closed (rare)
```

## SEC Information Requests - Response Strategy:

### Document Subpoena (Typical Requests):

- Trading records (brokerage statements, order confirmations)
- Communications (emails, texts, calls) re: AI benchmarks
- Calendar entries (meetings, calls)
- Corporate policies (insider trading policy, blackout periods)
- Pre-clearance records (if policy requires)
- Employment agreements, equity grant documents
- Board minutes, committee minutes (audit, compensation)

### Response Protocol:

- Engage SEC Counsel: Experienced in enforcement defense
- Preservation Notice: Expand litigation hold (all responsive documents)
- Document Collection: IT forensics, email preservation, custodian interviews
- Privilege Review: Identify and withhold privileged documents (privilege log)
- Negotiation: Narrow scope, extend deadline, rolling production
- Production: Organized, Bates-stamped, native format or TIFF
- Privilege Log: Detailed description of withheld documents

### Testimony Subpoena (Executive or Employee):

- SEC Depositions: Under oath, recorded by court reporter
- Preparation: Extensive witness prep with counsel (mock deposition)
- Representation: Counsel present (may object, but cannot instruct not to answer unless privilege)
- Assertions: Fifth Amendment (self-incrimination), attorney-client privilege (limited)
- Strategy: Truthful but narrow answers, "I don't recall" if genuinely uncertain

Wells Notice Response:

- Wells Notice: SEC staff's preliminary determination to recommend charges
- Opportunity: Submit Wells Response (legal brief arguing against charges)
- Timing: Typically 30 days to respond (may request extension)
- Strategy: Legal arguments, factual disputes, cooperation credit, no scienter, remediation
- Outcome: SEC may decline charges, modify charges, or proceed as planned

## B. Parallel Criminal Investigation

DOJ Insider Trading Prosecution:

Criminal Insider Trading Elements (Section 10(b), Rule 10b-5):

- Material nonpublic information (MNPI)
- Breach of fiduciary duty (classical theory) or misappropriation (misappropriation theory)
- Willfulness (knowing and intentional violation)
- Securities transaction (purchase or sale)

Criminal Penalties:

- Individuals: Up to 20 years imprisonment, \$5 million fine
- Corporations: Up to \$25 million fine (if aiding/abetting or failure to supervise)

Parallel Investigation Coordination:

- SEC and DOJ often investigate simultaneously
- SEC typically civil (disgorgement, penalties, injunctions)
- DOJ criminal (imprisonment, fines, restitution)
- Cooperation: Statements to SEC may be shared with DOJ (no separate privilege)
- Fifth Amendment: Individual may assert in SEC deposition (adverse inference in civil case, but no criminal penalty)

Company's Position in Criminal Investigation:

- Target: Company itself may be charged (rare unless systemic failure or cover-up)
- Subject: Under investigation but not yet target
- Witness: Providing information about executive's conduct
- Cooperation Strategy: Full cooperation with DOJ to avoid corporate charges (Yates Memo - individual accountability)

Yates Memo (DOJ Corporate Enforcement Policy):

- Companies must provide all facts about individual misconduct to receive cooperation credit
- No "cooperation credit" for partial disclosure or protecting individuals
- Early cooperation (voluntary disclosure) valued highly
- Remediation and compliance enhancements required

## C. Cooperation Strategy

## Cooperation Decision Matrix:

### COOPERATION CALCULUS:

% % % FULL COOPERATION (Recommended if Misconduct)

% % % Voluntary disclosure to SEC / DOJ

% % % Provide investigation findings (subject to audit)

% % % Produce documents proactively

% % % Make witnesses available (employees, non-employees)

% % % Waive privilege (limited, negotiated scope)

% % % BENEFITS:

% % % Cooperation credit (reduced penalties)

% % % No corporate charges (focus on individual wrongdoing)

% % % Influence investigation scope

% % % Faster resolution

% % % RISKS:

% % % Admits knowledge of violation

% % % Privilege waiver (subject matter width)

% % % Employee morale (perception of "turning over a new leaf")

% % % Shareholder derivative litigation

% % % SELECTIVE COOPERATION (If Facts Uncertain)

% % % Respond to subpoenas (required)

% % % Produce non-privileged documents

% % % Make witnesses available (with counsel)

% % % No voluntary privilege waiver

% % % BENEFITS:

% % % Preserves privilege protections

% % % Maintains flexibility

% % % Avoids premature admissions

% % % RISKS:

% % % Less cooperation credit

% % % Longer investigation

% % % Potential corporate charges if obstruction

% % % MINIMAL COOPERATION (Not Recommended)

% % % Comply only with legal compulsion (subject to audit)

% % % Assert all privileges aggressively

% % % Limit witness availability

% % % RISKS:

% % % No cooperation credit

% % % Corporate charges likely

% % % Maximum penalties

RECOMMENDATION: Full cooperation if:

