

most recent six years and have not aggregated more than \$1,500,000 in the most recent six fiscal years.

(d) Notwithstanding the foregoing provisions of this section, the financial information required by Part I of Form 10-Q and Form 10-QSB, shall not be deemed to be “filed” for the purpose of section 18 of the Act or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act.

(Sec. 12, 13, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; sec 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 3, 4, 6, 78 Stat. 565-568, 569, 570-574; secs. 1, 2, 82 Stat. 454; secs. 1, 2, 28(c), 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155; 15 U.S.C. 78l, 78m, 78o(d), 78w(a); secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85, secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 88 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec 203(a), 49 Stat. 704; sec. 202, 68 Stat. 686; secs. 3, 4, 5, 6, 78 Stat. 565-568, 569, 570-574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), “1, 2, 3-5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 81 Stat. 1494, 1498, 1499, 1500; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78l, 78m, 78n, 78o(d), 78w(a))

[42 FR 24064, May 12, 1977, as amended at 48 FR 19877, May 3, 1983; 50 FR 27939, July 9, 1985; 54 FR 10317, Mar. 13, 1989; 57 FR 10615, Mar. 27, 1992; 61 FR 30403, June 14, 1996]

**§ 240.13a-14 Certification of disclosure in annual and quarterly reports.**

(a) Each report, including transition reports, filed on Form 10-Q, Form 10-QSB, Form 10-K, Form 10-KSB, Form 20-F or Form 40-F (§§ 249.308a, 249.308b, 249.310, 249.310b, 249.220f and 249.240f of this chapter) under section 13(a) of the Act (15 U.S.C. 78m(a)), other than a report filed by an Asset-Backed Issuer (as defined in paragraph (g) of this section), must include a certification containing the information set forth in paragraph (b) of this section in the form specified in the report. Each principal executive officer or officers and principal financial officer or officers of the issuer, or persons performing similar functions, at the time of filing of the report must sign the certification.

(b) The certification included in each report specified in paragraph (a) of this section must be in the form specified in

the report and consist of a statement of the certifying officer that:

(1) He or she has reviewed the report being filed;

(2) Based on his or her knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report;

(3) Based on his or her knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition, results of operations and cash flows of the issuer as of, and for, the periods presented in the report;

(4) He or she and the other certifying officers are responsible for establishing and maintaining disclosure controls and procedures (as such term is defined in paragraph (c) of this section) for the issuer and have:

(i) Designed such disclosure controls and procedures to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to them by others within those entities, particularly during the period in which the periodic reports are being prepared;

(ii) Evaluated the effectiveness of the issuer’s disclosure controls and procedures as of a date within 90 days prior to the filing date of the report (“Evaluation Date”); and

(iii) Presented in the report their conclusions about the effectiveness of the disclosure controls and procedures based on their evaluation as of the Evaluation Date;

(5) He or she and the other certifying officers have disclosed, based on their most recent evaluation, to the issuer’s auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

(i) All significant deficiencies in the design or operation of internal controls which could adversely affect the issuer’s ability to record, process, summarize and report financial data and have identified for the issuer’s auditors any material weaknesses in internal controls; and

(ii) Any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and

(6) He or she and the other certifying officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

(c) For purposes of this section and § 240.13a-15 of this chapter, 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 officer or officers and principal financial officer or officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

(d) A person required to provide the certification specified in paragraph (a) of this section may not have the certification signed on his or her behalf pursuant to a power of attorney or other form of confirming authority.

(e) Each annual report filed by an Asset-Backed Issuer (as defined in paragraph (g) of this section) under section 13(a) of the Act (15 U.S.C. 78m(a)) must include a certification addressing the following items:

(1) Review by the certifying officer of the annual report and other reports containing distribution information for the period covered by the annual report;

(2) The absence in these reports, to the best of the certifying officer's

knowledge, of any untrue statement of material fact or omission of a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading;

(3) The inclusion in these reports, to the best of the certifying officer's knowledge, of the financial information required to be provided to the trustee under the governing documents of the issuer; and

(4) Compliance by the servicer with its servicing obligations and minimum servicing standards.

(f) With respect to Asset-Backed Issuers, the certification required by paragraph (e) of this section must be signed by the trustee of the trust (if the trustee signs the annual report) or the senior officer in charge of securitization of the depositor (if the depositor signs the annual report). Alternatively, the senior officer in charge of the servicing function of the master servicer (or entity performing the equivalent functions) may sign the certification.

(g) For purposes of this section, the term Asset-Backed Issuer means any issuer whose reporting obligation results from the registration of securities it issued that are primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders.

[67 FR 57288, Sept. 9, 2002]

**§ 240.13a-15 Issuer's disclosure controls and procedures related to preparation of required reports.**

(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 § 240.13a-14(g) 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 by 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 § 240.13a-14(c) of this chapter).