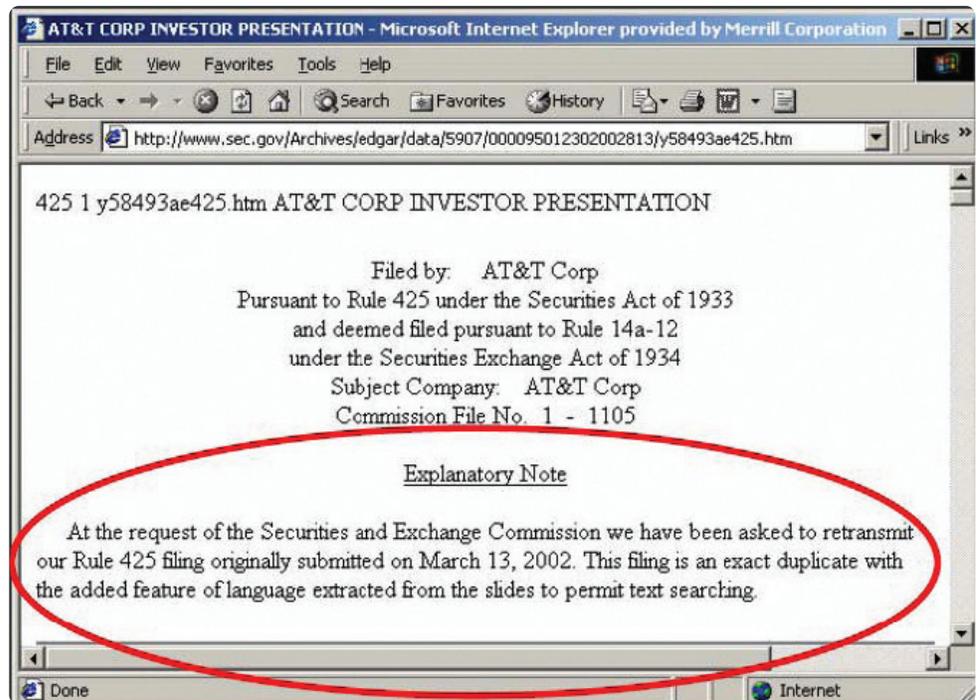# EDGAR – Graphics are Not Always Legal Content

With the inclusion of graphics in EDGAR HTML filings, disclosure material is becoming more stylized and user-friendly. The SEC's Fair Disclosure (FD) rules have resulted in the need to file more graphically oriented material. A popular example of this graphic material includes PowerPoint presentations/slide shows. Merrill has converted and transmitted many of these graphic heavy documents successfully, adding to the value of the disclosure. When these graphics are done correctly, they greatly enhance an EDGAR filing. However, when SEC rules are not followed for graphics, SEC penalties may be enforced, including a requirement to re-file corrected documents as seen in the screen shot below.

So why does the SEC care about what's in a graphic? Because graphics are not always legal content. Required information and substantive/material disclosure must be searchable! Logos, photos, charts, etc., may be filed in EDGAR but NOT in place of required or substantive text or tables. In regulation S-T, Section 232.304, the SEC rule states:

> "…filers may not present in a graphic or image file information such as text or tables that users must be able to search and/or download into spreadsheet form (e.g., financial statements)…"

Link to Regulation S-T: http://www.sec.gov/about/forms/regs-t.pdf

Below are some common EDGAR HTML graphics questions we are asked:

1. Can a proxy card be created as a graphic in HTML?
2. Can I convert my presentation/slide show to a series of graphics?
3. Can the 20-F have tables set up as graphics?
4. Can the 8-K, 425 or 6-K have text converted to graphics?

The answers to all of these are NO, unless the graphics are supported with searchable text.

If the above examples are set up as graphics, their content is not searchable. The only time these questions may be answered "YES" is when the content is not required and not material, or when extracted text or tables accompany the graphic elements so they are searchable and/or can be downloaded to a spreadsheet. Tables may also be represented as a series of plot points in a searchable narrative table.

The proxy performance graph is an exception to filing legal (required) content in a searchable format. This graph is required to be filed as a graphic in HTML. See the rule below:

> "…HTML documents must present the following information in a HTML graphic or image file: …the performance graph that is to appear in registrant proxy and information statements…"

How does Merrill know if your disclosure information is substantive/material (legal)? We rely on you! Identifying material content of a filing is the responsibility of the registrant and its lawyers. So please always identify material data you want us to extract from a graphic to include in a filing. Plan ahead for some additional processing time to avoid risking a missed deadline or critical filing.

See the examples below of filings that contain graphics and properly extracted, searchable data:

Example 1
http://www.sec.gov/Archives/edgar/data/825313/000110465901503379/j2417_ex99d13.htm

Example 2
http://www.sec.gov/Archives/edgar/data/1144980/000091205702014498/a2076305zex-99_2.htm