- Investigation confirms insider trading
- Executive acted alone (no systemic compliance failure)
- Company has strong compliance program
- Early disclosure demonstrates good governance

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## PHASE 6: LITIGATION RISK MANAGEMENT

### A. Anticipated Litigation

Potential Legal Actions:

#### LITIGATION EXPOSURE MAP:

|       |   |
|-------|---|
| % % % | SEC Enforcement Action (Certain if Investigation confirmed)               |
| % % % | Civil injunction (permanent injunction)                                   |
| % % % | Disgorgement (return of trading profit)                                   |
| % % % | Civil penalties (up to \$1 million per officer and director bar)          |
| % % % | Settlement typical (consent order with no admission of wrongdoing)        |
| %     |   |
| % % % | DOJ Criminal Prosecution (Possible if Egredious conduct)                  |
| % % % | Criminal charges (wire fraud, securities fraud)                           |
| % % % | Imprisonment (up to 20 years)   |
| % % % | Criminal fines (up to \$5 million individual fines)                       |
| % % % | Restitution (victim compensation)   |
| % % % | Probation and supervised release  |
| %     |   |
| % % % | Shareholder Derivative Lawsuit (Likely)                                   |
| % % % | Shareholders sue on behalf of company                                     |
| % % % | Allegations: Breach of fiduciary duty, abuse of power                     |
| % % % | Demand requirement (demand on board or special committee)                 |
| % % % | Special litigation committee (SLC) to oversee investigation               |
| % % % | Typical resolution: Corporate governance changes, disgorgement, and fines |
| %     |   |
| % % % | Securities Class Action (Possible if Stock price manipulation)            |
| % % % | Shareholders sue company and executive officers                           |
| % % % | Allegations: Fraudulent misrepresentation, accounting errors              |
| % % % | Class certification (all shareholders are part of the class)              |
| % % % | Damages: Stock price decline attributed to wrongdoing                     |
| % % % | Typical resolution: Settlement (D&O insurance coverage)                   |
| %     |   |
| % % % | Executive Wrongful Termination Claim (If Terminated without cause)        |
| % % % | Claims: Breach of employment agreement, violation of contract             |
| % % % | Defenses: Termination for cause (policy, performance, conduct)            |

%       % % %   Counterclaims: Breach of fiduciary duty  
%       % % %   Typical resolution: Settlement with re  
%  
% % %   Regulatory Investigations (State, International)  
% % %   State securities regulators (Blue Sky  
% % %   FINRA (if broker-dealer involved)  
% % %   International regulators (if trading o  
% % %   Coordination with SEC (typically defer

## B. D&O Insurance and Indemnification

Directors and Officers (D&O) Insurance:

Coverage Types:

- Side A: Individual directors/officers (if company cannot indemnify - insolvency, public company restrictions)
- Side B: Company reimbursement (for indemnification payments to directors/officers)
- Side C (Entity Coverage): Company itself (securities claims)

Covered Claims (Typical):

- Shareholder derivative lawsuits
- Securities class actions
- Regulatory investigations (defense costs)
- Employment practices claims (if EPL coverage included)

Exclusions (Not Covered):

- Fraud/Intentional Misconduct: Conduct exclusion (if adjudicated)
- Illegal Profits: Disgorgement, fines, penalties (uninsurable as public policy)
- Prior Acts: Claims arising from conduct before policy period (if known)
- Insured vs. Insured: Claims by company against officers (unless derivative)

Advancement of Defense Costs:

- D&O policies typically advance defense costs (legal fees) before final adjudication
- Repayment obligation if ultimately determined conduct not covered (fraud, intentional misconduct)
- Critical for executive to fund defense

Indemnification Obligations:

Delaware General Corporation Law § 145 (Typical):

- Mandatory Indemnification: If director/officer is wholly successful on merits or otherwise
- Permissive Indemnification: If acted in good faith and in manner reasonably believed to be in company's best interest
- Prohibited Indemnification: If adjudicated liable for bad faith, intentional misconduct, unlawful personal benefit
- Advancement: Company may advance defense costs (subject to undertaking to repay if not entitled to indemnification)

Company's Indemnification Analysis:

INDEMNIFICATION DECISION TREE:

% % % Review Governing Documents  
% % % Certificate of Incorporation (indemnification procedures)  
% % % Bylaws (indemnification procedures)  
% % % Indemnification Agreement (if separate  
% % % D & O Insurance Policy (coordination with  
%  
% % % Assess Indemnification Eligibility  
% % % Was executive acting in official capacity?  
