

## § 230.167

distribution or publication of the communication until either the first public announcement is made or the registration statement related to the transaction is filed.

(b) *Definitions.* The terms business combination transaction, participant and public announcement have the same meaning as set forth in § 230.165(f).

[64 FR 61450, Nov. 10, 1999]

### **§ 230.167 Communications in connection with certain registered offerings of asset-backed securities.**

PRELIMINARY NOTE: This section is available only to communications in connection with certain offerings of asset-backed securities. The exemption does not apply to communications that may be in technical compliance with this section, but have the primary purpose or effect of conditioning the market for another transaction or are part of a plan or scheme to evade the requirements of section 5 of the Act (15 U.S.C. 77e).

(a) In an offering of asset-backed securities meeting the requirements of General Instruction I.B.5 of Form S-3 (§ 239.13 of this chapter) and registered under the Act on Form S-3 pursuant to § 230.415, *ABS informational and computational material* regarding such securities used after the effective date of the registration statement and before the sending or giving to investors of a final prospectus that meets the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)) regarding such offering is exempt from section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)), if the conditions in paragraph (b) of this section are met.

(b) *Conditions.* To rely on paragraph (a) of this section:

(1) The communications shall be filed to the extent required pursuant to § 230.426.

(2) Every communication used pursuant to this section shall include prominently on the cover page or otherwise at the beginning of such communication:

(i) The issuing entity's name and the depositor's name, if applicable;

(ii) The Commission file number for the related registration statement;

(iii) A statement that such communication is *ABS informational and com-*

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*putational material* used in reliance on Securities Act Rule 167 (§ 230.167); and

(iv) A legend that urges investors to read the relevant documents filed or to be filed with the Commission because they contain important information. The legend also shall explain to investors that they can get the documents for free at the Commission's Web site and describe which documents are available free from the issuer or an underwriter.

(c) This section is applicable not only to the offeror of the asset-backed securities, but also to any other participant that may need to rely on and complies with this section in communicating about the transaction. A participant for purposes of this section is any person or entity that is a party to the asset-backed securities transaction and any persons authorized to act on their behalf.

(d) Failure by a particular underwriter to cause the filing of a prospectus described in this section will not affect the ability of any other underwriter who has complied with the procedures to rely on the exemption.

(e) An immaterial or unintentional failure to file or delay in filing a prospectus described in this section will not result in a violation of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)), so long as:

(1) A good faith and reasonable effort was made to comply with the filing requirement; and

(2) The prospectus is filed as soon as practicable after discovery of the failure to file.

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

[70 FR 1615, Jan. 7, 2005]

### **§ 230.168 Exemption from sections 2(a)(10) and 5(c) of the Act for certain communications of regularly released factual business information and forward-looking information.**

PRELIMINARY NOTES TO § 230.168. 1. This section is not available for any communication that, although in technical compliance with this section, is part of a plan or scheme to evade the requirements of section 5 of the Act.