Comparative Approaches to AI Transparency

Lessons from Recent Regulatory Efforts

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FDA Virtual Public Workshop – Transparency of Artificial Intelligence/Machine Learning-Enabled Medical Devices
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European Commission Draft AI Act

**Unacceptable Risk, e.g.:**
- Real-time remote biometrics in public places for law enforcement
- Exploitative systems
- Social scoring

**High-Risk, e.g.:**
- Consumer creditworthiness
- Recruiting and workplace management
- Biometric identification
- Education/vocational training

**Limited Risk, e.g.:**
- Emotion recognition or biometric characterization
- Chatbots and interactive AI
- Deepfakes

**Minimal Risk**

**Prohibited**

**Conformity Assessment**

**Heightened Transparency**

**Codes of Conduct**
**U.S. Financial Regulators on AI Transparency**

**Federal Trade Commission**
Blog post: “Using Artificial Intelligence and Algorithms”

“[W]hen using AI tools to interact with customers (think chatbots), be careful not to mislead consumers about the nature of the interaction.”

“If you deny consumers something of value based on algorithmic decision-making, explain why.”

“If you might change the terms of a deal based on automated tools, make sure to tell consumers.”

“[B]e careful not to overpromise what your algorithm can deliver.”

**Securities and Exchange Commission**
IM Guidance Update on Robo-Advisors

Robo-advisers should disclose information regarding their business practices and related risks, including:
- Use of an algorithm;
- Algorithm’s functions, assumptions, limitations, and risks;
- Circumstances that might cause the robo-adviser to override the algorithm;
- Third-party involvement;
- Degree of human involvement;
- Data used by the algorithm, and how to update or correct that data.

**Consumer Financial Protection Bureau**
Innovation spotlight: “Providing adverse action notices when using AI/ML models”

“The existing regulatory framework has built-in flexibility that can be compatible with AI algorithms.”

**Federal Reserve Board**
Speech: “Supporting Responsible Use of AI and Equitable Outcomes in Financial Services”

“[T]here need not be a single principle or one-size-fits-all approach for explaining machine learning models. Explanations serve a variety of purposes, and what makes a good explanation depends on the context. In particular, for an explanation to 'solve' the black box problem, it must take into account who is asking the question and what the model is predicting.”
Towards a Transparency Taxonomy

Ability to Contest/Correct Decisions

Interaction or Use of AI
Decision Explanations, Consequences, and Risks

Material Business Risks or Conflicts of Interest
Model Characteristics, Capabilities & Limitations

List of Approved or Marketed Systems
Technical Documentation (Data, Testing, Validation, etc.)

Use of Standards and Certifications
Data or Model Logs; Compliance Records

Consumers
Professionals
Users
Public
Regulators
Investors
Researchers, Academics
Supervisors
Enforcement
Anna R. Gressel is a senior associate in the firm’s Data Strategy & Security Group. She actively advises clients on the legal and regulatory implications of artificial intelligence and other emerging technologies. Her practice includes not only representing companies in regulatory inquiries concerning AI, but also assisting companies in developing AI governance, compliance, and oversight mechanisms.