% % % Did executive act in good faith? (NO -  
% % % Did executive believe conduct was in conflict with law?  
%  
% % % Advancement of Defense Costs  
% % % Company MAY advance costs (not required by law)  
% % % Executive must provide undertaking to repay  
% % % D & O insurance may advance (check policy)  
% % % Strategic decision: Advance to maintain liquidity  
%  
% % % Final Indemnification Determination  
% % % After adjudication or settlement  
% % % If fraud/intentional misconduct proven  
% % % If technical violation without bad faith  
% % % If wholly successful: MANDATORY indemnification

#### RECOMMENDATION:

- Notify D&O insurer immediately (investigation and potential claims)
- Preserve indemnification rights (do not waive in separation agreement)
- Advance defense costs if policy/bylaws require (subject to repayment)
- If fraud proven, company may decline indemnification and seek reimbursement

## INTEGRATED ACTION PLAN: FIRST 30 DAYS

### Week 1: Crisis Containment

#### Day 1-2:

- [ ] Engage outside securities counsel (SEC enforcement experience)
- [ ] Engage forensic investigators (through counsel for privilege)
- [ ] Issue litigation hold (all relevant custodians)
- [ ] Suspend executive (paid leave, restrict access)
- [ ] Notify D&O insurer
- [ ] Board emergency meeting (special committee formation)

#### Day 3-5:

- [ ] Forensic data collection (trading records, emails, communications)
- [ ] Employee interviews (Upjohn warnings)
- [ ] Preliminary findings report (privileged)

- [ ] Assess materiality and disclosure obligations
- [ ] Draft 8-K (if executive departure decided)

Day 6-7:

- [ ] Board meeting: Review findings, decide executive action, approve disclosure
- [ ] Executive separation (termination or resignation)
- [ ] Appoint interim leader
- [ ] File Form 8-K (if required)
- [ ] Internal communication (all-hands meeting)
- [ ] External communication (investors, media, customers)

## **Week 2: Investigation & Disclosure**

Day 8-10:

- [ ] Complete forensic investigation (trading analysis, timeline, evidence)
- [ ] Legal analysis (securities law violations, liability assessment)
- [ ] Voluntary disclosure decision (SEC, DOJ)
- [ ] Privilege review (documents, interview notes)

Day 11-14:

- [ ] Proffer meeting with SEC (if voluntary disclosure)
- [ ] Produce documents to SEC (if subpoenaed or voluntary)
- [ ] Investor relations calls (top shareholders)
- [ ] Employee town hall (Q&A, reassurance)
- [ ] Succession planning (executive search firm engaged)

## **Week 3-4: Remediation & Stabilization**

Day 15-21:

- [ ] Compliance program enhancements (trading policy, training, monitoring)
- [ ] Clawback enforcement (demand letter to executive, cancel unvested equity)
- [ ] Separation agreement finalization (if negotiated exit)
- [ ] Ongoing SEC cooperation (document production, witness interviews)
- [ ] Crisis management team daily standups

Day 22-30:

- [ ] Permanent CEO search (candidate sourcing, interviews)
- [ ] Board governance review (audit committee, compliance oversight)
- [ ] Shareholder derivative litigation (anticipate, prepare defense)
- [ ] Media monitoring and response (reputation management)
- [ ] Business continuity focus (customer retention, employee morale, product roadmap)

---

## **KEY TAKEAWAYS & CRITICAL WARNINGS**

### **Immediate Priorities (Do NOT Delay):**

- ENGAGE COUNSEL IMMEDIATELY - Securities law expertise essential

- PRESERVE ALL EVIDENCE - Spoliation = severe sanctions
- ESTABLISH PRIVILEGE - Investigation must be counsel-directed
- SUSPEND EXECUTIVE - Prevent further harm, preserve evidence
- NOTIFY D&O INSURER - Coverage may be time-sensitive

## **Common Mistakes to AVOID:**

- 'L Conducting investigation without counsel (destroys privilege)
- 'L Discussing investigation casually (waives privilege, expands liability)
- 'L Delaying SEC disclosure (materiality determination required)
- 'L Inadequate document preservation (spoliation sanctions)
- 'L Representing executive and company (conflict of interest)
- 'L Premature public statements (admissions, inconsistent messaging)
- 'L Failing to cooperate with SEC (no credit, corporate charges)
- 'L Ignoring business continuity (customer/employee attrition)

## **Long-Term Governance Enhancements:**

### Compliance Program Strengthening:

- Enhanced trading policy (shorter blackout windows, pre-clearance for all trades)
- 10b5-1 trading plans (affirmative defense, automatic execution)
- Quarterly training (insider trading, ethics, whistleblower protections)
- Monitoring and surveillance (trading activity, MNPI access)
- Whistleblower hotline (anonymous reporting, non-retaliation)

### Board Oversight Improvements:

- Audit committee: Enhanced compliance oversight, regular reports
- Compensation committee: Clawback policy enforcement, equity grant timing
- Nominating/governance committee: Board refreshment, independence standards
- Executive sessions: Regular meetings without management present
- Annual compliance certification: Officers certify policy compliance

### Cultural Change:

- Tone at the top (CEO, Board messaging on ethics)
- Consequences for violations (consistent enforcement)
- Transparency and accountability (open communication)
- Speak-up culture (encourage reporting, protect whistleblowers)

---

## **FINAL COUNSEL RECOMMENDATION**

This situation requires IMMEDIATE engagement of specialized securities counsel with SEC enforcement experience. The intersection of insider trading, privilege protection, and business continuity demands sophisticated coordination across legal, regulatory, and operational workstreams.

