

(3) The pool asset is not part of a scheme to avoid registration or the requirements of this section; and

(4) The pool asset is held by the issuing entity and is a part of the asset pool for the asset-backed securities.

(d) Notwithstanding paragraph (c) of this section (that is, although the pool asset described in paragraph (c) of this section is an not an “underlying security” for purposes of this section), if the pool assets for the asset-backed securities are collateral certificates or special units of beneficial interest, those collateral certificates or special units of beneficial interest must be registered concurrently with the registration of the asset-backed securities. However, pursuant to § 230.457(t) no separate registration fee for the certificates or special units of beneficial interest is required to be paid.

[70 FR 1615, Jan. 7, 2005, as amended at 72 FR 71571, Dec. 17, 2007; 79 FR 57328, Sept. 24, 2014; 80 FR 6652, Feb. 6, 2015]

**§ 230.191 Definition of “issuer” in section 2(a)(4) of the Act in relation to asset-backed securities.**

The following applies with respect to asset-backed securities under the Act. Terms used in this section have the same meaning as in Item 1101 of Regulation AB (§ 229.1101 of this chapter).

(a) The depositor for the asset-backed securities acting solely in its capacity as depositor to the issuing entity is the “issuer” for purposes of the asset-backed securities of that issuing entity.

(b) The person acting in the capacity as the depositor specified in paragraph (a) of this section is a different “issuer” from that same person acting as a depositor for another issuing entity or for purposes of that person’s own securities.

[70 FR 1615, Jan. 7, 2005]

**§ 230.193 Review of underlying assets in asset-backed securities transactions.**

An issuer of an “asset-backed security,” as that term is defined in Section 3(a)(79) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(79)), offering and selling such a security pursuant to a registration statement shall perform a review of the pool assets un-

derlying the asset-backed security. At a minimum, such review must be designed and effected to provide reasonable assurance that the disclosure regarding the pool assets in the form of prospectus filed pursuant to § 230.424 of this chapter is accurate in all material respects. The issuer may conduct the review or an issuer may employ a third party engaged for purposes of performing the review. If the findings and conclusions of the review are attributed to the third party, the third party must be named in the registration statement and consent to being named as an expert in accordance with § 230.436 of this chapter.

*Instruction to § 230.193:* An issuer of an “asset-backed security” may rely on one or more third parties to fulfill its obligation to perform a review under this section, provided that the reviews performed by the third parties and the issuer, in the aggregate, comply with the minimum standard in this section. The issuer must comply with the requirements of this section for each third party engaged by the issuer to perform the review for purposes of this section. An issuer may not rely on a review performed by an unaffiliated originator for purposes of performing the review required under this section.

[76 FR 4244, Jan. 25, 2011, as amended at 79 FR 57329, Sept. 24, 2014]

**§ 230.194 Definitions of the terms “swap” and “security-based swap” as used in the Act.**

(a) The term *swap* as used in section 2(a)(17) of the Act (15 U.S.C. 77b(a)(17)) has the same meaning as provided in section 3(a)(69) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(69)) and 17 CFR 240.3a69–1 through 240.3a69–3.

(b) The term *security-based swap* as used in section 2(a)(17) of the Act (15 U.S.C. 77b(a)(17)) has the same meaning as provided in section 3(a)(68) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)) and 17 CFR 240.3a68–1a through 240.3a68–5.

[77 FR 48356, Aug. 13, 2012]

**§ 230.215 Accredited investor.**

The term *accredited investor* as used in section 2(15)(ii) of the Securities Act of 1933 (15 U.S.C. 77b(15)(ii)) shall include the following persons:

(a) Any savings and loan association or other institution specified in section