

CORPORATE AND SECURITIES LAW ALERT

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

SEC Issues Guidance on MD&A Liquidity and Capital Resources Disclosures

October 6, 2010

On September 17, 2010, the Securities and Exchange Commission issued an interpretive release providing SEC reporting companies guidance on existing MD&A requirements for liquidity and capital resources disclosures. The interpretive release is intended to improve the presentation of information about funding and liquidity risk.

Much of the interpretive release reiterates past MD&A guidance. Some of the issues highlighted in the release include the following:

- **Liquidity Disclosures.** The interpretive release discusses: (i) additional trends and uncertainties registrants should consider identifying in their liquidity disclosures; (ii) additional narrative disclosures discussing financing arrangements and the impact of those arrangements on liquidity; (iii) disclosure of certain repurchase agreements accounted for as sales and other types of short-term financings not otherwise captured in balance sheets; and (iv) disclosure of cash management and risk management policies which are relevant to an assessment of a registrant's financial condition.
- **Leverage Ratio Disclosures.** The interpretive release emphasizes that capital or leverage ratios, and other financial and non-financial measures that are included in a filing, must be accompanied by a clear explanation of the calculation methodology, including an articulation of any treatment of inputs that differs from directly comparable measures, as well as a disclosure clearly stating why the ratios and/or measures are useful to understanding the registrant's financial condition.
- **Contractual Obligations Table Disclosures.** The interpretive release addresses divergent practices that have arisen in the context of the tabular disclosure of contractual obligations, and encourages registrants to refocus on developing a disclosure that is clear, understandable and accurately reflects meaningful obligations in order to improve transparency of a registrant's short-term and long-term liquidity and capital resources needs, and to provide context for investors to assess the relative role of off-balance sheet arrangements.

The interpretive release became effective upon publication in the Federal Register on September 28, 2010, and is therefore applicable to periodic reports filed after that date, including third quarter Form 10-Q filings for calendar year-end companies. The interpretive release is available on the SEC's Web site at <http://www.sec.gov/rules/interp/2010/33-9144.pdf>.

In a companion release, the SEC also proposed expanded short-term borrowings disclosure which would include, in a separately captioned subsection of MD&A, a comprehensive explanation of a registrant's short-term borrowings, including both quantitative and qualitative information. The proposal, which is subject to public comment, is available on the SEC's Web site at <http://www.sec.gov/rules/proposed/2010/33-9143.pdf>.

Bass, Berry & Sims PLC's Periodic and Current Reporting Subgroup monitors and advises on developments in SEC reporting, including quarterly, annual and current SEC reports and proxy statement disclosures as well as XBRL compliance. If you have any questions regarding the issues addressed in this *Corporate and Securities Law Alert*, please feel free to communicate with your regular contacts in our Corporate and Securities Group or any of the attorneys in our Subgroup responsible for this alert listed below.

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Bass, Berry & Sims PLC Corporate and Securities Group

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