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conducted in the bank may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product only if the person making the referral receives no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

§ 14.60 Qualification and licensing requirements for insurance sales personnel.

A bank may not permit any person to sell or offer for sale any insurance product or annuity in any part of its office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

APPENDIX A TO PART 14—CONSUMER GRIEVANCE PROCESS

Any consumer who believes that any bank or any other person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the bank or on behalf of the bank has violated the requirements of this part should contact the Customer Assistance Group, Office of the Comptroller of the Currency, (800) 613–6743, 1301 McKinney Street, Suite 3710, Houston, Texas 77010–3031.

PART 15 [RESERVED]

PART 16—SECURITIES OFFERING DISCLOSURE RULES

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AUTHORITY: 12 U.S.C. 1 *et seq.* and 93a.

SOURCE: 59 FR 54798, Nov. 2, 1994, unless otherwise noted.

§ 16.1 Authority, purpose, and scope.

(a) *Authority*. This part is issued under the general authority of the national banking laws, 12 U.S.C. 1 *et seq.*, and the OCC's general rulemaking authority in 12 U.S.C. 93a.

(b) *Purpose*. This part sets forth rules governing the offer and sale of securities issued by a bank.

(c) *Scope*. This part applies to offers and sales of bank securities by issuers, underwriters, and dealers.

§ 16.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Accredited investor* means the same as in Commission Rule 501(a) (17 CFR 230.501(a)).

(b) *Bank* means an existing national bank, a national bank in organization, or a Federal branch or agency of a foreign bank.

(c) *Commission* means the Securities and Exchange Commission. When used in the rules, regulations, or forms of the Commission referred to in this part, the term ''Commission'' shall be deemed to refer to the OCC.

(d) *Dealer* means the same as in section 2(12) of the Securities Act (15 U.S.C. 77b(12)).

(e) *Exchange Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a through 78jj).

(f) *Insured depository institution* means the same as in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)).

(g) *Investment grade* means that a security is rated investment grade (i.e., in one of the top four rating categories) by each nationally recognized statistical rating organization that has rated the security.

(h) *Issuer* means a bank that issues or proposes to issue any security.

(i) *Nonconvertible debt* means a general obligation of the bank, whether senior or subordinated, that is not convertible into any class of common or

preferred stock or any derivative thereof.

(j) *OCC* means the Office of the Comptroller of the Currency.

(k) *Person* means the same as in section 2(2) of the Securities Act (15 U.S.C. 77b(2)) and includes a bank.

(l) *Prospectus* means an offering document that includes the information required by section 10(a) of the Securities Act (15 U.S.C. 77j(a)).

(m) *Registration statement* means a filing that includes the prospectus and other information required by section 7 of the Securities Act (15 U.S.C. 77g).

(n) *Sale*, *sell*, *offer to sell*, *offer for sale*, and *offer* mean the same as in section 2(3) of the Securities Act (15 U.S.C. 77b(3)).

(o) *Securities Act* means the Securities Act of 1933 (15 U.S.C. 77a through 77aa).

(p) *Security* means the same as in section 2(1) of the Securities Act (15 U.S.C. 77b(1)).

(q) *Underwriter* means the same as in section 2(11) of the Securities Act (15 U.S.C. 77b(11)). Commission Rules 137, 140, 141, 142, and 144 (17 CFR 230.137, 230.140, 230.141, 230.142, and 230.144) (which apply to section 2(11) of the Securities Act) apply to this part.

[59 FR 54798, Nov. 2, 1994, as amended at 73 FR 22243, Apr. 24, 2008]

§ 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), section 3(a)(11) (exemption for intrastate offerings), and section 3(a)(12) of the Securities Act (exemption for bank holding company formation).

(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);

(g) In a transaction that is an offer or sale occurring outside the United States under Commission Regulation S (17 CFR part 230, Regulation S—Rules Governing Offers and Sales Made Outside the United States Without Registration Under the Securities Act of 1933); or

(h) In a transaction that satisfies the requirements of § 16.9 of this part.

[59 FR 54798, Nov. 2, 1994; 59 FR 67153, Dec. 29, 1994, as amended at 73 FR 22243, Apr. 24, 2008]

§ 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 and 16.15(a) and (b) 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, if issued in certificate form, 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 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.

[59 FR 54798, Nov. 2, 1994, as amended at 73 FR 22243, Apr. 24, 2008]

§ 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); and

(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.

(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.

