ARTIFICIAL INTELLIGENCE, FINANCE, AND THE LAW

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Artificial intelligence is an existential component of modern finance. The progress and promise realized and presented by artificial intelligence in finance has been thus far remarkable. It has made finance cheaper, faster, larger, more accessible, more profitable, and more efficient in many ways. Yet for all the significant progress and promise made possible by financial artificial intelligence, it also presents serious risks and limitations.

This Article offers a study of those risks and limitations—the ways artificial intelligence and misunderstandings of it can harm and hinder law, finance, and society. It provides a broad examination of inherent and structural risks and limitations present in financial artificial intelligence, explains the implications posed by such dangers, and offers some recommendations for the road ahead. Specifically, it highlights the perils and pitfalls of artificial codes, data bias, virtual threats, and systemic risks relating to financial artificial intelligence. It also raises larger issues about the implications of financial artificial intelligence on financial cybersecurity, competition, and society in the near future. Ultimately, this Article aspires to share an insightful perspective for thinking anew about the wide-ranging effects at the intersection of artificial intelligence, finance, and the law with the hopes of creating better financial artificial intelligence—one that is less artificial, more intelligent, and ultimately more humane, and more human.

INTRODUCTION

Artificial intelligence is coming for our money.1 The rise of artificial intelligence in finance and beyond has understandably garnered a great deal

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1. See generally ARTIFICIAL INTELLIGENCE IN FINANCIAL MARKETS (Christian L. Dunis et al. eds., 2016).
The progress and promise presented by artificial intelligence and related new technologies in finance and elsewhere in the economy has been remarkable, though much is yet to be realized. We are just at the beginning of the beginning of the age of artificial intelligence. That said, in just the last few decades alone, we have witnessed significant advances in financial technology made possible in part by artificial intelligence in various aspects of the financial sector. Previously, human-dominated financial efforts and endeavors have been eliminated, supplemented, or supplanted by artificial intelligence and smart machines. Trading, financial research, risk analysis, wealth management, investment banking, and other areas of the financial sector have been dramatically changed by the rise of artificial intelligence. Many of these advances and innovations have been profit-enhancing and socially beneficial. They have lowered the costs of capital for businesses and entrepreneurs, expanded the types of financial resources to a broader and more diverse population of


investors, and made it easier for consumers to bank and invest. Yet, for all the significant progress and promise presented by artificial intelligence in finance, it also presents serious pitfalls and perils.

This Article is about those risks and limitations—the ways artificial intelligence and misunderstandings of it can harm and hinder law, finance, and society. It provides a broad examination of inherent and structural risks and limitations present in financial artificial intelligence, explains the implications posed by each identified danger, and offers some recommendations for the road ahead. This Article does not seek to pinpoint every peril posed by financial artificial intelligence, as such an attempt would necessarily be incomplete and dated given the rapid changes in financial technology and their evolving ramifications. Rather, this Article aims to explore the larger penumbras of risks and limitations latent in financial artificial intelligence and how we can better confront them. In pursuit of these objectives, this Article hopes to provide another perspective for thinking about artificial intelligence and its wide-ranging impact on law, finance, and society.

Drawing on the author’s prior writings and building upon a rich and growing body of interdisciplinary literature on artificial intelligence that spans law, finance, technology, and sociology, this Article proceeds in two major parts. Part I provides an overview of critical risks and limitations. It describes four inherent areas of intertwined risks and limitations relating to programming codes, data bias, virtual threats, and systemic risks. It explains why and how each of these innate areas can harm and hinder the positive potential of artificial intelligence in finance. Pivoting from the intrinsic to the extrinsic, Part II contends with emerging ramifications and possible responses. It explores the challenges posed by financial artificial intelligence. Specifically, it focuses on implications relating to financial


cybersecurity, competition, and societal impact in connection with the rise of artificial intelligence in finance. Finally, the Article concludes by looking forward to an incredibly promising future offered by financial artificial intelligence, while cautioning of looming perils that may accompany that incredible promise.

I. RISKS AND LIMITATIONS

Despite the incredible progress and promise made possible by advances in financial artificial intelligence, it nevertheless presents some serious, interconnected risks and limitations.9 Four categories of risks and limitations relating to programming codes, data bias, virtual threats, and systemic risks are particularly noteworthy. Individually and collectively, these four perilous areas loom large as potential inherent and structural dangers in connection with the rise of financial artificial intelligence.