### Timing is critical:

- Document preservation must begin immediately (spoliation risk)
- Privilege protections must be established before investigation proceeds
- SEC disclosure obligations may be time-sensitive (Form 8-K within 4 business days of executive

- departure)
- Business continuity requires rapid leadership transition

The board's fiduciary duties require:

- Independent investigation (special committee with separate counsel)
- Informed decision-making (rely on expert advisors)
- Prompt remedial action (executive suspension/termination, clawback, compliance enhancements)
- Appropriate disclosure (balance transparency with legal exposure)

Success metrics:

- No corporate charges (focus on individual accountability)
- Cooperation credit from SEC (reduced penalties)
- Privilege protections maintained (limit waiver)
- Business continuity preserved (customer/employee retention, financial performance)
- Governance reputation enhanced (demonstrate commitment to ethics and compliance)

This is a high-stakes, high-visibility crisis that will test the board's governance and the company's resilience. With experienced counsel, disciplined execution, and transparent communication, the company can emerge with strengthened compliance culture and restored stakeholder confidence.

DO NOT attempt to manage this crisis without specialized legal counsel. The risks of missteps—spoliation, privilege waiver, inadequate disclosure, SEC charges—are too severe.

You

9:29:57 PM

Practice Area: Corporate Law

Solidify these as talking points for a board meeting.

--- Response from xAI Grok (Grok 4) ---

Assistant

9:35:01 PM

xAI Grok - Grok 4

Practice Area: Corporate Law

Below is a solidified set of talking points for a board meeting, distilled from the comprehensive crisis management plan outlined in my previous response. These are structured for clarity, logical flow, and efficiency, assuming a 30-60 minute discussion. They emphasize key decisions, legal risks, fiduciary duties (e.g., under Delaware General Corporation Law), and actionable recommendations. I've organized them into agenda sections with estimated timing, speaker roles (e.g., Chair, General Counsel, Outside Counsel), and decision points.

Important Disclaimers: These talking points are for informational purposes only and do not constitute legal advice. All actions must be directed by licensed attorneys specializing in securities law and corporate governance. Corporate transactions and crises like this require specialized legal counsel, due diligence, and coordination with experts (e.g., tax advisors, accountants). The board should document all discussions to demonstrate fulfillment of fiduciary duties.

---

## Board Meeting Agenda: Executive Misconduct Crisis Response

Date/Time: [Insert]

Purpose: Review investigation findings, assess SEC obligations, protect privileges, plan succession, and approve remediation to stabilize operations.

Attendees: Board Members, General Counsel, Outside Securities Counsel, [Interim Executive if appointed], [Forensic Advisor via Counsel].

Materials: Privileged Investigation Summary (distributed under attorney-client privilege), Draft Form 8-K, Succession Plan Outline.

### 1. Opening and Situation Overview (5 minutes - Board Chair)

- Context Recap: Internal investigation has revealed executive misconduct with suspicions of insider trading tied to unreleased AI product benchmarks—potential violations of Section 10(b) and Rule 10b-5 under the Securities Exchange Act.
- Key Risks: Material nonpublic information (MNPI) exposure, SEC enforcement, shareholder litigation, reputational damage, operational disruption.
- Fiduciary Imperative: Board's duties of care, loyalty, and good faith (Delaware § 141) require immediate, informed action to protect shareholder interests.
- Decision Point: Confirm formation of Special Committee of independent directors to oversee response (avoids conflicts; demonstrates governance to SEC).
- Action Item: Approve litigation hold and evidence preservation to prevent spoliation sanctions.

### 2. SEC Reporting Obligations (10 minutes - Outside Counsel)

- Materiality Assessment: AI benchmarks likely qualify as MNPI if they could impact stock price; trading patterns suggest materiality (assess volume, timing, profits under SAB 99).
