

# CORPORATE AND SECURITIES LAW

## Alert

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

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### NYSE Amends Corporate Governance Listing Standards

December 14, 2009

Recently approved amendments to New York Stock Exchange's ("NYSE") corporate governance listing standards become effective January 1, 2010. Generally, these amendments conform to applicable SEC rules and clarify existing listing standards. This client alert provides a brief summary of the most relevant amendments to NYSE's listing standards.

#### Amendments to Disclosure Requirements

- *Enhanced Notification Requirements.* A company's chief executive officer must notify NYSE after an executive officer becomes aware of *any* non-compliance with NYSE corporate governance listing standards, regardless of its materiality.
- *Incorporation of Regulation S-K Item 407 Disclosure Requirements.* Item 407 of Regulation S-K takes the place of current NYSE director independence disclosure requirements, enabling NYSE to take action (including, in appropriate cases, delisting) against companies with deficient Item 407 disclosure.
- *Website Reporting Option for Certain Disclosures.* A company can report certain required corporate governance disclosures on its website in place of its proxy statements and annual reports.
- *Communications with Directors.* The amendments clarify that a company must disclose a method for *all* interested parties, not only shareholders, to communicate with the presiding director or the non-management or independent directors as a group.
- *Disclosure of Business Conduct and Ethics Waivers.* The amended listing standards clarify that companies must disclose any waivers of their codes of conduct and ethics granted to executive officers and directors within four business days, the same time frame required by the SEC, either through a press release, on the company's website or on a Form 8-K.

#### Additional Amendments

- *Executive Sessions.* A company can hold regular executive sessions of independent directors as an alternative to executive sessions of non-management directors.

- *Clarification of “Controlled Company.”* The amendments clarify that the determination of whether a company is “controlled,” and therefore exempt from certain requirements, is based upon whether 50 percent of the voting power *for the election of directors* is held by an individual, a group or another company.

The NYSE listing standard amendments contain several additional changes applicable to NYSE listed companies, as well as changes applicable only to foreign private issuers, which are not addressed in this Alert. The full text of the SEC release adopting the amendments to the NYSE listing standards is available at <http://www.sec.gov/rules/sro/nyse/2009/34-61067.pdf>.

### What Companies Should Do Now

Most of the amendments to the NYSE listing standards are clarifications or conformation to applicable SEC rules that do not mandate immediate company action. However, in order to ensure compliance with the amended listing standards we advise NYSE-listed companies to take the following actions:

- Review your proxy statement, website disclosures and governance documents (including committee charters and D&O questionnaires) to ensure compliance with the revised rules and to determine whether any references need to be updated.
- Review your disclosure controls and procedures to ensure executive officers are aware of the new notification requirement for non-compliance with NYSE corporate governance listing standards to ensure timely notification.
- Consider whether you will continue to provide shareholders with hard copies of governance documents posted to your website upon request. While no longer required, you may want to continue offering hard copies as a matter of good investor relations.

Bass, Berry & Sims PLC’s Corporate Governance Subgroup counsels boards, audit, nominating/governance and compensation committees and special committees of public companies on a variety of key issues, including public disclosure, executive compensation and fiduciary duty issues. If you have any questions regarding the issues addressed in this Corporate and Securities Law Alert or if you would like to set up a meeting with us and your management team or board of directors regarding these developments, please feel free to contact your regular contacts in our Corporate and Securities Group or any of the attorneys in our Corporate Governance Subgroup listed below.

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## Bass, Berry & Sims PLC Corporate and Securities Group

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