A. Uncertain Markets and Artificial Codes

Artificial intelligence programs are limited by their underlying code and their ability to fully and properly capture all that is happening in the marketplace. There are simply too many complex, ineffable human and other elements of financial markets and our uncertain world that cannot be fully or properly captured by artificial lines of codes, no matter how comprehensive or smart. As such, computer codes and models frequently make simplifying and oversimplifying assumptions about the workings of the marketplace that can make it appear that it is more predictive and productive than in reality.10 As a result of these simplifications, financial artificial intelligence tools have the capacity to make powerful predictions and to produce incredible value that helps move and grow markets, but on the other hand, they also operate with potentially dangerous blind spots to the workings of the marketplace because of their limitations.11

The fantastical powers and applications of financial artificial intelligence have convinced many within the financial industry to naively believe that these smart machines are the fix for most of our human-created financial problems.12 While such admiration and acclamation is understandable, it

12. EMANUEL DERMAN, MODELS. BEHAVING. BADLY.: WHY CONFUSING ILLUSION WITH REALITY CAN LEAD TO DISASTER, ON WALL STREET AND IN LIFE 143–87 (2011).
must also be balanced with proper recognition of the limitations of artificial intelligence at their underlying codes to perfectly depict and encapsulate the complexities of the financial marketplace and the world at large.\textsuperscript{13} The 2008 financial crisis was caused and exacerbated in part by too many in the financial industry placing too much faith in smart machines to properly account for the risks and repercussions of a booming—then bursting—real estate market.\textsuperscript{14} Uncertainty, risk, repercussions, and animal spirits in finance can never be perfectly coded, modeled, mitigated, or eliminated because human unpredictability is beyond precise mathematical modeling and computer coding.\textsuperscript{15}

Furthermore, deal negotiations, board presentations, regulatory actions, legal interpretations, and many other activities critical to finance are done largely among humans communicating using verbal and nonverbal language in ways that smart machines are thus far unable to do on a consistent basis.\textsuperscript{16} Despite all of its amazing advances, artificial intelligence still does not possess all of the capabilities of the human brain, with its trillions of synaptic connections and billions of neurons.\textsuperscript{17} Artificial intelligence cannot fully decipher a simple common human phrase like “it’s fine,” let alone the many nonverbal expressions that humans use among one another.\textsuperscript{18}

In sum, financial artificial intelligence is limited by the incapability of its programming to fully capture the breadth, depth, and diversity of all that is happening in a marketplace. This is due in large part to the whimsical, flawed, and unpredictable role humans continue to play in finance and markets.\textsuperscript{19} Therefore, as we grow more reliant and assured about the promise

\textsuperscript{13} Hu, supra note 8, at 1608–12.


\textsuperscript{15} See, e.g., Jerome Frank, Law and the Modern Mind 129 (2009) (“The law is not a machine and the judges not machine-tenders. There never was and there never will be a body of fixed and predetermined rules alike for all.”); Frank H. Knight, Risk, Uncertainty, and Profit 347 (1921); Lo, supra note 8, at 14.

\textsuperscript{16} See, e.g., Christian, supra note 8, at 5–10.


To be fair to the machines, many humans have difficulties deciphering the meaning of the phrase, “it’s fine,” depending on the context.

\textsuperscript{19} See Frank, supra note 15, at 129 (“The acts of human beings are not identical mathematical entities; the individual cannot be eliminated as, in algebraic equations, equal quantities on the two sides can be cancelled.”); Weatherall, supra note 11, at 36–39; Lo,
of financial artificial intelligence, we should also grow more mindful of its limited capacity to fully comprehend the ineffable complexities of a still largely human-driven marketplace.

B. Discriminatory Data and Algorithmic Biases

Discriminatory data and algorithmic bias represent a set of critical risks and limitations associated with financial artificial intelligence. They concern the integrity and utilization of the underlying informational inputs that are the fuel of artificial intelligence systems.20 Most artificial intelligence systems initially need large quantities of data to teach the programs to recognize certain patterns and make certain predictions. At its best, artificial intelligence can uncover valuable new insights and observations from troves of big data, otherwise impossible without artificial intelligence’s awesome processing powers.21 At its worst, artificial intelligence can exacerbate misguided old practices and aggravate past social harms with its incredible processing powers and the veneer of novel objectivity since discriminatory humans are associated with the decisions.22 While we should appreciate the incredible potential of financial artificial intelligence, we should also be cognizant of the potential risks inherent in systems built with data that may reflect harmful past biases against the marginalized and the poor that we do not want to replicate in the present or perpetuate in the future.23 We should be particularly mindful of underlying data contexts and applications that are being selected and coded by flawed humans with all of our biases, prejudices, and fallacies.24