[59 FR 54798, Nov. 2, 1994, as amended at 73 FR 22243, Apr. 24, 2008]

§ 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.

§ 16.9 Securities offered and sold in holding company dissolution.

Offers and sales of bank issued securities in connection with the dissolution of the holding company of the bank are exempt from the registration and prospectus requirements of § 16.3 pursuant to § 16.5(h), provided all of the following requirements are met:

(a) The offer and sale of bank-issued securities occurs solely as part of a dissolution in which the security holders exchange their shares of stock in a holding company that had no significant assets other than securities of the bank, for bank stock;

(b) The security holders receive, after the dissolution, substantially the same proportional share interests in the bank as they held in the holding company;

(c) The rights and interests of the security holders in the bank are substantially the same as those in the holding company prior to the transaction; and

(d) The bank has substantially the same assets and liabilities as the holding company had on a consolidated basis prior to the transaction.

[73 FR 22243, Apr. 24, 2008]

§ 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 under which they are made, not misleading.

(d) Notwithstanding paragraph (a) of this section, the registration statement for securities issued by a bank that is not in compliance with the regulatory capital requirements set forth in part 3 of this chapter must be on the Form S–1 (17 CFR part 239) registration statement under the Securities Act.

(e) Notwithstanding paragraph (a) of this section, a national bank in organization pursuant to § 5.20 of this chapter shall not be required to include audited financial statements as part of its registration statement for the offer and sale of its securities, unless the OCC determines that factors particular to the proposal indicate that inclusion of such statements would be in the interest of investors or would further the safe and sound operation of a national bank.

[59 FR 54798, Nov. 2, 1994, as amended at 73 FR 12010, Mar. 6, 2008]

§ 16.16 Effectiveness.

(a) Registration statements and amendments filed with the OCC pursuant to this part will become effective in accordance with sections 8(a) and (c) of the Securities Act (15 U.S.C. 77h(a) and (c)) and Commission Regulation C (17 CFR part 230, Regulation C—Registration).

(b) The OCC will deem registration statements and amendments that become effective pursuant to paragraph (a) of this section to be declared effective. If the OCC deems a registration statement to be declared effective, the OCC will also deem the prospectus that was filed as a part of that registration statement to be declared effective.

§ 16.17 Filing requirements and inspection of documents.

(a) Except as provided in paragraph (b) of this section, all registration statements, offering documents, amendments, notices, or other documents must be filed with the Securities, Investments, and Fiduciary Practices Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

(b) All registration statements, offering documents, amendments, notices, or other documents relating to a bank in organization must be filed with the appropriate District office of the OCC.

(c) Where this part refers to a section of the Securities Act or the Exchange Act or a Commission rule that requires the filing of a notice or other document with the Commission, that notice or other document must be filed with the OCC.

(d) Unless otherwise requested by the OCC, any filing under this part must include four copies of any document filed. Material may be filed by delivery to the OCC through use of the mails or otherwise. The date on which documents are actually received by the OCC will be the date of filing of those documents, if the person filing the documents has complied with all requirements regarding the filing, including

the submission of any fee required under § 16.33 of this part.

(e) Any filing of amendments or revisions must include at least four copies, two of which are marked to indicate clearly and precisely, by underlining or in some other appropriate manner, the changes made.

(f) The OCC will make available for public inspection copies of the registration statements, offering documents, amendments, exhibits, notices or reports filed pursuant to this part at the address identified in § 4.17(b) of this chapter.

§ 16.18 Use of prospectus.

(a) No person shall use a prospectus or amendment declared effective by the OCC more than nine months after the effective date unless the information contained in the prospectus or amendment is as of a date not more than 16 months prior to the date of use.

(b) If any event arises, or change in fact occurs, after the effective date and that event or change in fact, individually or in the aggregate, results in the prospectus containing any untrue statement of material fact, or omitting to state a material fact necessary in order to make statements made in the prospectus not misleading under the circumstances, then no person shall use the prospectus that has been declared effective under this part until an amendment reflecting the event or change has been filed with and declared effective by the OCC.

§ 16.19 Withdrawal or abandonment.

(a) Any registration statement, amendment, or exhibit may be withdrawn prior to the effective date. A withdrawal must be signed and state the grounds upon which it is made. The OCC will not remove any withdrawn document from its files, but will mark the document *Withdrawn upon the request of the registrant on (date)*.

