

Cleaning up disclosure: CSA provides guidance on AI washing and greenwashing

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Disclosure about the adoption of new technologies, such as artificial intelligence (AI), and environmental, social and governance (ESG) matters, including greenwashing, are highlighted in [CSA Staff Notice 51-365 – Continuous Disclosure Review Program Activities for the Fiscal Years Ended March 31, 2024 and March 31, 2023](#) (the Notice) published by the Canadian Securities Administrators (the CSA) on Nov. 7, 2024. The Notice highlights common disclosure deficiencies of reporting issuers through the CSA's latest Continuous Disclosure Review Program (CD Review Program) covering fiscal 2023 and 2024. In addition to AI and ESG, the Notice also comments on common financial statement and MD&A deficiencies.

Takeaways

- The CSA specifically noted there should be a reasonable basis for AI disclosure by issuers and overly promotional disclosure should be avoided. Instead, a factual, balanced discussion of the benefits and risks of AI systems should be provided.
- While ESG disclosure has grown rapidly, the CSA expects issuers to be specific in their ESG-related activities and to avoid overly broad disclosure.
- The CSA continues to reiterate the importance of complete, accurate and timely disclosure and provides financial statement and MD&A guidance to issuers based on existing securities regulatory requirements.

AI washing

AI washing occurs when an issuer makes false, misleading, or exaggerated claims about its use of AI systems, with the specific purpose of taking advantage of the growing use of, and interest in, AI. Some examples include:

- Claims that the issuer utilizes the most advanced AI technology, modernizing the business processes and disrupting their specific industry.
- Claims that the company's business is a global leader in AI.
- Discussion of the issuer's acquisition and development of AI technology or overly inflating the importance/usage of AI within the company.

The Notice is clear that unsubstantiated claims about technological capabilities and global prowess in this regard is inappropriate. Concerns were also raised where issuers disclosed the use of AI but did not have a reasonable basis for doing so and thus, were found to be misleading and overly promotional. Furthermore, the Notice condemns the absence of operating segment disclosure and relevant MD&A discussions on the true volume of AI usage within the company. Without such segmentation, it may cause investors to incorrectly assume more of the company's revenue is derived AI than is actually the case.

Greenwashing

Greenwashing occurs when issuers make potentially misleading, unsubstantiated, and/or incomplete claims about general business operations or the sustainability of the products or services they offer. Some examples include:

- Failure to disclose particulars about net-zero targets and a credible plan to achieve such targets.
- Claims that a product or service is friendly or compliant with industry standards from an ESG perspective without accompanying information about which industry standards, the factors considered, and measurement/evaluation.

The Notice urges issuers to ensure that all ESG disclosures are factual, balanced, specific, and supported by any applicable facts and corporate activities. The Notice also states that ESG-related disclosure may constitute forward looking information (FLI); for instance, disclosure about a company's plans to reduce greenhouse gas (GHG) emissions or to reach a carbon neutral position. In combination with [recent amendments to the Competition Act](#), issuers should be thoughtful about their ESG disclosure, particularly as new CSA disclosure requirements relating to climate risk and sustainability are expected to be adopted in the near future. It further reminds issuers of the importance of identifying and disclosing material risk factors that could cause results to materially differ, as well as disclosing material factors and/or assumptions used to develop any FLI.

Issuers are cautioned about using broad terms in their disclosures (such as "ESG", "sustainability", "responsible investing", "ethical", and "green") in the event that investors may be misled by such terms. If such terms are used, it is expected that issuers would provide details about the meaning of each term, which factors are included, how the factors are evaluated/prioritized, and the parameters of any sustainability goals the company has.

Finally, the Notice reminds issuers about using a 'rating' to show its ESG impact. Any such disclosure should show:

- the actual rating;
- a description of the specific set of criteria on which the rating is based;
- a description of the methodology used and whether it is based on quantitative or qualitative data and the degree of subjectivity involved;
- the identity of the third party certifying the rating; and
- the date of the rating.

Common financial disclosure deficiencies

The Notice sets out a series of disclosure deficiencies in the context of financial statements and MD&A. General trends in all areas include issuers failing to provide satisfactory detail in their disclosures for investors to make informed decisions based on legitimate company information. Select deficiencies identified include:

- **Failing to meaningfully discuss operations in the MD&A.** Form 51-102F1 requires issuers to sufficiently disclose information relating to that company's operations including a discussion of risks and uncertainties, revenue and cost of sale or gross profit.
- **Disclosing FOFI or financial outlook over an unreasonably long period of time.** The CSA reminded issuers that the period for which future-oriented financial information can reasonably be estimated does not, in most cases, go beyond the end of the issuer's next fiscal year.
- **FLI being unsupported by reasonable factors or assumptions.** Issuers must disclose all material factors and assumptions that are used to develop FLI which should consider the issuer's current financial condition, operational status, capacity and other factors.

Next steps

The Notice reminds issuers that topical trends like AI and ESG should not be capitalized on unless there is sufficient basis for such disclosure. Overly broad and promotional language does not provide investors with material facts to make informed investment decisions. The CSA also provides notice that quantity does not equal quality when it comes to disclosure. Clear language is always expected of issuers.

The authors would like to thank BLG articling student [Corbin Boes](#) for his assistance in preparing this article.

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