

company's Exchange Act or Investment Company Act file number, in the upper right corner of the cover page.

(d) Notwithstanding paragraph (a) of this section, the following need not be filed under this section:

(1) Any written communication that is limited to the information specified in § 230.135 and does not contain new or different information from that which was previously publicly disclosed and filed under this section.

(2) Any research report used in reliance on § 230.137, § 230.138 and § 230.139;

(3) Any confirmation described in § 240.10b-10 of this chapter; and

(4) Any prospectus filed under § 230.424.

NOTES TO § 230.425: 1. File five copies of the prospectus or § 230.135 communication if paper filing is permitted.

2. No filing is required under § 240.13e-4(c), § 240.14a-12(b), § 240.14d-2(b), or § 240.14d-9(a), if the communication is filed under this section. Communications filed under this section also are deemed filed under the other applicable sections.

[64 FR 61450, Nov. 10, 1999]

**§ 230.426 Filing of certain prospectuses under § 230.167 in connection with certain offerings of asset-backed securities.**

(a) All written communications made in reliance on § 230.167 are prospectuses that must be filed with the Commission in accordance with paragraphs (b) and (c) of this section on Form 8-K (§ 249.308 of this chapter) and incorporated by reference to the related registration statement for the offering of asset-backed securities. Each prospectus filed under this section must identify the Commission file number of the related registration statement on the cover page of the related Form 8-K in addition to any other information required by that form. The information contained in any such prospectus shall be deemed to be a part of the registration statement as of the earlier of the time of filing of such information or the time of the filing of the final prospectus that meets the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)) relating to such offering pursuant to § 230.424(b).

(b) Except as specified in paragraph (c) of this section, *ABS informational and computational material* made in reli-

ance on § 230.167 that meet the conditions in paragraph (b)(1) of this section must be filed within the time frame specified in paragraph (b)(2) of this section.

(1) *Conditions for which materials must be filed.* The materials are provided to prospective investors under the following conditions:

(i) If a prospective investor has indicated to the issuer or an underwriter that it will purchase all or a portion of the class of asset-backed securities to which such materials relate, all materials relating to such class that are or have been provided to such prospective investor; and

(ii) For any other prospective investor, all materials provided to such prospective investor after the final terms have been established for all classes of the offering.

(2) *Time frame to file the materials.* The materials must be filed by the later of:

(i) The due date for filing the final prospectus relating to such offering that meets the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)) pursuant to § 230.424(b); or

(ii) Two business days after first use.

(c) Notwithstanding paragraphs (a) and (b) of this section, the following need not be filed under this section:

(1) *ABS informational and computational material* that relate to abandoned structures or that are furnished to a prospective investor prior to the time the final terms have been established for all classes of the offering where such prospective investor has not indicated to the issuer or an underwriter its intention to purchase the asset-backed securities.

(2) Any *ABS informational and computational material* if a prospectus that meets the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)) relating to the offering of such asset-backed securities accompanies or precedes the use of such material.

(3) Any *ABS informational and computational material* that does not contain new or different information from that which was previously disclosed and filed under this section.

(4) Any written communication that is limited to the information specified in § 230.134, 230.135 or 230.135c.

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(5) Any research report used in reliance on § 230.137, 230.138, 230.139 or 230.139a.

(6) Any confirmation described in § 240.10b-10 of this chapter.

(7) Any prospectus filed under § 230.424.

(8) Any free writing prospectus used in reliance on Rule 164 and Rule 433 (§ 230.164 and § 230.433).

(d) Terms used in this section have the same meaning as in Item 1101 of Regulation AB (§ 229.1101 of this chapter).

*Instruction to § 230.426.* The issuer may aggregate data presented in *ABS informational and computational material* that are to be filed and file such data in consolidated form. Any such aggregation, however, must not result in either the omission of any information contained in such material otherwise to be filed, or a presentation that makes the information misleading.

[70 FR 1616, Jan. 7, 2005, as amended at 70 FR 44813, Aug. 3, 2005]

## § 230.427 Contents of prospectus used after nine months.

There may be omitted from any prospectus used more than 9 months after the effective date of the registration statement any information previously required to be contained in the prospectus insofar as later information covering the same subjects, including the latest available certified financial statement, as of a date not more than 16 months prior to the use of the prospectus is contained therein.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 892, 894, 895, 901; secs. 203(a), 1, 3, 8, 49 Stat. 704, 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 4, 5, 6(d), 78 Stat. 569, 570-574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3, 4, 5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 308(b), 90 Stat. 57; sec. 18, 89 Stat. 155; secs. 202, 203, 204, 91 Stat. 1494, 1498-1500; sec. 20(a), 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 38, 54 Stat. 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 79t(a), 77sss(a), 80a-37)

[47 FR 11440, Mar. 16, 1982]

## 17 CFR Ch. II (4-1-10 Edition)

### § 230.428 Documents constituting a section 10(a) prospectus for Form S-8 registration statement; requirements relating to offerings of securities registered on Form S-8.

(a)(1) Where securities are to be offered pursuant to a registration statement on Form S-8 (§ 239.16b of this chapter), the following, taken together, shall constitute a prospectus that meets the requirements of section 10(a) of the Act:

(i) The document(s), or portions thereof as permitted by paragraph (b)(1)(ii) of this section, containing the employee benefit plan information required by Item 1 of the Form;

(ii) The statement of availability of registrant information, employee benefit plan annual reports and other information required by Item 2; and

(iii) The documents containing registrant information and employee benefit plan annual reports that are incorporated by reference in the registration statement pursuant to Item 3.

(2) The registrant shall maintain a file of the documents that, pursuant to paragraph (a) of this section, at any time are part of the section 10(a) prospectus, except for documents required to be incorporated by reference in the registration statement pursuant to Item 3 of Form S-8. Each such document shall be included in the file until five years after it is last used as part of the Section 10(a) prospectus to offer or sell securities pursuant to the plan. With respect to documents containing specifically designated portions that constitute part of the section 10(a) prospectus pursuant to paragraph (b)(1)(ii) of this section, the entire document shall be maintained in the file. Upon request, the registrant shall furnish to the Commission or its staff a copy of any or all of the documents included in the file.

(b) Where securities are offered pursuant to a registration statement on Form S-8:

(1)(i) The registrant shall deliver or cause to be delivered, to each employee who is eligible to participate (or selected by the registrant to participate, in the case of a stock option or other plan with selective participation) in an employee benefit plan to which the