

§ 240.15d-15

(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 offering 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 57289, Sept. 9, 2002]

§ 240.15d-15 Issuer's disclosure controls and procedures related to preparation of required reports.

(a) Every issuer that files reports under section 15(d) of the Act (15 U.S.C. 78o(d)), 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 § 240.15d-14(c) of this chapter).

(b) Within the 90-day period prior to the filing date of each report requiring certification under § 240.13a-14 and § 270.30a-2 of this chapter, an evaluation must be carried out under the supervision and with the participation of the issuer's management, including the issuer's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, of the effectiveness of

17 CFR Ch. II (4-1-03 Edition)

the design and operation of the issuer's disclosure controls and procedures.

[67 FR 57290, Sept. 9, 2002, as amended at 68 FR 5364, Feb. 3, 2003]

§ 240.15d-16 Reports of foreign private issuers on Form 6-K [17 CFR 249.306].

(a) Every foreign private issuer which is subject to Rule 15d-1 [17 CFR 240.15d-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 depositary receipts for securities of any foreign issuer.

(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 the Act or otherwise subject to the liabilities of that section.

[32 FR 7849, May 30, 1967, as amended at 44 FR 70137, Dec. 6, 1979; 47 FR 54781, Dec. 6, 1982; 50 FR 27939, July 9, 1985; 56 FR 30075, July 1, 1991]

§ 240.15d-17 [Reserved]

EXEMPTION OF CERTAIN ISSUERS FROM SECTION 15(D) OF THE ACT

§ 240.15d-21 Reports for employee stock purchase, savings and similar plans.

(a) Separate annual and other reports need not be filed pursuant to section 15(d) of the Act with respect to any employee stock purchase, savings or similar plan: *Provided*,

(1) The issuer of the stock or other securities offered to employees through their participation in the plan files annual reports on Form 10-K and Form 10-KSB (§ 249.310 of this chapter) or U5S (§ 259.5s of this chapter); and

(2) Such issuer furnishes, as a part of its annual report on such form or as an amendment thereto, the financial statements required by Form 11-K