

Securities and Exchange Commission

§ 240.13b2-2

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

[67 FR 57289, Sept. 9, 2002, as amended at 68 FR 5364, Feb. 3, 2003]

§ 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; or

(3) Issuers filing periodic reports on Forms 10-K and Form 10-KSB, 10-Q and Form 10-QSB and 8-K.

(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; 57 FR 10615, Mar. 27, 1991]

§ 240.13a-17 [Reserved]

REGULATION 13B-2: MAINTENANCE OF RECORDS AND PREPARATION OF REQUIRED REPORTS

§ 240.13b2-1 Falsification of accounting records.

No person shall directly or indirectly, falsify or cause to be falsified, any book, record or account subject to section 13(b)(2)(A) of the Securities Exchange Act.

(15 U.S.C. 78m(b)(2); 15 U.S.C. 78m(a), 78m(b)(1), 78o(d), 78j(b), 78n(a), 78t(b), 78t(c))

[44 FR 10970, Feb. 23, 1979]

§ 240.13b2-2 Issuer's representations in connection with the preparation of required reports and documents.

No director or officer of an issuer shall, directly or indirectly,

(a) Make or cause to be made a materially false or misleading statement, or

(b) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in the light of the circumstances under which such statements were made, not misleading to an accountant in connection with (1) any audit or examination of the financial statements of the issuer required to be made pursuant to this subpart or (2) the preparation or filing of any document or report required to be filed with the Commission pursuant to this subpart or otherwise.

(15 U.S.C. 78m(b)(2); 15 U.S.C. 78m(a), 78m(b)(1), 78o(d), 78j(b), 78n(a), 78t(b), 78t(c))

[44 FR 10970, Feb. 23, 1979]

REGULATION 13D

SOURCE: Sections 240.13d-1 through 240.13f-1 appear at 43 FR 18495, Apr. 28, 1978, unless otherwise noted.

ATTENTION ELECTRONIC FILERS

THIS REGULATION SHOULD BE READ IN CONJUNCTION WITH REGULATION S-T (PART 232 OF THIS CHAPTER), WHICH

§ 240.13d-1

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

GOVERNS THE PREPARATION AND SUBMISSION OF DOCUMENTS IN ELECTRONIC FORMAT. MANY PROVISIONS RELATING TO THE PREPARATION AND SUBMISSION OF DOCUMENTS IN PAPER FORMAT CONTAINED IN THIS REGULATION ARE SUPERSEDED BY THE PROVISIONS OF REGULATION S-T FOR DOCUMENTS REQUIRED TO BE FILED IN ELECTRONIC FORMAT.

§ 240.13d-1 Filing of Schedules 13D and 13G.

(a) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is specified in paragraph (i) of this section, is directly or indirectly the beneficial owner of more than five percent of the class shall, within 10 days after the acquisition, file with the Commission, a statement containing the information required by Schedule 13D (§ 240.13d-101).

(b)(1) A person who would otherwise be obligated under paragraph (a) of this section to file a statement on Schedule 13D (§ 240.13d-101) may, in lieu thereof, file with the Commission, a short-form statement on Schedule 13G (§ 240.13d-102), *Provided*, That:

(i) Such person has acquired such securities in the ordinary course of his business and not with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to Rule 13d-3(b) (§ 240.13d-3(b)); and

(ii) Such person is:

(A) A broker or dealer registered under section 15 of the Act (15 U.S.C. 78o);

(B) A bank as defined in section 3(a)(6) of the Act (15 U.S.C. 78c);

(C) An insurance company as defined in section 3(a)(19) of the Act (15 U.S.C. 78c);

(D) An investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8);

(E) Any person registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) or under the laws of any state;

(F) An employee benefit plan as defined in Section 3(3) of the Employee

Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001 *et seq.* (“ERISA”) that is subject to the provisions of ERISA, or any such plan that is not subject to ERISA that is maintained primarily for the benefit of the employees of a state or local government or instrumentality, or an endowment fund;

(G) A parent holding company or control person, provided the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries or affiliates that are not persons specified in § 240.13d-1(b)(1)(ii)(A) through (I), does not exceed one percent of the securities of the subject class;

(H) A savings association as defined in Section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(I) A church plan that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 (15 U.S.C. 80a-3); and

(J) A group, provided that all the members are persons specified in § 240.13d-1(b)(1)(ii)(A) through (I); and

(iii) Such person has promptly notified any other person (or group within the meaning of section 13(d)(3) of the Act) on whose behalf it holds, on a discretionary basis, securities exceeding five percent of the class, of any acquisition or transaction on behalf of such other person which might be reportable by that person under section 13(d) of the Act. This paragraph only requires notice to the account owner of information which the filing person reasonably should be expected to know and which would advise the account owner of an obligation he may have to file a statement pursuant to section 13(d) of the Act or an amendment thereto.

(2) The Schedule 13G filed pursuant to paragraph (b)(1) of this section shall be filed within 45 days after the end of the calendar year in which the person became obligated under paragraph (b)(1) of this section to report the person’s beneficial ownership as of the last day of the calendar year, *Provided*, That it shall not be necessary to file a Schedule 13G unless the percentage of the class of equity security specified in