

audited financial statements are not reasonably available.

For purposes of this waiver a "troubled financial institution" is one which either:

a. Is in receivership, conservatorship or is otherwise operating under a similar supervisory agreement with a federal financial regulatory agency; or

b. Is controlled by a federal regulatory agency; or

c. Is acquired in a federally assisted transaction.

A registrant that acquires a troubled financial institution that is deemed significant pursuant to Rule 3-05 may omit audited financial statements of the acquired entity, if such statements are not reasonably available and the total acquired assets of the troubled institution do not exceed 20% of the registrant's assets before giving effect to the acquisition. The staff will consider requests for waivers in situations involving more significant acquisitions, where federal financial assistance or guarantees are an essential part of the transaction, or where the nature and magnitude of federal assistance is so pervasive as to substantially reduce the relevance of such information to an assessment of future operations. Where financial statements are waived, disclosure concerning the acquired business as outlined in response to Question 3 must be furnished.

**Question 3:** Where historical financial statements meeting the requirements of Rule 3-05 of Regulation S-X are waived, what financial statements and other disclosures would the staff expect to be provided in filings with the Commission?

**Interpretive Response:** Where complete audited historical financial statements of a significant acquiree that is a troubled financial institution are not provided, the staff would expect filings to include an audited statement of assets acquired and liabilities assumed if the acquisition is not already reflected in the registrant's most recent audited balance sheet at the time the filing is made. Where reasonably available, unaudited statement of operations and cash flows that are prepared in accordance with GAAP and otherwise comply with Regulation S-X should be filed in lieu of any audited financial statements which are not provided if historical information may be relevant.

In all cases where a registrant succeeds to assets and/or liabilities of a troubled financial institution which are significant to the registrant pursuant to the tests in Rule 1-02(w) of Regulation S-X, narrative description should be required, quantified to the extent practicable, of the anticipated effects of

the acquisition on the registrant's financial condition, liquidity, capital resources and operating results. If federal financial assistance (including any commitments, agreements or understandings made with respect to capital, accounting or other forbearances) may be material, the limits, conditions and other variables affecting its availability should be disclosed, along with an analysis of its likely short term and long term effects on cash flows and reported results.

If the transaction will result in the recognition of any significant intangibles that cannot be separately sold, such as goodwill or a core deposit intangible, the discussion of the transaction should describe the amount of such intangibles, the necessarily subjective nature of the estimation of the life and value of such intangibles, and the effects upon future results of operations, liquidity and capital resources, including any consequences if a recognized intangible will be excluded from the calculation of capital for regulatory purposes. The discussion of the impact on future operations should specifically address the period over which intangibles will be amortized and the period over which any discounts on acquired assets will be taken into income. If amortization of intangibles will be over a period which differs from the period over which income from discounts on acquired assets will be recognized (whether from amortization of discounts or sale of discounted assets), disclosure should be provided concerning the disparate effects of the amortization and income recognition on operating results for all affected periods.

Information specified by Industry Guide 3 should be furnished to the extent applicable and reasonably available. For the categories identified in the Industry Guide, the registrant should disclose the carrying value of loans and investments acquired, as well as their principal amount and average contractual yield and term. Amounts of acquired investments, loans, or other assets that are nonaccrual, past due or restructured, or for which other collectibility problems are indicated should be disclosed. Where historical financial statements of the acquired entity are furnished, pro forma information presented pursuant to Rule 11-02 should be supplemented as necessary with a discussion of the likely effects of any federal assistance and changes in operations subsequent to the acquisition. To the extent historical financial statements meeting all the requirements of Rule 3-05 are not furnished, the filing should include an

explanation of the basis for their omission.

**Question 4:** If an audited statement of assets acquired and liabilities assumed is required, but certain of the assets conveyed in the transaction are subject to rights allowing the registrant to put the assets back to the seller upon completion of a due diligence review, will the staff grant an extension of time for filing the required financial statement until the put period lapses?

**Interpretive Response:** If it is impracticable to provide an audited statement at the time the Form 8-K reporting the transaction is filed, an extension of time is available under certain circumstances. Specifically, if more than 25% of the acquired assets may be put and the put period does not exceed 120 days, the registrant should timely file a statement of assets acquired and liabilities assumed on an unaudited basis with full disclosure of the terms and amounts of the put arrangement. Within 21 days after the put period lapses, the registrant should furnish an audited statement of assets acquired and liabilities assumed unless the effects of the transaction are already reflected in an audited balance sheet which has been filed with the Commission. However, until the audited financial statement has been filed, certain offerings under the Securities Act of 1933 would be prevented, as described in Instruction 1 to Item 7 of Form 8-K.

*L. Deleted by SAB 103*

#### *M. Materiality*

##### *1. Assessing Materiality*

**Facts:** During the course of preparing or auditing year-end financial statements, financial management or the registrant's independent auditor becomes aware of misstatements in a registrant's financial statements. When combined, the misstatements result in a 4% overstatement of net income and a \$.02 (4%) overstatement of earnings per share. Because no item in the registrant's consolidated financial statements is misstated by more than 5%, management and the independent auditor conclude that the deviation from GAAP is immaterial and that the accounting is permissible.<sup>1</sup>

<sup>1</sup> AU 312 states that the auditor should consider audit risk and materiality both in (a) planning and setting the scope for the audit and (b) evaluating whether the financial statements taken as a whole are fairly presented in all material respects in conformity with GAAP. The purpose of this SAB is to provide guidance to financial management and independent auditors with respect to the evaluation of the materiality of misstatements that are identified in the audit process or preparation of the financial statements (*i.e.*, (b) above). This SAB is not