First, we should be mindful of the context of the data in order to properly account for potential latent biases. When, where, why, and how was this trove of data generated? Understanding the context of the data is critical to understanding the data, its utility, and its potential risks. Inputting data without properly understanding its context could lead to dangerous discriminatory implications.25 As a crude example, if one obtusely inputs


20. O’NEIL, supra note 8, at 3.

21. See Sonia K. Katyal, Private Accountability in the Age of Artificial Intelligence, 66 UCLA L. REV. 54, 59 (2019) (“At first glance, because data collection has now become ubiquitous, the benefits of algorithmic decisionmaking often seem to outweigh their costs. And this is mostly right.”); see also PEDRO DOMINGOS, THE MASTER ALGORITHM: HOW THE QUEST FOR THE ULTIMATE LEARNING MACHINE WILL REMAKE OUR WORLD 1–3 (2015) (discussing the benefits of algorithmic decision-making).

22. See O’NEIL, supra note 8, at 3.


24. See O’NEIL, supra note 8, at 3 (“The math-powered applications powering the data economy were based on choices made by fallible human beings.”).

25. See Bornstein, supra note 8, at 522–23 (“If the underlying data on which an algorithm relies is itself biased, incomplete, or discriminatory, the decisions it makes have the potential to reproduce inequality on a massive scale.”).
white-collar professional labor data from the 1940s to the 1970s into an artificial intelligence system to predict what demographics of individuals would be the most successful applicants for white-collar professions, the suggestion would likely be white males of a certain age. This is not because the algorithm or code is intentionally pernicious; rather, it is because the underlying data is reflective and reproductive of certain harmful discriminatory practices and (mis)understandings of a bygone era. As such, if the context of the data is not properly accounted for, it can lead to innovative technologies that perpetuate old, harmful ways—directly or indirectly via proxy. Given the long history of discriminatory practices in the financial industry, adopters of financial artificial intelligence must be particularly mindful of the historical context of the data that they input into their smart systems so as not to bring forth past biases into the present and the future.

Second, in addition to being more mindful of the context of the data, we should also be more thoughtful about the application of the data by artificial intelligence so as to mitigate potential algorithmic biases. Artificial intelligence, as well as its underlying data and code at their most basic level, is amoral, neither immoral nor virtuous. It lacks values and judgments. We imbue these smart machines with the values and judgments that we believe are important, however good or ill the intentions. Humans, with all of their foibles and faults, design these systems. As such, society cannot simply accept the outputs of artificially intelligent systems without due consideration and understanding of their implications. For example, financial artificial intelligence may recommend that veterans and certain minority populations should be charged higher interest rates on loans without ever considering the social and moral ramifications of such recommendations. Because of the importance of finance in the lives and livelihoods of people, it is critical that programmers, designers, architects, and consumers of financial artificial intelligence systems properly account

29. See generally Joy Buolamwini & Timnit Gebru, Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification, 81 PROC. MACHINE LEARNING RES. 77 (2018).
30. See O’NEIL, supra note 8, at 3 (“[M]any of these models encoded human prejudice, misunderstanding, and bias into the software systems that increasingly manage our lives.”).
31. See Katyal, supra note 21, at 59 (“While algorithmic decisionmaking may initially seem more reliable because it appears free from the irrational biases of human judgment and prejudice, algorithmic models are also the product of their fallible creators, who may miss evidence of systemic bias or structural discrimination in data or may simply make mistakes.”).
for the pernicious ways that such systems can be used and misused and must include humans as safeguards in critical decision points.\textsuperscript{32} In sum, data and algorithmic bias represent one of the key categories of risks and limitations inherent in the rise of financial artificial intelligence. As the financial industry grows more reliant on artificial intelligence, policymakers, regulators, and other key stakeholders must also grow more vigilant about the potential harms that could arise out of data and algorithmic bias. In recent years, there have been significant and serious movements to combat algorithmic bias in finance and beyond.\textsuperscript{33} Ultimately, it is important that new technology does not bring forth old discriminations into the present and the future under the blended gloss of innovation, neutrality, and objectivity.\textsuperscript{34}

\textbf{C. Virtual Threats and Cyber Conflicts}

Another key category of risks and limitations associated with the rise of financial artificial intelligence involves the rise of virtual threats and cyber conflicts in the financial system. The emergence of financial artificial intelligence is an extension of the growing reliance on technology in the financial industry, and this burgeoning reliance has made the financial industry ever more vulnerable to virtual threats. In 2019, IBM found that the finance and insurance industry was the most attacked industry in terms of cybersecurity threats.\textsuperscript{35} As the financial industry evolves even more into a high-tech industry, it will surely face even more of the same types of cyber challenges confronted by most traditional technology companies.\textsuperscript{36}

