

**§ 230.408 Additional information.**

(a) In addition to the information expressly required to be included in a registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

(b) Notwithstanding paragraph (a) of this section, unless otherwise required to be included in the registration statement, the failure to include in a registration statement information included in a free writing prospectus will not, solely by virtue of inclusion of the information in a free writing prospectus (as defined in Rule 405 (§ 230.405)), be considered an omission of material information required to be included in the registration statement.

[Reg. C, 12 FR 4072, June 24, 1947, as amended at 70 FR 44811, Aug. 3, 2005]

**§ 230.409 Information unknown or not reasonably available.**

Information required need be given only insofar as it is known or reasonably available to the registrant. If any required information is unknown and not reasonably available to the registrant, either because the obtaining thereof could involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the registrant, the information may be omitted, subject to the following conditions:

(a) The registrant shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof.

(b) The registrant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

[Reg. C, 12 FR 4072, June 24, 1947, as amended at 14 FR 91, Jan. 7, 1949]

**§ 230.410 Disclaimer of control.**

If the existence of control is open to reasonable doubt in any instance, the registrant may disclaim the existence of control and any admission thereof; in such case, however, the registrant shall state the material facts pertinent to the possible existence of control.

[Reg. C, 12 FR 4073, June 24, 1947]

**§ 230.411 Incorporation by reference.**

(a) *Prospectus*. Except as provided by this section, Item 1100(c) of Regulation AB (§ 229.1100(c) of this chapter) for registered offerings of asset-backed securities, or unless otherwise provided in the appropriate form, information shall not be incorporated by reference in a prospectus. Where a summary or outline of the provisions of any document is required in the prospectus, the summary or outline may incorporate by reference particular items, sections or paragraphs of any exhibit and may be qualified in its entirety by such reference.

(b) *Information not required in a prospectus*. Except for exhibits covered by paragraph (c) of this section, information may be incorporated by reference in answer, or partial answer, to any item that calls for information not required to be included in a prospectus subject to the following provisions:

(1) Non-financial information may be incorporated by reference to any document;

(2) Financial information may be incorporated by reference to any document, provided any financial statement so incorporated meets the requirements of the forms on which the statement is filed. Financial statements or other financial data required to be given in comparative form for two or more fiscal years or periods shall not be incorporated by reference unless the information incorporated by reference includes the entire period for which the comparative data is given;

(3) Information contained in any part of the registration statement, including the prospectus, may be incorporated by reference in answer, or partial answer, to any item that calls for information not required to be included in the prospectus; and

(4) Unless the information is incorporated by reference to a document which complies with the time limitations of § 228.10(f) and § 229.10(d) of this chapter, then the document, or part thereof, containing the incorporated information is required to be filed as an exhibit.

(c) *Exhibits.* Any document or part thereof filed with the Commission pursuant to any Act administered by the Commission may, subject to the limitations of § 228.10(f) and § 229.11(d) of this chapter, be incorporated by reference as an exhibit to any registration statement. If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the registrant shall file with the reference a statement containing the text of such modification and the date thereof.

(d) *General.* Any incorporation by reference of information pursuant to this section shall be subject to the provisions of Rule 24 of the Commission's Rules of Practice restricting incorporation by reference of documents which incorporate by reference other information. Information incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. If the information is incorporated by reference to a previously filed document, the file number of such document shall be included. Where only certain pages of a document are incorporated by reference and filed with the statement, the document from which the information is taken shall be clearly identified in the reference. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the registration statement where the information is required. Information shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

[47 FR 11437, Mar. 16, 1982, as amended at 60 FR 32824, June 23, 1995; 70 FR 1616, Jan. 7, 2005]

**§ 230.412 Modified or superseded documents.**

(a) Any statement contained in a document incorporated or deemed to be incorporated by reference or deemed to

be part of a registration statement or the prospectus that is part of the registration statement shall be deemed to be modified or superseded for purposes of the registration statement or the prospectus that is part of the registration statement to the extent that a statement contained in the prospectus that is part of the registration statement or in any other subsequently filed document which also is or is deemed to be incorporated by reference or deemed to be part of the registration statement or prospectus that is part of the registration statement modifies or replaces such statement. Any statement contained in a document that is deemed to be incorporated by reference or deemed to be part of a registration statement or the prospectus that is part of the registration statement after the most recent effective date or after the date of the most recent prospectus that is part of the registration statement may modify or replace existing statements contained in the registration statement or the prospectus that is part of the registration statement.

(b) The modifying or superseding statement may, but need not, state that it has modified or superseded a prior statement or include any other information set forth in the document which is not so modified or superseded. The making of a modifying or superseding statement shall not be deemed an admission that the modified or superseded statement, when made, constituted an untrue statement of a material fact, an omission to state a material fact necessary to make a statement not misleading, or the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business or artifice to defraud, as those terms are used in the Act, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, or the rules and regulations thereunder.

(c) Any statement so modified shall not be deemed in its unmodified form to constitute part of the registration statement or prospectus for purpose of the Act. Any statement so superseded shall not be deemed to constitute a