

§ 16.3 Registration statement and prospectus requirements.

(a) No person shall offer or sell, directly or indirectly, any bank issued security unless:

(1) A registration statement for the security meeting the requirements of §16.15 of this part has been filed with and declared effective by the OCC pursuant to this part, and the offer or sale is accompanied or preceded by a prospectus that has been filed with and declared effective by the OCC as a part of that registration statement; or

(2) An exemption is available under §16.5 of this part.

(b) Notwithstanding paragraph (a) of this section, securities of a bank may be offered through the use of a preliminary prospectus before a registration statement and prospectus for the securities have been declared effective by the OCC if:

(1) A registration statement including the preliminary prospectus has been filed with the OCC;

(2) The preliminary prospectus contains the information required by §16.15 of this part except for the omission of information with respect to the offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices, or other matters dependent upon the offering price; and

(3) A copy of the prospectus as declared effective containing the information specified in paragraph (b)(2) of this section is furnished to each purchaser prior to or simultaneously with the sale of the security.

(c) Commission Rule 174 (17 CFR 230.174—Delivery of prospectus by dealers; Exemptions under section 4(3) of the Act) applies to transactions by dealers in bank issued securities.

§ 16.4 Communications not deemed an offer.

(a) The OCC will not deem the following communications to be an offer under §16.3 of this part:

(1) Prior to the filing of a registration statement, any notice of a proposed offering that satisfies the requirements of Commission Rule 135 (17 CFR 230.135);

(2) Subsequent to the filing of a registration statement, any notice, circular, advertisement, letter, or other communication published or transmitted to any person that satisfies the requirements of Commission Rule 134 (17 CFR 230.134);

(3) Subsequent to the filing of a registration statement, any oral offer of securities covered by that registration statement;

(4) Subsequent to the filing of a registration statement, any summary prospectus that is filed as a part of that registration statement and satisfies the requirements of Commission Rule 431 (17 CFR 230.431);

(5) Subsequent to the effective date of a registration statement, any written communication if it is proved that each recipient of the communication simultaneously or previously received 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