The virtual threats against the financial industry can be both external and internal. First, in terms of external virtual threats, financial firms and financial industry regulators must be particularly vigilant against foreign


\textsuperscript{34} Kim, supra note 27, at 877 (“Data models may also discriminate when neutral factors act as ‘proxies’ for sensitive characteristics like race or sex. Those neutral factors may be highly correlated with membership in a protected class, and also correlate with outcomes of interest. In such a situation, those neutral factors may produce results that systematically disadvantage protected groups, even though the model’s creators have no discriminatory intent, and the sensitive characteristics have been removed from the data.”).

\textsuperscript{35} IBM, X-Force Threat Intelligence Index 4 (2019), https://www.securindex.com/downloads/8b9f94c46a70e60b229b04609c07acff.pdf [https://perma.cc/3MDS-4TJW].

nation-states, competitors, terrorist organizations, cybercriminals, and cybermercenaries. In the last decade alone, the financial industry has had to confront a diverse matrix of external threats from state and nonstate actors, some seeking profit while others seeking merely to sow chaos using sophisticated hacks designed to steal billions of dollars, acquire valuable information, and cause significant disruptions. Second, in addition to the external threats, financial firms and regulators also have to guard against internal threats, such as rogue employees, corporate spies, and misguided contractors. IBM in recent years has


39. See, e.g., Bambauer, * supra* note 8, at 1050 (“[I]t is not technologically possible to prevent those authorized to access data from misusing it . . . .”); Steven R. Chabinsky,
estimated that human errors account for a very significant percentage of all data and cybersecurity breaches. While such internal threats have always existed within the financial industry, the industry’s heavy reliance on technology like artificial intelligence has magnified the impact of such internal threats. In a financial marketplace where millions of dollars can automatically move in fractions of a second with or without a keystroke, the rogue internal threat may be one of the most dangerous menaces to the financial industry.

Furthermore, both internal and external virtual threats have grown more sophisticated and complex to detect and thwart. In the coming years, with the rise of financial artificial intelligence, market regulators and participants may have to confront unprecedented threats in the marketplace. Financial deepfakes, financial fake news, and many other previously unimagined ways to disrupt and manipulate the markets will persist and grow in a marketplace that becomes ever more reliant on technologies like artificial intelligence. In 2016, then-Federal Reserve Chair Janet Yellen ominously testified before Congress that cyberattacks on the financial system present “one of the most significant risks our country faces.”

In the last few years alone, hackers injected false data into the U.S. Securities and Exchange Commission’s EDGAR electronic filing system and hacked social media accounts to manipulate the stock market. For instance, in 2013, cybercriminals hacked the Associated Press’s Twitter account to falsely report an attack on the White House, which momentarily caused a $136 billion loss in market value when programs driven by artificial intelligence began to trade on the false report.


40. See IBM, supra note 35, at 7–8; IBM GLOB. TECH. SERVS., IBM SECURITY SERVICES 2014 CYBER SECURITY INTELLIGENCE INDEX 3 (2014), http://media.scmagazine.com/documents/82/ibm_cyber_security_intelligence_200450.pdf [https://perma.cc/6EKB-6R8G] (finding that 95 percent of data breaches are the result of human error).


43. Lin, supra note 8, at 1287–94.


intelligence traded on the bogus news.46 Such innovative, pernicious threats will continue to increase as finance becomes more reliant on automated systems powered by artificial intelligence that may be particularly susceptible to bad or false data as nation-states and nonstate actors try to weaponize technological tools like artificial intelligence that have made so much progress in the financial system possible against the system itself.47

In sum, as the financial industry becomes more like the technology industry, with its greater adoption of artificial intelligence, it will face growing and serious risks concerning virtual and other technology-oriented threats.

D. Systemic Risks and Financial Accidents

The rise of financial artificial intelligence and related financial technology heightens the dangers of systemic risk and major financial accidents.48 A growing reliance on artificial intelligence and other forms of technology in the financial industry can exacerbate intertwined systemic risks related to size, speed, and interconnectivity. Moreover, the growing complexity of technology increases the risks of serious financial accidents.

Wider adoption of financial artificial intelligence can amplify certain systemic risks for the financial system relating to size, speed, and linkage. First, in terms of size, there exists the well-known systemic risk of “too big to fail,” whereby large financial institutions supposedly become too large and important to the welfare of the system to falter or fail.49 As financial artificial intelligence gains more ground in the financial industry, institutions that are critical to the system because of their large data holdings for the purpose of financial artificial intelligence could also become too important to the system to fail. As such, in the future, the systemic risk of size may mean not only the size of a financial institution’s balance sheet but also the size of its databases.

