

Securities and Exchange Commission

§ 229.1016

3. Conclusory statements, such as “The Rule 13e-3 transaction is fair to unaffiliated security holders in relation to net book value, going concern value and future prospects of the issuer” will not be considered sufficient disclosure in response to paragraph (b) of this section.

§ 229.1015 (Item 1015) Reports, opinions, appraisals and negotiations.

(a) *Report, opinion or appraisal.* State whether or not the subject company or affiliate has received any report, opinion (other than an opinion of counsel) or appraisal from an outside party that is materially related to the Rule 13e-3 transaction, including, but not limited to: Any report, opinion or appraisal relating to the consideration or the fairness of the consideration to be offered to security holders or the fairness of the transaction to the issuer or affiliate or to security holders who are not affiliates.

(b) *Preparer and summary of the report, opinion or appraisal.* For each report, opinion or appraisal described in response to paragraph (a) of this section or any negotiation or report described in response to Item 1014(d) of Regulation M-A (§ 229.1014) or Item 14(b)(6) of Schedule 14A (§ 240.14a-101 of this chapter) concerning the terms of the transaction:

(1) Identify the outside party and/or unaffiliated representative;

(2) Briefly describe the qualifications of the outside party and/or unaffiliated representative;

(3) Describe the method of selection of the outside party and/or unaffiliated representative;

(4) Describe any material relationship that existed during the past two years or is mutually understood to be contemplated and any compensation received or to be received as a result of the relationship between:

(i) The outside party, its affiliates, and/or unaffiliated representative; and

(ii) The subject company or its affiliates;

(5) If the report, opinion or appraisal relates to the fairness of the consideration, state whether the subject company or affiliate determined the amount of consideration to be paid or whether the outside party recommended the amount of consideration to be paid; and

(6) Furnish a summary concerning the negotiation, report, opinion or appraisal. The summary must include, but need not be limited to, the procedures followed; the findings and recommendations; the bases for and methods of arriving at such findings and recommendations; instructions received from the subject company or affiliate; and any limitation imposed by the subject company or affiliate on the scope of the investigation.

Instruction to Item 1015(b): The information called for by paragraphs (b)(1), (2) and (3) of this section must be given with respect to the firm that provides the report, opinion or appraisal rather than the employees of the firm that prepared the report.

(c) *Availability of documents.* Furnish a statement to the effect that the report, opinion or appraisal will be made available for inspection and copying at the principal executive offices of the subject company or affiliate during its regular business hours by any interested equity security holder of the subject company or representative who has been so designated in writing. This statement also may provide that a copy of the report, opinion or appraisal will be transmitted by the subject company or affiliate to any interested equity security holder of the subject company or representative who has been so designated in writing upon written request and at the expense of the requesting security holder.

§ 229.1016 (Item 1016) Exhibits.

File as an exhibit to the schedule:

(a) Any disclosure materials furnished to security holders by or on behalf of the filing person, including:

(1) Tender offer materials (including transmittal letter);

(2) Solicitation or recommendation (including those referred to in Item 1012 of Regulation M-A (§ 229.1012));

(3) Going-private disclosure document;

(4) Prospectus used in connection with an exchange offer where securities are registered under the Securities Act of 1933; and

(5) Any other disclosure materials;

(b) Any loan agreement referred to in response to Item 1007(d) of Regulation M-A (§ 229.1007(d));

§ 229.1100

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

Instruction to Item 1016(b): If the filing relates to a third-party tender offer and a request is made under Item 1007(d) of Regulation M-A (§229.1007(d)), the identity of the bank providing financing may be omitted from the loan agreement filed as an exhibit.

(c) Any report, opinion or appraisal referred to in response to Item 1014(d) or Item 1015 of Regulation M-A (§229.1014(d) or §229.1015);

(d) Any document setting forth the terms of any agreement, arrangement, understanding or relationship referred to in response to Item 1005(e) or Item 1011(a)(1) of Regulation M-A (§229.1005(e) or §229.1011(a)(1));

(e) Any agreement, arrangement or understanding referred to in response to §229.1005(d), or the pertinent portions of any proxy statement, report or other communication containing the

disclosure required by Item 1005(d) of Regulation M-A (§229.1005(d));

(f) A detailed statement describing security holders' appraisal rights and the procedures for exercising those appraisal rights referred to in response to Item 1004(d) of Regulation M-A (§229.1004(d));

(g) Any written instruction, form or other material that is furnished to persons making an oral solicitation or recommendation by or on behalf of the filing person for their use directly or indirectly in connection with the transaction; and

(h) Any written opinion prepared by legal counsel at the filing person's request and communicated to the filing person pertaining to the tax consequences of the transaction.

EXHIBIT TABLE TO ITEM 1016 OF REGULATION M-A

	13E-3	TO	14D-9
Disclosure Material	X	X	X
Loan Agreement	X	X
Report, Opinion or Appraisal	X		
Contracts, Arrangements or Understandings	X	X	X
Statement re: Appraisal Rights	X		
Oral Solicitation Materials	X	X	X
Tax Opinion	X

Subpart 229.1100—Asset-Backed Securities (Regulation AB)

SOURCE: 70 FR 1597, Jan. 7, 2005, unless otherwise noted.

§ 229.1100 (Item 1100) General.

(a) *Application of Regulation AB.* Regulation AB (§§229.1100 through 229.1123) is the source of various disclosure items and requirements for "asset-backed securities" filings under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a *et seq.*). Unless otherwise specified, definitions to be used in this Regulation AB, including the definition of "asset-backed security," are set forth in Item 1101.

(b) *Presentation of historical delinquency and loss information.* Several Items in Regulation AB call for the presentation of historical information and data on delinquencies and loss in-

formation. In providing such information:

(1) Present delinquency experience in 30 or 31 day increments, as applicable, beginning at least with assets that are 30 or 31 days delinquent, as applicable, through the point that assets are written off or charged off as uncollectable. At a minimum, present such information by number of accounts and dollar amount. Present statistical information in a tabular or graphical format, if such presentation will aid understanding.

(2) Disclose the total amount of delinquent assets as a percentage of the aggregate asset pool.

(3) Present loss and cumulative loss information, as applicable, regarding charge-offs, charge-off rate, gross losses, recoveries and net losses (with a description of how these terms are defined), the number and amount of assets experiencing a loss and the number and amount of assets with a recovery, the ratio of aggregate net losses to