- Form 8-K Requirements:

- Item 5.02 for executive departure (file within 4 business days; disclose facts without admissions).
- Item 8.01 for investigation disclosure if material (e.g., "Ongoing internal probe into potential policy violations").
- Voluntary Self-Reporting to SEC/DOJ: Recommend based on Seaboard factors (self-policing, remediation); benefits include cooperation credit and reduced penalties, but risks waiver of defenses.
- Disclosure Strategy: Use factual language; avoid speculation or liability admissions; coordinate with communications team for consistent messaging.
- Decision Points:
  - Approve draft 8-K language and filing timeline.
  - Decide on self-reporting (yes/no; if yes, authorize counsel to initiate proffer meeting).
- Action Items: Notify D&O insurers; prepare for parallel DOJ inquiry (criminal penalties up to 20 years if intent proven).

### **3. Protecting Attorney-Client Privilege in Tech Audits (10 minutes - General Counsel/Outside Counsel)**

- Privilege Framework: All audits must be counsel-directed to qualify as attorney work product (anticipating litigation); use Kovel letters for forensic firms.
- Audit Scope and Protections: Focus on trading logs, communications, and AI data access; label all materials "Privileged & Confidential"; conduct employee interviews with Upjohn warnings.
- Risks and Mitigations: Avoid waiver through selective sharing (e.g., limited waiver agreements with SEC); separate business remediation from legal investigation.
- Tech-Specific Considerations: Preserve AI benchmark integrity forensically; assert trade secret protections alongside privilege.
- Decision Points:
  - Approve engagement of forensic firm through outside counsel.
  - Authorize privilege log preparation for any regulatory productions.
- Action Items: Issue Upjohn warnings for interviews; segregate privileged files.

### **4. Board Governance and Succession Planning (10 minutes - Nominating/Governance Committee Chair)**

- Immediate Stabilization: Suspend/terminate executive for cause (review employment agreement for clauses); appoint interim leader (e.g., COO) to maintain operations and AI roadmap.
- Succession Process: Activate Nominating Committee; engage executive search firm; define criteria (AI expertise, ethics focus); aim for permanent hire in 3-6 months.
- Governance Enhancements: Strengthen insider trading policies, clawback provisions (Dodd-Frank Rule 10D-1), and compliance training to prevent recurrence.
- Communications Plan: Internal (town halls for morale); external (investor calls, press release aligned with 8-K).
- Decision Points:
  - Approve interim appointment and delegation of authority.
  - Authorize search firm engagement and succession timeline.
- Action Items: Draft separation agreement (include clawbacks, non-disparagement); schedule quarterly governance reviews.

### **5. Regulatory Investigation and Litigation Risk Management (5 minutes - Outside**

## **Counsel)**

- SEC/DOJ Process: Expect subpoenas; prepare for Wells Notice; emphasize cooperation for credit (Yates Memo).
- Litigation Exposure: Anticipate shareholder derivatives (Caremark claims for oversight failure), class actions, and wrongful termination suits.
- Indemnification and Insurance: Advance defense costs per bylaws/D&O policy, but preserve clawback rights for misconduct.
- Decision Points:
  - Approve cooperation strategy (full/selective).
  - Authorize formation of Special Litigation Committee if derivatives arise.
- Action Items: Notify state regulators if applicable; monitor for international implications (e.g., if cross-border trading).

## **6. Integrated Action Plan and Next Steps (5 minutes - Board Chair)**

- 30-Day Roadmap:
  - Week 1: Containment (holds, suspension, initial filings).
  - Week 2: Investigation completion and disclosures.
  - Weeks 3-4: Remediation, succession search, stakeholder outreach.
- Metrics for Success: No corporate charges, preserved privileges, stable operations, restored confidence (track stock price, employee retention).
- Resource Allocation: Budget for counsel, forensics, search firm; assign oversight roles.
- Decision Point: Approve overall plan and budget.
- Action Items: Schedule follow-up meeting in 1 week; document all decisions in minutes.

## **7. Q&A and Adjournment (5 minutes - All)**

- Open Discussion: Address concerns on risks, timelines, or alternatives.
- Key Takeaways: Act swiftly to fulfill fiduciary duties; prioritize privilege and compliance; focus on stabilization and transparency.
- Final Recommendation: Engage counsel immediately for all executions—delays could escalate SEC scrutiny or litigation.

---

These talking points are designed to be presented via slides or a handout for easy reference, with visuals like decision trees or checklists from the full plan. They promote efficient discussion while highlighting board-level strategic choices. If needed, I can refine for specific board dynamics or add supporting slides. Remember, consult licensed attorneys before implementation.