Second, in terms of speed, wider adoption of financial artificial intelligence would likely lead to even faster financial speeds, which would create a systemic risk of “too fast to save,” whereby disruptions, bad acts, and other events could destabilize the financial system before any corrective

46. Chozick & Perlroth, supra note 45.
47. See Lee, supra note 2, at 82–86 (discussing the competition between the United States and China in the area of artificial intelligence); Smith & Browne, Tools and Weapons: The Promise and the Peril of the Digital Age 69–76 (2019).
48. See Magnuson, supra note 3, at 1199 (arguing that new financial technologies can create and complicate systemic risks).
or preventive measure could be taken.50 During times and trading periods of distress, panic, and confusion, high-speed automated programs running on artificial intelligence can sow greater volatility and calamity by rapidly increasing or decreasing liquidity.51 In the last few decades alone, we have seen unprecedented volatility and flash crashes in the financial markets, made possible by new technology like artificial intelligence.52

Third, in terms of linkage, the prevalence of financial artificial intelligence could intensify the systemic risk of “too linked to fail,” whereby actions, errors, and failings trigger destabilizing ripples across the financial system because of the interconnectivity of firms, regardless of their value or size.53 This systemic risk is particularly troubling because of the highly intermediated and interconnected nature of modern finance and the use of similar and interdependent artificial intelligence programs by many firms within the financial industry.54 As a consequence of these tight links and interoperative programs, one or a few firms can create dangerous cycles and cascades of volatility and spillover effects that destabilize the entire financial system.55

50. See Andrei A. Kirilenko & Andrew W. Lo, Moore’s Law Versus Murphy’s Law: Algorithmic Trading and Its Discontents, J. ECON. PERSP., Spring 2013, at 51, 60; Lin, supra note 5, at 711–14 (“[A]utomated trading systems provide enormous economies of scale and scope in managing large portfolios, but trading errors can now accumulate losses at the speed of light before they’re discovered and corrected by human oversight.”).


In addition to the rise of financial artificial intelligence that exacerbates systemic risk, its ascent could also lead to financial accidents. Charles Perrow, in his landmark study on technological risks *Normal Accidents: Living with High-Risk Technologies*, theorized that complex technology systems, like the artificial intelligence–driven ones that are at the heart of our financial system, are inherently vulnerable to breakdowns and accidents. As financial artificial intelligence grows more prevalent, “normal financial accidents” will likely also grow more frequent within the financial system. In fact, both the New York Stock Exchange and the Nasdaq, the two most prominent American stock exchanges, suffered serious malfunctions that halted hundreds of billions of dollars worth of trading for hours during otherwise normal trading sessions in recent years.

In sum, the proliferation of artificial intelligence in finance increases the dangers of systemic risks and major financial accidents. While we should appreciate the many new positive outgrowths of financial artificial intelligence for certain firms and institutions, we should also be mindful of the hazards and challenges that it may cause for the entire financial system going forward.

**II. Key Implications and Recommendations**

The proliferation of financial artificial intelligence will have many profound implications on finance, law, and society. While the specific and wider effects of financial artificial intelligence remain forthcoming, three particular areas are worthy of closer near-term consideration and action: financial cybersecurity, competition, and societal impact.

**A. On Financial Cybersecurity**

One of the most significant issues and challenges arising from the wider adoption of financial artificial intelligence is financial cybersecurity. Today, many of the more sophisticated attempts to manipulate and disrupt financial

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59. See, e.g., Korsmo, supra note 7, at 549–50 (listing the benefits relating to algorithmic trading); Langevoort & Thompson, supra note 7, at 347 (discussing how new financial technologies have increased liquidity and lowered transactional costs for many in the marketplace).
markets take place exclusively in cyberspace and are aimed at artificial intelligence systems. Because financial artificial intelligence relies on interconnected, complex technological systems, being able to safeguard those systems from threats and attacks is critical to preserving the integrity of the financial system.

