

(j) Banks are reminded that these factors are merely guidelines that will be utilized to determine whether a bank has fulfilled its suitability obligation with respect to a specific institutional customer transaction and that the inclusion or absence of any of these factors is not dispositive of the determination of suitability. Such a determination can only be made on a case-by-case basis taking into consideration all the facts and circumstances of a particular bank/customer relationship, assessed in the context of a particular transaction.

(k) For purposes of the interpretation in this section, an institutional customer shall be any entity other than a natural person. In determining the applicability of the interpretation in this section to an institutional customer, the OCC will consider the dollar value of the securities that the institutional customer has in its portfolio and/or under management. While the interpretation in this section is potentially applicable to any institutional customer, the guidance contained in this section is more appropriately applied to an institutional customer with at least \$10 million invested in securities in the aggregate in its portfolio and/or under management.

PARTS 14–15—[RESERVED]

PART 16—SECURITIES OFFERING DISCLOSURE RULES

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

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§ 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, a bank operating under the Code of Law of the District of Columbia, 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