

TB 31-3 was rescinded 4/18/01 - obsolete

Handbook: Thrift Activities
Subject: Asset/Liability Structure

Section: 410
TB 31-3

August 31, 1989

Securities Disclosure Obligation Arising **RESCINDED** as a Result of Regulatory Bulletin No. 3a

Summary: Institutions subject to growth restrictions pursuant to Regulatory Bulletin No. 3a, issued by the Office of Regulatory Activities, may be subject to various public disclosure obligations.

OTS Identification:
CASD Memorandum No. 3-1
April 3, 1989

For Further Information Contact:
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Thrift Bulletin 31-3

The purpose of this memorandum is to summarize the disclosure obligations of thrift institutions registered under the Securities Exchange Act of 1934 when they are subjected to restrictions on their growth pursuant to Regulatory Bulletin No. 3a ("RB 3a") issued by the Office of Regulatory Activities. The policy of the staff with respect to the disclosure obligations of such institutions is as follows:

- 1) The institution must disclose the fact that it is subject to significant restrictions on its ability to grow and must include a description of such restrictions;
- 2) The institution must disclose the reasons why it has become subject to the growth restrictions. Such disclosure must include: (i) that such restrictions were imposed pursuant to RB 3a, which expresses a general policy that institutions that are

insolvent, or identified in some respect by supervisory personnel as being "troubled", will be permitted little or no growth; and, (ii) a detailed description of the relevant aspects of the institution's operations giving rise to the supervisory concerns that resulted in imposition of restrictions on the institution's ability to grow. In addition to the foregoing, the disclosure may, at the institution's option, include additional appropriate disclosure (a statement that the institution disagrees with the characterization of it as troubled, together with a statement of the reasons; a more detailed description of RB 3a; etc.);

- 3) The institution must disclose whether the growth restrictions could have a material effect on its operations (e.g. this would depend on the institution's recent growth trends, existing business plan, etc.); and
- 4) The disclosure required above should be included in the institution's Management's Discussion and Analysis sections included in regular periodic reports on Forms 10-K and 10-Q; however, such disclosure will not be required in routine proxy materials, nor will the staff generally opine to the effect that a Form 8-K is required to be filed upon an

institution becoming subject to the growth restrictions. We do note, however, that an institution is required on an ongoing basis to consider its implicit obligations to disclose adequate, accurate and updated information regarding events that may have a material impact on its business and operations. Furthermore, and on a case by case basis, the staff may consider the required disclosure to be material to the business and operations of a particular institution, thus requiring the institution to expand discussion in particular periodic reports and/or immediately disclose current information through an appropriate vehicle such as the filing of a Form 8-K, the issuing of a press release, etc.

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1 It should be noted with respect to this requirement that the institution is not required to and should not disclose its MACRO rating if such rating is the reason the institution has been designated as "troubled" within the meaning of the Regulatory Bulletin. We note in this regard that the Bulletin defines a troubled institution as one that (i) has a MACRO rating of 4 or 5, (ii) is failing to meet its minimum regulatory capital requirement, or (iii) is otherwise identified as
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