One of the critical challenges concerning financial cybersecurity is that disparate private parties, who may have misaligned and competing interests, control much of the global cyberinfrastructure. As such, private firms motivated by higher profits, competitive advantage, expense reductions, and other understandable considerations may not always act with systemic financial cybersecurity as a top priority in their decision-making. For instance, many financial firms already spend substantial sums of money annually on regulatory compliance and cybersecurity efforts and may be reluctant to spend more on a timely basis going forward. That said, sound systemic financial cybersecurity requires all or most firms to have strong cybersecurity capabilities. It is not nearly enough for just a few firms to have strong cybersecurity safeguards while their counterparties and vendors are vulnerable, given the interconnected nature of the modern financial system. As such, public policymakers need to think creatively to incentivize private firms around the world to innovate faster and cooperate better with other firms and public regulators as the specter of cybersecurity attacks grows larger with advances in financial artificial intelligence.

60. Lin, supra note 8, at 1287–93.
61. See, e.g., Patterson, supra note 6, at 8–10; Tom C.W. Lin, Financial Weapons of War, 100 Minn. L. Rev. 1377, 1405–08 (2016) (discussing the threats of “cyber financial weapons”).
63. See, e.g., Stewart Baker et al., McAfee, In the Crossfire: Critical Infrastructure in the Age of Cyber War 14 (2010), https://www.govexec.com/pdfs/012816j1.pdf [https://perma.cc/BP3N-Q8LL]; N.Y. State Dep’t of Fin. Servs., Report on Cyber Security in the Banking Sector 11 (2014), https://www.dfs.ny.gov/docs/reportpub/cyber/dfs_cyber_banking_report_052014.pdf [https://perma.cc/74SR-YL58] (reporting on resource constraints and stale software as persistent financial cybersecurity challenges); Bambauer, supra note 8, at 1036 (“Rational vendors will accordingly skimp on security investments, at least at the margins, since they will likely not be able to recover those costs via higher prices that correlate with higher quality.”).
65. See, e.g., Harris, supra note 37, at xxii (“Defending computer networks, and launching attacks on them, requires the participation, willing or otherwise, of the private sector.”); Nathan Alexander Sales, Regulating Cyber-Security, 107 Nw. U. L. Rev. 1503, 1550–52 (2013) (discussing the use of both incentives and punishments to improve cybersecurity); Bruce P. Smith, Hacking, Poaching, and Counterattacking: Digital Counterstrikes and the Contours of Self-Help, 1 J.L. Econ. & Pol’y 171, 173 (2005); Christopher S. Yoo, Cyber Espionage or Cyberwar?: International Law, Domestic Law, and Self-Protective Measures, in CYBERWAR: LAW & ETHICS FOR VIRTUAL CONFLICTS 175, 192–93 (Jens David Ohlin, Kevin Govern & Claire Finkelstein eds., 2015) (discussing the need for “improved software engineering”).
Ultimately, sound and sustainable financial cybersecurity requires smart leadership and partnership from both the public and private sectors. As then-President Barack Obama remarked in 2015 about cybersecurity, “neither government, nor the private sector can defend the nation alone. It’s going to have to be a shared mission—government and industry working hand in hand, as partners.” In the absence of such coordinated action, the integrity of the financial system could come into question as institutions and investors lose trust and faith in the stability and reliability of the financial system. This is particularly true with the rise of financial artificial intelligence because of its heavy reliance on electronic networks and computerized systems for its operations. Furthermore, many financial artificial intelligence systems are “black box” systems, meaning that their operations are difficult or impossible to fully understand, explain, or audit.

In sum, wider adoption of financial artificial intelligence will have serious ramifications on the cybersecurity and integrity of the global financial marketplace. Private and public institutions throughout the world must act with greater speed and coordination to guard against the looming threats of cyberattacks, manipulation, and other bad acts that strike at the heart of the modern, high-tech financial system. It should be noted that while such urgency may be clear and present, it does not necessarily mean that such urgency would manifest in swift and smart policies and actions given various geopolitical complexities involved in a vexing issue like financial cybersecurity.

B. On Competition

The rise of financial artificial intelligence will have significant implications for competition within the financial industry and the greater economy. Because artificial intelligence is highly dependent on large data sets for insights, firms with captive, large sets of data built into their structural platforms may end up having a durable competitive advantage in the marketplace that ultimately hurts consumer welfare and the competitive landscape of finance. The ongoing debates and investigations concerning

68. See BAKER ET AL., supra note 63, at 14; Scopino, supra note 8, at 518–19 (arguing for greater regulatory attention on “digital intermediaries” in finance).
70. See, e.g., Bambauer, supra note 8, at 1062–63; Scopino, supra note 8, at 518–19.
71. See Eichensehr, supra note 66, at 507–11 (identifying various challenges arising from public-private actions on cybersecurity).
72. See, e.g., Lina M. Khan, Amazon’s Antitrust Paradox, 126 YALE L.J. 710, 784–88 (2017) (discussing how online platforms “may facilitate anticompetitive conduct and structures”).
competition and antitrust among large technology companies like Google, Amazon, and Facebook may soon spill over into the financial industry with large financial institutions, which are functionally large technology companies similarly powered by large troves of data. In recent years, large financial institutions like JPMorgan Chase have reportedly hired more software developers and technologists than Google or Microsoft.

