

Don't Forget to Review the Graphics in Your Proxy

As lawyers reviewing disclosure documents, it's easy to gloss over the graphics when conducting a compliance review. But that would be a mistake. Those graphics are as important as any textual disclosure. Let me give you an example. Quite a few companies include non-GAAP financial measures in proxy disclosure outside of the CD&A discussion of incentive targets and achievement that does not require Reg G compliance. On occasion, someone - after a compliance check is already conducted - decides to add in a non-GAAP metric to the discussion of company performance. This might happen in the proxy summary, the letter to shareholders, or the discussion of shareholder engagement for the say-on-pay proposal, or even in the part of CD&A that discusses company performance more generally. Maybe it's a reference in a graphic. This new graphic is added in without alerting the compliance people that need to know; this happens without realizing that the graphic needs to follow the normal Reg G requirements. Bottom line: as compliance personnel, make sure you do a clean read of the final product, graphics and all.

Authors



[Danielle Benderly](#)

Partner

DBenderly@perkinscoie.com [503.727.2011](tel:503.727.2011)

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