

this chapter) by an asset-backed issuer under section 13(a) of the Act (15 U.S.C. 78m(a)) must include a certification in the form specified in the applicable exhibit filing requirements of such report and such certification must be filed as an exhibit to such report. Terms used in paragraphs (d) and (e) of this section have the same meaning as in Item 1101 of Regulation AB (§229.1101 of this chapter).

(e) With respect to asset-backed issuers, the certification required by paragraph (d) of this section must be signed by either:

(1) The senior officer in charge of securitization of the depositor if the depositor is signing the report; or

(2) The senior officer in charge of the servicing function of the servicer if the servicer is signing the report on behalf of the issuing entity. If multiple servicers are involved in servicing the pool assets, the senior officer in charge of the servicing function of the master servicer (or entity performing the equivalent function) must sign if a representative of the servicer is to sign the report on behalf of the issuing entity.

(f) The certification requirements of this section do not apply to:

(1) An Interactive Data File, as defined in Rule 11 of Regulation S-T (§232.11 of this chapter); or

(2) XBRL-Related Documents, as defined in Rule 11 of Regulation S-T.

[67 FR 57288, Sept. 9, 2002, as amended at 68 FR 36665, June 18, 2003; 70 FR 1621, Jan. 7, 2005; 70 FR 6572, Feb. 8, 2005; 70 FR 42247, July 21, 2005; 71 FR 76596, Dec. 21, 2006; 73 FR 976, Jan. 4, 2008; 74 FR 6818, Feb. 10, 2009]

§ 240.13a-15 Controls and procedures.

(a) Every issuer that has a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78l), other than an Asset-Backed Issuer (as defined in §229.1101 of this chapter), a small business investment company registered on Form N-5 (§§239.24 and 274.5 of this chapter), or a unit investment trust as defined in section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-4(2)), must maintain disclosure controls and procedures (as defined in paragraph (e) of this section) and, if the issuer either had been required to file an annual report pursu-

ant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)) for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year, internal control over financial reporting (as defined in paragraph (f) of this section).

(b) Each such issuer's management must evaluate, with the participation of the issuer's principal executive and principal financial officers, or persons performing similar functions, the effectiveness of the issuer's disclosure controls and procedures, as of the end of each fiscal quarter, except that management must perform this evaluation:

(1) In the case of a foreign private issuer (as defined in §240.3b-4) as of the end of each fiscal year; and

(2) In the case of an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), within the 90-day period prior to the filing date of each report requiring certification under §270.30a-2 of this chapter.

(c) The management of each such issuer, that either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)) for the prior fiscal year or previously had filed an annual report with the Commission for the prior fiscal year, other than an investment company registered under section 8 of the Investment Company Act of 1940, must evaluate, with the participation of the issuer's principal executive and principal financial officers, or persons performing similar functions, the effectiveness, as of the end of each fiscal year, of the issuer's internal control over financial reporting. The framework on which management's evaluation of the issuer's internal control over financial reporting is based must be a suitable, recognized control framework that is established by a body or group that has followed due-process procedures, including the broad distribution of the framework for public comment. Although there are many different ways to conduct an evaluation of the effectiveness of internal control over financial reporting to meet the requirements of this paragraph, an evaluation that is conducted in accordance with the interpretive guidance issued by the Commission in

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Release No. 34-55929 will satisfy the evaluation required by this paragraph.

(d) The management of each such issuer that either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d) for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year, other than an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), must evaluate, with the participation of the issuer's principal executive and principal financial officers, or persons performing similar functions, any change in the issuer's internal control over financial reporting, that occurred during each of the issuer's fiscal quarters, or fiscal year in the case of a foreign private issuer, that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting.

(e) For purposes of this section, the term *disclosure controls and procedures* means controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the Act (15 U.S.C. 78a et seq.) is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Act is accumulated and communicated to the issuer's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

(f) The term *internal control over financial reporting* is defined as a process designed by, or under the supervision of, the issuer's principal executive and principal financial officers, or persons performing similar functions, and effected by the issuer's board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial

statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

(1) Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer;

(2) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer; and

(3) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the issuer's assets that could have a material effect on the financial statements.

[68 FR 36666, June 18, 2003, as amended at 70 FR 1621, Jan. 7, 2005; 71 FR 76596, Dec. 21, 2006; 72 FR 35321, June 27, 2007]

§ 240.13a-16 Reports of foreign private issuers on Form 6-K (17 CFR 249.306).

(a) Every foreign private issuer which is subject to Rule 13a-1 (17 CFR 240.13a-1) shall make reports on Form 6-K, except that this rule shall not apply to:

(1) Investment companies required to file reports pursuant to Rule 30b1-1 (17 CFR 270.30b1-1);

(2) Issuers of American depository receipts for securities of any foreign issuer;

(3) Issuers filing periodic reports on Form 10-K, Form 10-Q, and Form 8-K; or

(4) Asset-backed issuers, as defined in § 229.1101 of this chapter.

(b) Such reports shall be transmitted promptly after the information required by Form 6-K is made public by the issuer, by the country of its domicile or under the laws of which it was incorporated or organized, or by a foreign securities exchange with which the issuer has filed the information.

(c) Reports furnished pursuant to this rule shall not be deemed to be "filed" for the purpose of section 18 of