Technological innovations and advances have been dramatically changing the financial industry. The ascent of financial artificial intelligence is an important extension of this ongoing sea change. New financial technology and artificial intelligence have transformed many segments of modern finance. In trading, smart machines powered by artificial intelligence now trade most securities in global finance, often doing so better, cheaper, and faster than their human counterparts. In risk management, many, if not most, large financial institutions use financial artificial intelligence programs to aid them in managing risk. BlackRock, the world’s largest asset management company, with trillions of dollars under management, uses Aladdin, a proprietary artificial intelligence program to manage risk for its clients. Most significant financial institutions use artificial intelligence


programs in their financial research efforts as well. For instance, such programs can be coded to analyze market trends, read breaking news, and spot investment opportunities entirely on their own. Finally, in wealth management, artificial intelligence programs can manage funds just as well as many financial advisors—at a fraction of the cost. New financial technology companies, like Wealthfront and Betterment, use artificial intelligence programs to advise and manage billions of dollars of assets for clients at lower costs with comparable returns, all from an app on one’s phone.

While all of the aforementioned innovations and advances made possible by artificial intelligence have created many benefits, they also raise legitimate concerns about competition in ways historically unconsidered or underappreciated by banking and antitrust regulators. Because the technology and data underlying much of financial artificial intelligence requires significant investments and favors the data-rich, there is appropriate concern that early movers and better-resourced institutions would acquire durable competitive advantages that ultimately stifle innovation, eliminate meaningful competition, and harm consumer welfare. It is not difficult to foresee a financial firm acquiring and leveraging its superior data in terms of quality and quantity, as well as concentrated network effects, to build an economic moat to shield itself from competition in the same manner as its more traditional technology-oriented counterparts. Similar to current concerns relating to the domination of Google, Amazon, and Facebook in their respective technological territories in search, online commerce, and social media, there is good reason to believe that some large, dominant financial institutions may warrant similar scrutiny with the rise of financial artificial intelligence in the coming years. Whereas federal and state regulators are currently focused on large, traditional technology companies for their anticompetitive practices and implications, in the near future such regulators may turn a similar investigatory gaze on financial institutions given the rise of financial artificial intelligence and its implications for competition within the financial industry.

78. See, e.g., Hope, supra note 6.
79. See, e.g., Patterson, supra note 6, at 322–23; Stevenson, supra note 6.
80. Wasik, supra note 6.
82. Khan, supra note 72, at 784–88.
83. See, e.g., OECD, DATA-DRIVEN INNOVATION: BIG DATA FOR GROWTH AND WELL-BEING 1, 7 (2015) (discussing the data as key ingredient to economic and business growth in the modern economy); Michal S. Gal & Niva Elkin-Koren, Algorithmic Consumers, 30 HARV. J.L. & TECH. 309, 334–35 (2017) (“Digital markets suffer from a high level of concentration. Currently a handful of digital intermediaries with mega platforms control effective points of access to potential users.”).
Therefore, as artificial intelligence becomes more common in finance, policymakers must grow more watchful, thoughtful, and action-oriented about the potential implications it may have for competition within the industry and beyond.86

C. On Societal Impact

The rise of financial artificial intelligence will likely have a profound societal and economic impact on an individual as well as a collective basis.87 On an individual basis, the rise of artificial intelligence in finance raises important questions about the role of humans in finance. On a collective basis, the ascent of financial artificial intelligence also raises important questions about the role and purpose of finance in society.

First, on an individual basis, financial artificial intelligence has profound implications for people working in finance, just as similar ramifications are unfolding in other sectors of our economy.88 Artificial intelligence has gradually—then rapidly—displaced much human labor and effort in finance, and understandably so.89 Smart machines driven by artificial intelligence with perfect memory and recall can process large volumes of data faster, cheaper, and more accurately than humans in most circumstances, and they do not tire with more work or grow irrational with “animal spirits” the way humans normally do.90 It is worth noting that while artificial intelligence has reduced and eliminated many jobs in finance and beyond, it has also produced new jobs, some of which are highly desirable and others that are
Despite the undeniable and impressive rise of financial artificial intelligence, humans will likely remain the critical players in modern finance (for now) because of their judgment and sophistication, especially as it relates to other humans. More importantly, human engagement that touches on emotions, ethics, values, empathy, culture, and other basic human traits remains critical to the success and failure of any financial endeavor. Smart machines, although artificially intelligent, still need humans to build their initial codes and hardware as well as embed them with human values and ethics. Moreover, humans can nevertheless override their smart machines in many situations. As such, in many circumstances, artificial intelligence is often outmatched by natural stupidity or natural brilliance. Ultimately, on an individual basis, financial artificial intelligence will become an even more critical technological ally for humans in finance and not their adversary. This will be the case for both government financial regulators and those they regulate. The important questions in the face of these rapid technological changes in finance and beyond are less about what artificial intelligence is going to do to humans; rather, they are more about what humans are going to do with artificial intelligence going forward to make one another even better and more powerful.

