§ 230.436 Definitions. For purposes of this section:

(1) An issuer free writing prospectus means a free writing prospectus prepared by or on behalf of the issuer or used or referred to by the issuer and, in the case of an asset-backed issuer, prepared by or on behalf of a depositor, sponsor, or servicer (as defined in Item 1101 of Regulation AB) or affiliated depositor or used or referred to by any such person.

(2) Issuer information means material information about the issuer or its securities that has been provided by or on behalf of the issuer.

(3) A written communication or information is prepared or provided by or on behalf of a person if the person or an agent or representative of the person authorizes the communication or information or approves the communication or information before it is used. An offering participant other than the issuer shall not be an agent or representative of the issuer solely by virtue of its acting as an offering participant.

(4) A road show means an offer (other than a statutory prospectus or a portion of a statutory prospectus filed as part of a registration statement) that contains a presentation regarding an offering by one or more members of the issuer’s management (and in the case of an offering of asset-backed securities, management involved in the securitization or servicing function of one or more of the depositors, sponsors, or servicers (as such terms are defined in Item 1101 of Regulation AB) or an affiliated depositor) and includes discussion of one or more of the issuer, such management, and the securities being offered; and

(5) A bona fide electronic road show means a road show that is a written communication transmitted by graphic means that contains a presentation by one or more officers of an issuer or other persons in an issuer’s management (and in the case of an offering of asset-backed securities, management involved in the securitization or servicing function of one or more of the depositors, sponsors, or servicers (as such terms are defined in Item 1101 of Regulation AB) or an affiliated depositor) and, if more than one road show that is a written communication is being used, includes discussion of the same general areas of information regarding the issuer, such management, and the securities being offered as such other issuer road show or shows for the same offering that are written communications.

NOTE TO §230.433. This section does not affect the operation of the provisions of clause (a) of section 2(a)(10) of the Act providing an exception from the definition of “prospectus.”


§ 230.436 Consents required in special cases.

(a) If any portion of the report or opinion of an expert or counsel is quoted or summarized as such in the registration statement or in a prospectus, the written consent of the expert or counsel shall be filed as an exhibit to the registration statement.

(b) If it is stated that any information contained in the registration statement has been reviewed or passed upon by any persons and that such information is set forth in the registration statement upon the authority of or in reliance upon such persons as experts, the written consents of such persons shall be filed as exhibits to the registration statement.

(c) Notwithstanding the provisions of paragraph (b) of this section, a report on unaudited interim financial information (as defined in paragraph (d) of this section) by an independent accountant who has conducted a review of such interim financial information shall not be considered a part of a registration statement prepared or certified by an accountant or a report prepared or certified by an accountant within the meaning of sections 7 and 11 of the Act.

(d) The term report on unaudited interim financial information shall mean a report which consists of the following:

(1) A statement that the review of interim financial information was made in accordance with established professional standards for such reviews;
(2) An identification of the interim financial information reviewed;
(3) A description of the procedures for a review of interim financial information;
(4) A statement that a review of interim financial information is substantially less in scope than an examination in accordance with generally accepted auditing standards, the objective of which is an expression of opinion regarding the financial statements taken as a whole, and, accordingly, no such opinion is expressed; and
(5) A statement about whether the accountant is aware of any material modifications that should be made to the accompanying financial information so that it conforms with generally accepted accounting principles.

§ 230.437 Application to dispense with consent.

An application to the Commission to dispense with any written consent of an expert pursuant to section 7 of the act shall be made by the registrant and shall be supported by an affidavit or affidavits establishing that the obtaining of such consent is impracticable or involves undue hardship on the registrant. Such application shall be filed and the consent of the Commission shall be obtained prior to the effective date of the registration statement.

[Reg. C. 12 FR 4074, June 24, 1947]

§ 230.437a Written consents.

(a) This section applies only to registrants that:
(1) Are not a “blank check company” as defined in §230.419(a)(2); and
(2) Are filing a registration statement containing financial statements in which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been acting as the independent public accountant.

(b) Notwithstanding any other Commission rule or regulation, every registrant eligible to rely on this section may dispense with the requirement for the registrant to file the written consent of Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) as required by Section 7 of the Act (15 U.S.C. 77g) where:
(1) The registrant has not already obtained the written consent that would be required if not for this section;
(2) The registrant is not able to obtain the written consent after reasonable efforts; and
(3) The registrant discloses clearly any limitations on recovery by investors posed by the lack of consent.

[67 FR 13537, Mar. 22, 2002]

§ 230.438 Consents of persons about to become directors.

If any person who has not signed the registration statement is named therein as about to become a director, the written consent of such person shall be filed with the registration statement. Any such consent, however, may be omitted if there is filed with the registration statement a statement by the registrant, supported by an affidavit or