

## § 16.5

a written prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)) and §16.15 of this part that was filed with and declared effective by the OCC;

(6) A notice of a proposed unregistered offering that satisfies the requirements of Commission Rule 135c (17 CFR 230.135c); and

(7) A communication that satisfies the requirements of Commission Rule 138 or 139 (17 CFR 230.138 or 230.139).

(b) The OCC may request that communications not deemed an offer under paragraph (a) of this section be submitted to the OCC.

(c) The OCC may prohibit the publication or distribution of any communication not deemed an offer under paragraph (a) of this section if necessary to protect the investing public.

### § 16.5 Exemptions.

The registration statement and prospectus requirements of §16.3 of this part do not apply to an offer or sale of bank securities:

(a) If the securities are exempt from registration under section 3 of the Securities Act (15 U.S.C. 77c), but only by reason of an exemption other than section 3(a)(2) (exemption for bank securities) and section 3(a)(11) (exemption for intrastate offerings) of the Securities Act. Commission Rules 149 and 150 (17 CFR 230.149 and 230.150) (which apply to section 3(a)(9) of the Securities Act) apply to this part;

(b) In a transaction exempt from registration under section 4 of the Securities Act (15 U.S.C. 77d). Commission Rules 152 and 152a (17 CFR 230.152 and 230.152a) (which apply to sections 4(2) and 4(1) of the Securities Act) apply to this part;

(c) In a transaction that satisfies the requirements of §16.7 of this part;

(d) In a transaction that satisfies the requirements of §16.8 of this part;

(e) In a transaction that satisfies the requirements of Commission Rule 144, 144A, 148, or 236 (17 CFR 230.144, 230.144A, 230.148, or 230.236);

(f) In a transaction that satisfies the requirements of Commission Rule 701 (17 CFR 230.701); or

(g) In a transaction that is an offer or sale occurring outside the United States under Commission Regulation S

## 12 CFR Ch. I (1–1–05 Edition)

(17 CFR part 230, Regulation S—Rules Governing Offers and Sales Made Outside the United States Without Registration Under the Securities Act of 1933).

[59 FR 54798, Nov. 2, 1994; 59 FR 67153, Dec. 29, 1994]

### § 16.6 Sales of nonconvertible debt.

(a) The OCC will deem offers or sales of bank issued nonconvertible debt to be in compliance with §§16.3, 16.15 (a) and (b), and 16.20 of this part if all of the following requirements are met:

(1) The bank issuing the debt has securities registered under the Exchange Act or is a subsidiary of a bank holding company that has securities registered under the Exchange Act;

(2) The debt is offered and sold only to accredited investors;

(3) The debt is sold in minimum denominations of \$250,000 and each note or debenture is legended to provide that it cannot be exchanged for notes or debentures of the bank in smaller denominations;

(4) The debt is rated investment grade;

(5) Prior to or simultaneously with the sale of the debt, each purchaser receives an offering document that contains a description of the terms of the debt, the use of proceeds, and method of distribution, and incorporates the bank's latest Consolidated Reports of Condition and Income (Call Report) and the bank's or its bank holding company's Forms 10-K, 10-Q (or 10-KSB, 10-QSB), and 8-K (17 CFR part 249) filed under the Exchange Act; and

(6) The offering document and any amendments are filed with the OCC no later than the fifth business day after they are first used.

(b) Offers or sales of nonconvertible debt issued by a federal branch or agency of a foreign bank need not need comply with the requirements of paragraph (a)(1) of this section, if the federal branch or agency provides the OCC the information specified in Commission Rule 12g3-2(b) (17 CFR 240.12g3-2(b)) and provides purchasers the information specified in Commission Rule 144A(d)(4)(i) (17 CFR 230.144A(d)(4)(i)). A federal branch or agency that provides the OCC the information specified in

## Comptroller of the Currency, Treasury

## § 16.15

Commission Rule 12g3-2(b) need not incorporate that information by reference into the offering document provided to purchasers pursuant to paragraph (a)(5) of this section. However, the federal branch or agency must make that information available to the potential purchasers upon request. The OCC will make the information available for public inspection.

### § 16.7 Nonpublic offerings.

(a) The OCC will deem offers and sales of bank issued securities that meet all of the following requirements to be exempt from the registration and prospectus requirements of § 16.3 pursuant to § 16.5(c) of this part:

(1) All the securities are offered and sold in a transaction that satisfies the requirements of Commission Regulation D (17 CFR part 230, Regulation D—Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933);

(2) Each purchaser who is not an accredited investor either alone or with its purchaser representative(s) has the knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment, or the issuer reasonably believes immediately prior to making any sale that the purchaser comes within this description; and

(3) A notice that meets the requirements of Commission Rule 503 (17 CFR 230.503) is filed with the OCC.

(b) All subsequent sales of bank issued securities subject to the limitations on resale of Commission Regulation D (17 CFR part 230, Regulation D—Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933) must be made pursuant to Commission Rule 144 (17 CFR 230.144), Commission Rule 144A (17 CFR 230.144A), another exemption from registration under the Securities Act referenced in § 16.5 of this part, or in accordance with the registration and prospectus requirements of § 16.3 of this part.

(c) No offer or sale of bank issued securities shall be made in reliance on Commission Regulation D (17 CFR part 230, Regulation D—Rules Governing the Limited Offer and Sale of Securities

Without Registration Under the Securities Act of 1933) without compliance with paragraphs (a)(1) and (a)(2) of this section.

### § 16.8 Small issues.

(a) The OCC will deem offers and sales of bank issued securities that satisfy the requirements of Commission Regulation A (17 CFR part 230, Regulation A—Conditional Small Issues Exemption) to be exempt from the registration and prospectus requirements of § 16.3 pursuant to § 16.5(d) of this part.

(b) A filer should consult the Commission's Securities Act Industry Guide 3—Statistical Disclosure by Bank Holding Companies (17 CFR 229.801(c) and 231) and requirement 7 (Loans) of Rule 9-03 of Commission Regulation S-X (17 CFR 230.9-03) for guidance on appropriate disclosures when preparing offering documents to be filed with the OCC pursuant to Regulation A.

### § 16.15 Form and content.

(a) Any registration statement filed pursuant to this part must be on the form for registration (17 CFR part 239) that the bank would be eligible to use were it required to register the securities under the Securities Act and must meet the requirements of the Commission regulations referred to in the applicable form for registration. A filer should consult the Commission's Securities Act Industry Guide 3—Statistical Disclosure by Bank Holding Companies (17 CFR 229.801(c) and 231) for guidance on appropriate disclosures when preparing registration statements.

(b) Any registration statement or amendment filed pursuant to this part must comply with the requirements of Commission Regulation C (17 CFR part 230, Regulation C—Registration), except to the extent those requirements conflict with specific requirements of this part.

(c) In addition to the information expressly required to be included in the registration statement by paragraphs (a) and (b) of this section, the registration statement must include any additional material information that is necessary to make the required statements, in light of the circumstances