--- Response from Azure OpenAI (GPT-4o) ---

**Assistant**

9:35:01 PM

Azure OpenAI - GPT-4o

Practice Area: Corporate Law

## **Board Meeting Talking Points: Executive Misconduct & Insider Trading Investigation**

The following talking points are structured to guide the Board of Directors in addressing the insider trading allegations, SEC obligations, privilege protection, and succession decisions. This structured agenda ensures informed decision-making while balancing legal, regulatory, and operational risks.

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### **AGENDA ITEM 1: Current Status of Internal Investigation**

#### **Key Talking Points**

- Investigation Overview:
  - The company is conducting an internal investigation into allegations of insider trading involving MNPI related to unreleased AI product benchmarks.
  - The investigation is led by independent outside counsel, supported by forensic experts hired to preserve privilege and provide technical analysis.
  - A litigation hold has been issued, and relevant documents have been preserved, including trading records, emails, and system logs.
- Preliminary Findings (to Date):
  - The implicated executive traded Company securities during a potential blackout period while possessing sensitive AI benchmark data that had not yet been publicly disclosed.
  - Forensic analysis of communications between the executive and technical teams is underway to confirm when the data was accessed and whether this qualifies as MNPI under SEC Rule 10b-5.
- Materiality Assessment:
  - Based on counsel's initial legal analysis, this situation is likely material under SEC standards because it involves a senior executive and product information that could impact the Company's stock value.
- Structure of Investigation:
  - A Special Committee comprised of independent directors is overseeing the investigation to ensure governance best practices and independence.
  - All investigative actions (data collection, interviews, external reporting) are being conducted under attorney-client privilege.

---

### **AGENDA ITEM 2: SEC Reporting Obligations**

## **Key Talking Points**

- Trigger for SEC Disclosure:
  - If deemed material, the Company's disclosure obligations under Form 8-K would be triggered on two grounds:
    - Item 5.02: Disclosure of an executive's departure (resignation, suspension, or termination).
    - Item 8.01: Voluntary disclosure of the investigation if it is material to the investment community and could affect the stock price.
- Deadlines and Timeline:
  - A Form 8-K must be filed within four business days of any triggering event, such as the executive's departure.
  - The Board should decide today on how to characterize the departure: either as a resignation, suspension pending investigation, or termination for cause.
- Strategic Disclosure Considerations:
  - Disclosing the ongoing investigation voluntarily could demonstrate transparency, mitigate SEC penalties, and reduce reputational risks.
  - Counsel recommends carefully crafting the disclosure to state facts only—avoid legal conclusions or premature speculation about liability.
- Voluntary Self-Reporting to SEC:
  - The Board should consider voluntary disclosure to the SEC Enforcement Division. Early cooperation may reduce penalties and protect the Company from potential charges.

## **Next Steps**

- The Board should approve the Form 8-K content and align on whether to self-report to the SEC.
- Counsel will need to strategize any proffer to the SEC under the enforcement cooperation framework.

---

## **AGENDA ITEM 3: Protecting Attorney-Client Privilege**

### **Key Talking Points**

- Investigation Confidentiality:
  - All investigative actions, including forensic audits of the executive's trading and data access to AI product benchmarks, are being conducted under the direction of outside counsel to preserve privilege.
  - Communications from the forensic firm, minutes of this Board meeting, and any reports should be labeled as "Attorney-Client Privileged and Confidential – Attorney Work Product."
- Privilege Risks:
  - The integrity of attorney-client privilege must be maintained. Sharing investigative details with auditors, insurers, or regulators without a privilege protocol could unintentionally waive protection over key findings.
  - If findings are shared with the SEC for cooperation credit, a limited confidentiality

agreement will be negotiated to protect against further exposure (i.e., selective waiver risk).

- Board Communication Protocol:
  - Directors should direct all questions about the investigation to outside counsel to avoid privilege breaches.
  - Avoid use of personal email accounts for any investigation-related communications.

---

## AGENDA ITEM 4: Executive Actions – Suspension or Termination

### Key Talking Points

- Immediate Suspension/Access Restriction:
  - To mitigate ongoing risks, the executive has been temporarily suspended with pay pending the investigation's completion.
  - The executive's access to all sensitive systems, data, and company property has been revoked (laptop, phone, building access).
- Termination Decision Factors:
  - Counsel has reviewed the executive's employment agreement:
    - Termination for Cause: Based on findings of trading misconduct and violations of the insider trading policy, termination for cause is an option if sufficient evidence is conclusive.
    - Clawback of Compensation: The executive's incentive compensation and unvested equity are subject to the Company's clawback policy.
  - If the Board prefers to negotiate a voluntary resignation, counsel suggests requiring the executive to sign a separation agreement with:
    - General release of claims
    - Cooperation during investigations
    - Non-disparagement clauses
    - Waiver of severance

---

## AGENDA ITEM 5: Succession Planning and Operational Stability

### Key Talking Points

- Interim Leadership:
  - The Board must appoint an Interim Executive to stabilize operations and reassure employees, investors, and partners. Options include:
    - Internal candidate: Promote from the existing C-suite (e.g., COO, CFO).