Second, on a collective basis, financial artificial intelligence implicates significant questions about the proper role of finance in society. As finance continues to adopt new technologies like artificial intelligence, it can sometimes lose sight of the fact that finance at its core—behind and beyond all the high-tech gadgetries, complex codes, and seas of data—is driven by real people and real social purposes. Faster, cheaper, bigger, and more efficient finance does not necessarily mean a more just and socially valuable form of finance. Frequently in discussing matters of finance, scholars, regulators, and policymakers forget that people and communities are at the

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97. Pasquale, supra note 69, at 102–04.
People create supply and demand. People move markets. It is flesh and blood people who need finance and financing for education, homes, health care, investments, and other life and social pursuits. Finance is ultimately a tool of social utility and connection that would lose much of its meaning without the context of people and society.

One of the critical responsibilities for executives, policymakers, and regulators in the years ahead centers on how better to update a twentieth-century financial system to account for twenty-first-century financial advances like artificial intelligence without losing focus on the human-oriented missions of finance and democratic values like equal access and transparency. Doing so will not be easy given the serious challenges of modern politics, old narratives, and scarce resources. Furthermore, the objectives of regulating new financial technology can often be crosscutting, whereby achieving one objective like greater transparency could undercut other objectives like efficiency and fairness. That said, properly recognizing the human heart of finance is key to better understanding and harnessing the power of financial artificial intelligence for positive monetary and social impact, while taming its hostilities. To legislate, regulate, innovate, and act on finance divorced from its human participants, beneficiaries, and victims—while theoretically elegant—can lead to serious negative consequences.

In fact, as noted earlier, in the run up to the financial crisis of 2008, too many regulators and firms placed too much faith in the elegant models of smart machines and lost focus on the real-world implications of finance and markets to the detriment of society.

In sum, as finance grows more reliant on new technologies like artificial intelligence, key financial stakeholders must grow more vigilant in safeguarding the people-centered, social purposes of finance.

99. See id. (“We see finance everywhere, from our retirement assets to our investments in housing and education.”).
103. See, e.g., Brummer & Yadav, supra note 55, at 244 (theorizing on the trilemma of fintech regulation relating to the objectives of “(i) market integrity; (ii) rules simplicity; and (iii) financial innovation”).
105. See Khandani & Lo, supra note 14, at 5–9; Krugman, supra note 14 (“There was nothing in the prevailing models suggesting the possibility of the kind of collapse that happened last year.”).
106. See Pasquale, supra note 69, at 141–42, 186–87 (proposing various policies and practices to better harness the benefits of artificial intelligence systems towards positive social ends while minimizing ruinous consequences).
CONCLUSION

The rise and growth of artificial intelligence in finance and beyond will likely be one of the most significant developments for law, finance, and society in the coming years and decades. The early movements offer glimpses of the awesome powers and potential of financial artificial intelligence. Nevertheless, as financial artificial intelligence continues to grow and evolve, we must also become more aware of its potential risks and limitations. We must grow more cognizant of the ways financial artificial intelligence can harm and hinder individual as well as societal progress.

This Article broadly highlights some of the critical risks and limitations of financial artificial intelligence while being largely appreciative of its incredible potential applications. Specifically, it sheds light on the perils and pitfalls of artificial codes, data bias, virtual threats, and systemic risks relating to financial artificial intelligence. It also raises broader issues about the implications of financial artificial intelligence on financial cybersecurity, competition, and society in the near future. This Article aims to offer an insightful perspective for thinking anew about the wide-ranging effects at the intersection of artificial intelligence, finance, and the law with the hope of creating better financial artificial intelligence. In the end, one of the most daunting and consequential endeavors for executives, policymakers, scholars, and other stakeholders working in law and finance going forward is to create better financial artificial intelligence—one that is less artificial, more intelligent, and ultimately more humane, and more human.