Managing Model and AI Representations in Public Communications:

How MRM Practices can Reduce Legal Risk

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Companies increasingly describe their processes as “AI-driven,” “algorithmic,” or powered by “proprietary models” and often make public claims about how their models and AI distinguish them from competitors. Fintechs and technology firms in particular may make such statements in investor presentations, earnings calls, SEC filings, press releases, websites, and marketing materials.

But if a firm’s business performance and stock price later declines, plaintiffs may look back at those statements and ask:

Did the company overstate what its models could do?

Recent securities lawsuits show a consistent pattern:

1. A firm promotes an AI or model-driven competitive advantage.

2. The firm’s performance deteriorates or risk materializes.

3. The stock price falls.

4. Investors allege that earlier statements about model capabilities were misleading.

Law firm WilmerHale notes that “Between 2020 and 2023, the number of AI-related securities class actions remained relatively stable. However, in 2024, that number more than doubled, and they became one of the top three trend categories according to

Cornerstone Research and the Stanford Law School Securities Class Action Clearinghouse." [1]

The lesson is not for companies to avoid discussing models or AI use publicly, but rather to ensure that any public representation about model performance, superiority, or adaptability can be supported with well-documented evidence that such claims are well-founded and can hold up to scrutiny. Firms should make sure any representations about their models or AI are carefully assessed by those most knowledgeable of their risks and limitations.

Despite the widespread use of predictive models and AI across the banking sector, it's notable that there have been few, or no recent investor-driven securities fraud cases alleging that banks have misrepresented the capabilities of their models. This stands in contrast to a growing body of litigation involving fintech and technology firms, where plaintiffs have challenged specific claims regarding model performance, adaptability, and competitive advantage.

Banks have a long history of executing on model risk management (MRM) practices that likely have helped them steer away from over-statements or misstatements about their models. In this paper we argue the MRM practices that are widespread among banks could also substantially lower the legal risks to non-bank financial and technology firms.

Where Model and AI Claims Can Create Exposure

Litigation risk can arise from multiple sources, including:

- Annual and quarterly SEC reports
- Earnings calls and transcripts
- Investor presentations and investor days

- Press releases
- Public conference remarks by executives
- Investor-relations webpages, and marketing materials
- Registration statements and SPAC[2] materials

Companies should assume that any public statement about model capability that could influence investors may later be examined and used in litigation after a stock price dip. The risk is greatest when claims are framed as drivers of growth, stability, or resilience — for example:

- "Our AI adapts to changing macroeconomic conditions"
- "Our model provides superior risk selection"
- "Our proprietary algorithm reduces volatility."

Especially when such statements become central to a firm's valuation, they may become central to litigation.

Three Recent Cases Involving Model or AI Claims

In the appendix we summarize Class Action lawsuits brought against three companies who had touted their models as beneficial to their ability to compete and generate revenue. These allegations have not necessarily been established to be true, but they illustrate the types of challenges companies may face to prove any public statements they may make regarding model and AI benefits are factual.

Across all three matters:

1. The company highlighted AI or model advantages in public statements.

2. Environmental or firm-specific conditions caused performance deterioration and its stock price declined.

3. Investors claimed earlier AI or model representations had

helped support or even inflate the stock price, but were overly optimistic, embellished, or just not factual.

4. The litigation focused on whether those representations were materially misleading when made.

Importantly, none of these cases turned on whether the model was perfect, but rather on whether public statements accurately reflected known model capabilities and limitations at the time.

Best Practices for Integrating MRM into AI and Model-Related Disclosures

Firms that publicly reference artificial intelligence, algorithmic systems, or predictive models should incorporate disclosure governance into their existing model management practices to ensure their statements about model capabilities are accurate, supportable, and consistent with validated evidence at the time they are made.

These practices have been in place at banks for more than a decade, driven by regulatory guidance such as OCC 2011-12 and related OCC expectations. While these practices are primarily designed to ensure the sound development, validation, and use of models, they also appear to influence how institutions describe those models externally. When speaking of models, bank disclosures typically emphasize uncertainty, limitations, and governance processes rather than asserting model superiority or performance advantages. Statements are often framed in conditional or risk-based language—for example, noting that model outputs are subject to assumptions and may not perform as expected under changing economic conditions. This style of communication reduces the likelihood that statements about models will be construed as concrete, verifiable representations capable of supporting securities fraud claims.