    - External interim CEO: Engage an experienced interim executive with specific AI/technology expertise.
- Permanent CEO Search:
  - Initiate a managed CEO search process to identify a long-term successor. The Board's Nominating & Governance Committee will lead with support from an executive search firm.

- Candidate criteria: Strong governance ethics, proven leadership track record, expertise in AI/technology commercialization.
  - Internal Communications:
    - The interim CEO will lead with transparency:
      - Host a company-wide all-hands meeting this week to address employee concerns.
      - Provide reassurance regarding leadership, operational stability, and the progress of the AI product roadmap.
    - Messaging will emphasize the Board's priorities:
      - Business continuity
      - Commitment to governance and ethics
      - Long-term vision
      - Employee engagement
- 

## **AGENDA ITEM 6: Compliance and Risk Mitigation**

### **Key Talking Points**

- Policy Enhancements:
    - The investigation highlighted gaps in Company compliance policies (insider trading and MNPI handling). Immediate actions include:
      - AI Benchmark Controls: Limit access to sensitive data based on role and implement stricter audit trails.
      - Trading Blackout Policies: Reduce ambiguity in trading blackout periods for executives and staff with knowledge of MNPI.
      - Periodic Compliance Training: Train all employees, executives, and directors on insider trading laws and MNPI handling annually.
      - Whistleblower Program: Strengthen the whistleblower hotline channels to encourage early reporting of policy violations without fear of retaliation.
  - Board Governance Enhancements:
    - Establish clearer Board oversight for MNPI risk management through the Audit Committee.
    - Conduct annual Board training sessions covering fiduciary duties related to insider trading oversight and ethics practices.
  - Remedial Actions:
    - Ensure the findings of the investigation are documented and reported in the next proxy statement, outlining the Company's internal improvements to prevent recurrence.
    - Consider appointing a Chief Compliance Officer (CCO) for centralized oversight of securities compliance.
- 

## **AGENDA ITEM 7: Regulatory Cooperation and Legal Strategy**

### **Key Talking Points**

- Voluntary Cooperation Scope:

- Counsel will propose a voluntary self-disclosure strategy to the SEC to demonstrate good governance and mitigate penalties.
  - Coordinate document production and witness availability in consultation with legal counsel to limit privilege waivers.
  - Preparedness for SEC/DOJ Subpoenas:
    - Anticipate document requests and prepare privilege logs.
    - Plan defense strategy for potential SEC or DOJ enforcement actions and shareholder derivative lawsuits.
  - Litigation Preparedness:
    - Notify the D&O insurer and confirm coverage aligns with litigation defense costs.
    - Prepare for potential shareholder derivative suits under Caremark liability standards, which may claim a failure of oversight.
- 

## **AGENDA ITEM 8: Board Resolution & Next Steps**

### **Key Actions for Board Approval**

- Executive Suspension or Termination:
    - Decision on executive separation: Resignation, termination for cause, or suspension pending investigation.
    - Approve terms of any separation agreement (if applicable).
  - Form 8-K Disclosure:
    - Approve content for immediate disclosure concerning the investigation and executive departure.
  - Succession Appointment:
    - Identify and approve the Interim CEO or executive leader.
  - Compliance Enhancements:
    - Approve measures for stricter insider trading controls, data governance, and training.
  - Cooperation with Regulators:
    - Approve strategy for voluntary disclosure, if applicable.
  - Search Process for Permanent CEO:
    - Vote to initiate the process for permanent CEO selection, led by the Nominating & Governance Committee.
- 

### **Closing Statement: Proactive Governance Leadership**

- "This is a critical moment for the Company. The Board has an opportunity to demonstrate its commitment to integrity, transparency, and proactive governance. By acting decisively and aligning on these key actions, we can safeguard the Company's operations, protect shareholders, and ensure long-term success."
- 

These structured talking points emphasize clarity, accountability, and alignment with regulatory and fiduciary obligations while addressing operational risks. The Board must act expeditiously to protect the

Company's reputation and business continuity.



--- Response from Google Gemini (Gemini 2.5 Pro) ---

Assistant

9:35:01 PM

Google Gemini - Gemini 2.5 Pro

Practice Area: Corporate Law

Of course. Here are the key findings and recommendations consolidated into a clear, concise set of talking points for presentation at an emergency board meeting. This is designed to be delivered by the General Counsel or CEO.