(b) When a registration statement or amendment has been on file with the OCC for a period of nine months and has not become effective, the OCC may, in its discretion, determine whether the filing has been abandoned. Before determining that a filing has been abandoned, the OCC will notify the filer that the filing is out of date and must either be amended to comply with the applicable requirements of this part or be withdrawn within 30 days after the date of notice. When a filing is abandoned, the OCC will not remove the filing from its files but will mark the filing *Declared abandoned by the OCC on (date)*.

§ 16.30 Request for interpretive advice or no-objection letter.

Any person requesting interpretive advice or a no-objection letter from the OCC with respect to any provision of this part shall:

(a) File a copy of the request, including any supporting attachments with the Securities, Investments, and Fiduciary Practices Division at the address listed in § 16.17;

(b) Identify or describe the provisions of this part to which the request relates, the participants in the proposed transaction, and the reasons for the request; and

(c) Include with the request a legal opinion as to each legal issue raised and an accounting opinion as to each accounting issue raised.

§ 16.31 Escrow requirement.

The OCC may require that any funds received in connection with an offer or sale of securities be held in an independent escrow account at an unrelated insured depository institution when the use of an escrow account is in the best interests of shareholders.

§ 16.32 Fraudulent transactions and unsafe and unsound practices.

(a) No person in the offer or sale of bank securities shall directly or indirectly:

(1) Employ any device, scheme or artifice to defraud;

(2) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(3) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person, in connection with the purchase or sale of any security of a bank.

(b) Nothing in this section limits the applicability of section 17 of the Securities Act (15 U.S.C. 77q) or section 10(b) of the Exchange Act (15 U.S.C. 78j) or Rule 10b–5 promulgated thereunder (17 CFR 240.10b–5).

(c) Any violation of this section also constitutes an unsafe or unsound practice under 12 U.S.C. 1818.

(d) Commission Rule 175 (17 CFR 230.175—Liability for certain statements by issuers) applies to this part.

§ 16.33 Filing fees.

(a) Filing fees must accompany certain filings made under the provisions of this part before the OCC will accept those filings. The applicable fee schedule is provided in the Notice of Comptroller of the Currency Fees published pursuant to § 8.8 of this chapter.

(b) Filing fees must be paid by check payable to the Comptroller of the Currency.

PART 18—DISCLOSURE OF FINANCIAL AND OTHER INFORMATION BY NATIONAL BANKS

Sec.
18.1 Purpose and OMB control number.
18.2 Definitions.
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AUTHORITY: 12 U.S.C. 93a, 161, and 1818.

SOURCE: 53 FR 3866, Feb. 10, 1988, unless otherwise noted.

§ 18.1 Purpose and OMB control number.

(a) *Purpose*. The purpose of this part is to require all national banks and federal branches and agencies to prepare an annual financial disclosure statement, and to make this statement available to security holders, depositors, and anyone who requests it. The bank may, at its option, supplement this financial disclosure statement with narrative information management deems important. The availability of this information is expected to promote better public understanding of, and confidence in, individual national banks and the national banking system. The annual disclosure statement will serve to complement the supervisory efforts of the Office of the Comptroller of the Currency (OCC) to promote bank safety and soundness and public confidence in the national banking system.

(b) *OMB control number*. The collection of information requirements contained in this part were approved by the Office of Management and Budget under OMB control number 1557–0182.

[53 FR 3866, Feb. 10, 1988, as amended at 60 FR 57332, Nov. 15, 1995]

§ 18.2 Definitions.

Unless otherwise defined in this part, the terms used have the same meaning as in the instructions to the Consolidated Reports of Condition and Income (*Call Reports*).

§ 18.3 Preparation of annual disclosure statement.

(a) Beginning with calendar year 1987, each national bank and federal branch and agency shall prepare an annual disclosure statement as of December 31. The annual disclosure statement shall contain information required by § 18.4 (a), (b) and (d) may include other information that bank management believes important, as discussed in § 18.4(c).

(b) The annual disclosure statement shall be available by March 31 of each year, or by an earlier date as necessary to be made available to security holders in advance of the annual meeting of shareholders. A bank shall continually make its annual disclosure statement available until the annual disclosure statement for the succeeding year becomes available.

§ 18.4 Contents of annual disclosure statement.

(a) *Information concerning financial condition and results of operations*. The annual disclosure statement for any year shall reflect a fair presentation of the bank's financial condition at the end of that year and the preceding year. The annual disclosure statement