Comptroller of the Currency, Treasury

§ 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

§ 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.

§ 16.2 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)).


(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)).
§ 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.


§ 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 comply with the requirements of paragraphs (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 14A(d)(4)(i) (17 CFR 229.14A(d)(4)(i)). A federal branch or agency that provides...