

CORPORATE AND SECURITIES LAW ALERT

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

SEC Issues Guidance on Climate Change Disclosure

January 29, 2010

On January 27, 2010, the Securities and Exchange Commission by a 3 to 2 vote approved an interpretive release providing SEC reporting companies guidance on existing disclosure requirements as they apply to business or legal developments relating to the issue of climate change. While the release has not yet been published, the SEC stressed the importance of reporting companies closely reviewing their public disclosures to ensure compliance with applicable disclosure requirements in light of climate change risks.

The SEC stated that the interpretive release does not create new legal requirements or modify existing requirements, which already require disclosure of a company's material risks. Notably, the SEC confirmed that the traditional materiality standard governing disclosure requirements is not being altered with respect to climate change risk disclosures. Instead, the interpretive release is intended to provide clarity and enhance consistency for reporting company disclosures on the impact that business or legal developments related to climate change may have on its business. The relevant sections of a reporting company's SEC reports which may require climate change disclosure include the company's risk factors, business description, legal proceedings, and MD&A.

The SEC highlighted the following areas as examples of where climate change may trigger disclosure requirements:

- The impact of state and federal laws and regulation, including potential legislation, regarding climate change;
- The impact of international accords and treaties relating to climate change;
- The actual and potential indirect impacts and consequences, including reputational harm and lost opportunities, due to climate change; and
- The actual and potential impacts of physical effects of climate change.

Because the guidance is in the form of an interpretive release and not a formal rule proposal, it is possible, although not completely clear, that the guidance is immediately effective, meaning it is applicable to the thousands of Form 10-K filings that will be filed over the next two months. The SEC's press release announcing the approval of the interpretive release can be located at the SEC's web site at <http://www.sec.gov/news/press/2010/2010-15.htm>.

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Bass, Berry & Sims PLC Corporate and Securities Group

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