---

## Board Meeting Talking Points: Executive Misconduct Investigation

Subject: Urgent Briefing on Allegations of Executive Misconduct and Potential Insider Trading

Objective for this Meeting: To approve a decisive, legally sound crisis response plan that protects the company, fulfills our fiduciary duties, and ensures operational stability.

---

### 1. The Situation: A Summary

- An internal investigation has uncovered credible evidence of executive misconduct.
- The core issue involves suspicions of insider trading related to unreleased, material AI product benchmarks.
- This creates significant legal, financial, and reputational exposure for the company and its leadership.
- Our response must be immediate, coordinated, and controlled.

### 2. Our Guiding Principles

Every action we take will be guided by three core principles:

- Control & Containment: We must immediately stop any further harm, preserve all evidence, and control all communications.
- Privilege & Protection: The entire investigation will be structured under attorney-client privilege to protect our findings from premature disclosure and discovery in litigation.
- Governance & Stabilization: The Board's role is to provide oversight and ensure the business remains stable. We must act decisively to protect shareholder value and maintain employee and customer confidence.

### 3. Immediate Decisions Required Today

To execute our plan, we need the Board's authorization on four critical items in this meeting:

- Form a Special Committee: Establish a committee of independent directors to oversee the investigation. This is a critical governance step to ensure impartiality.
- Retain Specialized Counsel: Formally engage outside counsel with deep expertise in SEC

- enforcement and internal investigations. This counsel will report directly to the Special Committee.
- Authorize the Investigation: Grant the Special Committee and its counsel the authority and resources to conduct a thorough and independent investigation.
  - Address the Executive's Status: We recommend placing the executive on immediate administrative leave, pending the investigation's outcome, to neutralize any ongoing risk.

## 4. The Three-Pronged Action Plan

Our response will be managed across three parallel workstreams:

### Workstream 1: SEC & Regulatory Engagement (Led by Counsel)

- Assess Disclosure: Counsel will determine our immediate SEC reporting obligations, specifically regarding a Form 8-K for the executive's change in status and the investigation itself.
- Develop Strategy: We will formulate a strategy for self-reporting to the SEC and potentially the Department of Justice. Proactive cooperation is often the best path to mitigating penalties against the company.
- Control Communications: All external communications regarding this matter will be managed by a single point of contact and approved by counsel.

### Workstream 2: The Privileged Internal Investigation (Counsel-Led)

- Preserve Evidence: A formal litigation hold is being issued immediately to preserve all relevant documents, communications, and trading data.
- Forensic Audit: Counsel will engage and direct a third-party forensic firm to analyze trading activity and data access related to the AI benchmarks. Crucially, engaging them through counsel protects their findings under privilege.
- Fact Finding: The investigation will proceed with witness interviews and a full review to establish the facts conclusively.

### Workstream 3: Leadership & Operational Stability (Management-Led)

- Appoint Interim Leadership: We must immediately appoint a trusted internal leader to assume the executive's duties to ensure zero disruption to our operations and AI product roadmap.
- Launch Succession Plan: The Nominating & Governance Committee will initiate a formal process to identify a permanent successor.
- Manage Stakeholders: We will execute a communications plan to reassure employees, key customers, and investors that the business is stable and our leadership is in control.

## 5. The Board's Role and Fiduciary Duties

- Our primary responsibility is to act in the best interests of the company and its shareholders.
- Duty of Care: We fulfill this by acting on an informed basis—relying on the Special Committee and expert counsel.
- Duty of Loyalty: We fulfill this by ensuring the investigation is independent and free of conflicts.
- Action Item: We need a formal vote to establish the Special Committee and delegate the authority to manage this investigation.

## 6. Critical Next Steps (24-72 Hours)

- Immediately Following this Meeting:

- Formally engage outside counsel.
  - Issue the litigation hold notice.
  - Communicate the executive's status (administrative leave).
  - Announce the interim leader to the organization.
- Within 72 Hours:
    - Counsel and forensic experts begin evidence collection and analysis.
    - Drafting of any required SEC filings will commence.
    - The Special Committee will hold its first official meeting with counsel.

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Closing Statement:

This is a serious challenge, but it is manageable. By taking swift, decisive, and well-advised action, we will navigate this crisis, demonstrate our commitment to integrity, and protect the long-term health of the company. We are asking for the Board's full support to execute this plan.

Disclaimer: These talking points are for discussion purposes and do not constitute legal advice. All actions should be taken in direct consultation with retained legal counsel.

--- Response from Anthropic Claude (Claude 4.5 Sonnet (Latest)) ---

**Assistant**

9:35:01 PM

Anthropic Claude - Claude 4.5 Sonnet (Latest)

Practice Area: Corporate Law

Error from Anthropic Claude (Claude 4.5 Sonnet (Latest)):

Failed to process chat request. Check logs for details.. Please check your API configuration.