In contrast, fintechs and certain other technology-driven companies may view their competitive advantage as being more model-driven and may be inclined to emphasize these advantages publicly. This makes it even more important that they have formal processes for reviewing models and related statements in place to ensure their statements remain consistent with validated evidence and clearly articulated limitations.

Here are some best practices for limiting legal exposure related to model representations:

First, firms should have a policy requiring that model-related statements made in public documents and forums be subject to formal internal review by experts most knowledgeable of the model or AI capabilities:

Reviews should be required for all statements dealing with AI or models such as the following:

- Expected firm performance (e.g. expectation of increased or stable revenue due to model or AI capabilities).
- Claims of superiority relative to competitors or prior model versions (e.g. “industry leading AI”, “proprietary algorithm advantage”)
- Description of automation as “fully automated,” “self-learning,” or “autonomous.”
- Representation of model robustness across economic cycles

Second, for each model-related public statement made, companies should maintain a supporting memorandum explicitly comparing proposed public language to validation conclusions to identify any possible overreach. The memo should include:

- The exact language of the public statement.
- The model version referenced.
- Supporting validation and testing results (e.g. benchmarking to other models, back-testing, sensitivity testing, evaluation of

"automation" claims by evaluating extent of human intervention).
- Data period used for testing.
- Name of approver of statement and date.

This creates contemporaneous documentation demonstrating that the statement was grounded in validated evidence, reducing litigation exposure related to allegations of false or exaggerated representations.

When appropriate, model representations should be modified or caveated to make clear they are based on results for a specific period and that future results could differ. Just because model testing shows high model accuracy from one time period does not necessarily mean the model will continue to perform well in a substantially different economic environment for which back-testing has not been possible; so, claims the model works well in all environments should be made with extreme care. These practices will reduce the likelihood that statements could be deemed materially misleading as part of a legal action.

Third, the board should be made aware of planned public statements related to AI and models and provided with summary evidence that such statements have been assessed against model testing results (by a knowledgeable party independent of the development of the model such as a model validation team, if available).

Even if firms don't have full-scale MRM frameworks similar to those at banks, these steps, along with the documentation produced, should serve to temper overly embellished public model representations in the first place, and, in the event a lawsuit is brought, provide evidence to plaintiffs and courts that the model statements are well-founded.

Appendix

Opendoor Technologies

Opendoor is an iBuyer (Instant Buyer) of residential real estate. Such companies make instant cash offers to buy homes based on values indicated by their proprietary pricing models, then update and repair the properties with the goal of quickly reselling them at a profit.

In January of this year Opendoor made headlines for a $39 million settlement in response to a complaint about representations concerning its home pricing model to establish prices for properties, and other business practices. In its SPAC merger materials and in other public disclosures, Opendoor described its proprietary pricing technology as a key competitive advantage enabling accurate valuation and risk control.

The class action complaint against Opendoor alleged that "defendants told investors that Opendoor had built "world-class data…to improve and automate pricing decisions and explained that its AI-powered algorithm was superior because it uses machine learning to drive pricing decisions through demand forecasting, outlier detection, risk pricing, and inventory management". Further it was alleged the company "consistently told investors that the algorithm worked in all housing markets because it could predict changing economic conditions and quickly adapt to such changes".

The claim further alleged these statements led the investing public to believe the accuracy of Opendoor's algorithm would drive its success and provided a key advantage over competitors. When its key competitor, Zillow (discussed next) shut down its iBuyer business over problems with its own pricing model, Opendoor's stock price also fell. Opendoor, however,

continued to make positive statements during an earnings call about the responsiveness of its AI-driven algorithm to changing economic conditions, causing its stock price to rebound.

The claim alleged that when housing markets shifted in 2022, Opendoor's model was internally found to be inaccurate and employees made manual adjustments to model output and the company undertook other practices (claimed to be harmful to home sellers) to temporarily maintain profitability.

But as a key profitability metric began to decline in 2022, analysts began to express concern that Opendoor's model and in fact overall iBuyer business model was not robust in the face of a changing housing market, and the stock price dropped precipitously. The class action case was brought in October 2022.

Zillow Group

In 2018 Zillow announced it would fundamentally shift its business model and enter the iBuyer market, stating a goal to purchase and resell 5000 homes per month. As a part of this new strategy, they would use their proprietary pricing model to estimate the appropriate price for homes they would purchase.

