

CSA disclosure review highlights AI-washing and greenwashing among other continuous disclosure concerns

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Last week, the Canadian Securities Administrators staff (CSA) issued their biennial report covering the 2023 and 2024 fiscal years identifying topics of CSA focus in their review of continuous disclosure documents during the period. While many of the concerns highlighted in [CSA Staff Notice 51-365 \[PDF\]](#) have been the subject of CSA reminders in the past, the report for the first time also addressed concerns about emerging areas of disclosure, such as overly promotional claims relating to artificial intelligence (AI) and greenwashing.

Overly promotional AI disclosures

The CSA report cites AI and sustainability as areas in which certain issuers have been overly promotional in their continuous disclosure filings, leading to information that is either untrue or unbalanced. The CSA reminded reporting issuers that are adopting new technologies (including AI) of the need to consider whether disclosures regarding the use of the technologies and the evolving risks associated with them are necessary.

Further, issuers were reminded that statements about the capabilities of their AI technologies must have a reasonable basis and be supported by facts and corporate activities. Making broad AI-related statements without supportable financial statement performance measures and additional details about particular AI-related aspects of their business or how the AI capabilities of their business will be measured may be misleading and promotional. For example, describing the issuer as a leader in AI when the issuer does not generate significant revenue from AI-related aspects of its business is misleading.

The CSA indicated that it expects investors would generally consider a variety of items around the use of AI to be material, including

- the source and providers of the data that each AI system uses to perform its functions
- whether the AI system used by the issuer is being developed by the issuer or supplied by a third party
- the impact that the use, development or dependency on AI systems is likely to have on the issuer's business, results of operations and financial condition
- whether there have been any incidents where AI system use has raised any regulatory, ethical or legal issues

- any other concerns that arose with the adoption of AI systems

Greenwashing concerns

The CSA report also notes an increase in issuers making potentially misleading, unsubstantiated or otherwise incomplete sustainability-related claims about business operations, products and services. The CSA reminded reporting issuers that prohibited greenwashing can include disclosure

- about a target or transition to net zero when the issuer does not indicate what is included in its net zero target or if the issuer has no credible plan to achieve the target
- claiming that a material product or service is ESG “friendly” or “compliant” with industry standards without accompanying disclosure identifying the industry standards, the particular factors considered and how they are measured and evaluated

The CSA recommends that reporting issuers ensure that descriptions of ESG-related matters

- avoid overly promotional language
- be factual and balanced
- be specific and supported by corporate activities

For disclosures that may constitute forward-looking information (for example, plans to reduce greenhouse gas emissions), the CSA reiterated that issuers must have a reasonable basis for the disclosure; describe material risks that could cause actual results to differ materially; state the material factors or assumptions used to develop the disclosure; and describe the issuer’s policies for updating the information.

Finally, the CSA report urges reporting issuers to exercise caution when using broad terms such as “ESG”, “sustainability”, “responsible investing”, “ethical” and “green” because they can cover a range of matters, such as climate change, greenhouse gas emissions and biodiversity. The CSA indicated that they expect issuers to provide the specifics of what they mean by the terms they use, which factors are included, and how those factors are weighted and prioritized. To avoid the potential for investor confusion, the CSA emphasized that reporting issuers should clearly state the parameters of their ESG-related goals — for example, whether certain social objectives are being prioritized by the reporting issuer and not others.

The focus on greenwashing foreshadows the focus of the CSA on climate-related disclosures. With specific Canadian rules being considered for climate-related disclosures under securities laws, there will be further developments in this space in the future.

MD&A

In addition to admonishing issuers to avoid boilerplate language in their MD&A analyses, CSA staff noted that issuers should improve the quality of their MD&A disclosures. The report provides a non-exhaustive list of deficiencies and areas for improvement:

- Discuss material impairment losses/reversals to enable investors to understand the impact on continuing operations.
- When an impairment charge has been taken, include an analysis of how continuing operations contributed to the asset’s recoverable amount being lower than the asset’s carrying amount.
- In the case of business combinations, issuers recording significant goodwill should explain

why management decided to pay a significant amount over the fair value of the assets acquired and discuss specific details about intangible assets recognized. If a significant impairment charge is taken in the same reporting period or fiscal year as the business combination, include an analysis of the circumstances surrounding the impairment loss and the changes to the key inputs or assumptions that were used in the purchase price allocation.

- For issuers with expected credit losses (ECLs), describe how estimates of ECLs are made and if there are risks and uncertainties relating to the estimation of ECLs, include tabular information about the fair value of collateral, maximum exposure to credit risk and resulting net exposure, as well as a discussion of those risks and uncertainties, particularly liquidity risks associated with financial assets.
- When disclosing forward-looking information (FLI), the CSA reminded issuers that FLI must have a reasonable basis (and lack of board of director approval or the resources required to execute a disclosed plan may indicate a lack of a reasonable basis) and disclosure should be made of all material factors or assumptions used to develop the FLI (including the issuer's current financial condition, operational status and capacity).
- Disclosure of future outlooks and projections should not cover an unreasonably long period of time and, in many cases, the existence of uncertainties outside the issuer's control will require that future outlooks and projections should not go beyond the end of the issuer's next fiscal year. The CSA reminded issuers that they are required to provide updates disclosing the material differences between actual results and the future outlooks or projections that had been provided for the period.
- Discussion of liquidity and capital resources should include issuer-specific details or context to enable investors to understand how the issuer will respond to liquidity demands and capital expenditure commitments, such as whether the issuer will rely on its operations, obtain additional debt facilities, defer planned projects or reduce employee expenses. Additionally, the CSA noted that reporting issuers must discuss any defaults or significant default risks in connection with debt obligations and the issuer's ability to satisfy related financial and non-financial covenants (including a discussion of cross-defaults and plans to cure defaults).

Other areas of deficiency

The CSA also drew attention certain other areas of deficiencies, such as

- failure to file material contracts and amendments
- redactions of provisions of material contracts beyond those provisions that the issuer reasonably believes would be seriously prejudicial to the interests of the reporting issuer or would violate a confidentiality obligation
- failure to file material change reports on a timely basis, or at all, and failure to include significant facts relating to the material change, information about the time and resources required for the change, and barriers and obligations involved in realizing the change, which are items that may not all have been addressed in the related news release
- for disclosures under National Instrument 43-101- *Standards of Disclosure for Mineral*

Projects, gaps in technical reports relating to matters such as lack of data verification performed by qualified persons (QPs); missing statements about the QP's opinion on the technical report; missing information relating to sample preparation, security, analytical procedures, drilling, and production activities at projects in operation; lack of information about the QP's relevant experience; failure of QP's to be independent when required; and failure to file technical reports for material mineral properties in certain situations

- a number of accounting topics relating to impairment of assets, cash-generating units, intangible assets in business combinations, ECLs and disaggregation of revenue

Takeaways

The report is a helpful reminder for issuers that CSA staff is monitoring disclosure for compliance and will provide targeted comment letters to issuers regarding deficiencies. As noted in the report, in 2024 21% of disclosure required immediate refilings and 8% of disclosure was referred to enforcement or resulted in the issuer being cease traded or noted in default.