

## § 16.7

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

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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