According to a Class Action complaint later filed in 2022, "the Wall Street Journal reported, based on interviews with employees that 'The business model rested on the assumptions that Zillow's algorithm, fed by the company's trove of data, would be able to predict home prices with pinpoint accuracy' and that "in the years leading up to the Class Action the Defendants repeatedly touted their algorithm's ability to accurately price homes".

The complaint alleges that in 2021 Zillow determined that it was "missing its volume targets because its algorithm was not accurately predicting house market appreciation which resulted in offers being too low to entice prospective sellers" and imposed an "add-on" (model overlay) with as much as a 7% increase in offer price, to drive up purchase volume. The complaint further

alleges that Zillow reported earnings for the second quarter of 2021 without disclosing any of this information and paid more than the model indicated, and claimed instead that higher volumes were the result of improvements in their pricing models. Analysts echoed Zillow's statements, noting "improved pricing models" and an algorithm that "Zillow recently updated to adapt to a rapidly changing market….which seem to be working".

By 3Q2021 analysts lowered their price targets for Zillow with one noting Zillow had "meaningful inventory that it "bought at too high a price". This caused the share price to fall. As another analyst report came to the same conclusion, Zillow's stock price continued to fall. Zillow announced it was winding down the program to purchase homes and would take large write-downs on their inventory, noting "fundamentally, we have been unable to predict future pricing of homes to a level of accuracy that makes this a safe business to be in".

In September 2025, the courts allowed the class certification to stand, permitting the case to proceed as a class action.

The OpenDoor and Zillow stories both illustrate that when a company publicly attributes performance to a model, that model becomes central in any post-loss litigation narrative.

Upstart Holdings, Inc.

Upstart Holdings, Inc. is a fintech company that provides a digital lending platform connecting borrowers, banks, and institutional investors. Upstart's business model centers on licensing and operating a proprietary machine-learning underwriting model that partner banks use to originate consumer loans. The company has marketed its platform as a marketplace in which banks originate loans using Upstart's predictive models while institutional investors purchase those loans in secondary markets. This structure was intended to allow Upstart to earn fee-based revenue rather than holding loans itself which would result

in it taking on credit exposure. Central to this business model was the company's claim that its AI–driven underwriting model could more accurately assess borrower credit risk than traditional credit scoring systems, enabling lenders to approve more borrowers at comparable or lower levels of credit loss.

Upstart repeatedly made public statements describing the capabilities of its AI-based underwriting model in earnings calls, investor presentations, and other public statements. Company executives emphasized that the model used machine-learning techniques and a large set of borrower attributes to outperform traditional credit evaluation methods. The complaint stated that executives represented that the system could dynamically adjust to changing macroeconomic conditions and interest rates through ongoing training and recalibration. These statements were important to investors because they implied that the company's core technology provided a durable competitive advantage and that the marketplace could function effectively even as broader credit market conditions changed.

In 2022, however, rapidly rising interest rates and tightening credit conditions disrupted the consumer lending market and exposed weaknesses in the company's marketplace model. As rates increased, investor demand for consumer loans declined and loan conversion rates on the platform fell. Upstart also began retaining loans on its own balance sheet to maintain loan originations on the platform, which was inconsistent with earlier expectations that the company would primarily operate as an asset-light marketplace. When Upstart reported these developments during its May 2022 earnings announcement and revised its forward guidance, Upstart's stock price dropped dramatically following the announcement, declining by more than half in a single trading session and continuing to fall in the months that followed.

Following this decline, investors filed multiple securities class actions alleging that Upstart executives made materially

misleading statements about the capabilities of the company's AI underwriting model and failed to disclose material limitations in its performance. According to the complaints, defendants overstated the model's ability to outperform traditional credit scoring methods and its capacity to adapt quickly to macroeconomic changes such as rising interest rates. Plaintiffs alleged that the company failed to disclose that the model could not adequately account for certain macroeconomic factors affecting loan pricing and demand, which contributed to declining loan conversion rates and the company's need to retain loans on its balance sheet. When these issues became apparent through the company's disclosures and financial results, investors alleged that the earlier representations about the model were revealed to be misleading, causing substantial losses to shareholders.

Disclaimer

This paper is provided for informational purposes only and does not constitute legal advice. Firms should consult qualified securities counsel regarding specific disclosure obligations.

[1] https://www.wilmerhale.com/en/insights/blogs/wilmerhale-privacy-and-cybersecurity-law/20250331-year-in-review-2024-ai-securities-litigation-trends

[2] Special Purpose Acquisition Companies (SPACs) are formed to raise capital through an IPO that it can then use to acquire or merge with another company.