the OCC the information specified in
Commission Rule 12g3–2(b) need not in-
corporate that information by ref-
erence into the offering document pro-
vided to purchasers pursuant to para-
graph (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 avail-
able for public inspection.

§ 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 pursu-
ant to §16.5(c) of this part:
(1) All the securities are offered and
sold in a transaction that satisfies the
requirements of Commission Regula-
tion 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 ac-
credited 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 pur-
chaser comes within this description.
(b) All subsequent sales of bank
issued securities subject to the limita-
tions on resale of Commission Regula-
tion 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 regis-
tration and prospectus require-
ments of §16.3 of this part.
(c) No offer or sale of bank issued se-
curities shall be made in reliance on
Commission Regulation D (17 CFR part
230, Regulation D—Rules Governing
the Limited Offer and Sale of Securi-
ties Without Registration Under the
Securities Act of 1933) without compli-
ance with paragraphs (a)(1) and (a)(2) of
this section.

§ 16.8 Small issues.
(a) The OCC will deem offers and
sales of bank issued securities that sat-
isfy the requirements of Commission
Regulation A (17 CFR part 230, Regulation A—Conditional Small Issues Ex-
emption) to be exempt from the reg-
istration and prospectus requirements
of §16.3 pursuant to §16.5(d) of this
part.
(b) A filer should consult the Com-
mision’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 Reg-
ulation A.

§ 16.9 Securities offered and sold in
holding company dissolution.
Offers and sales of bank issued secu-
rities in connection with the dissolu-
tion 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 dis-
solution in which the security holders
exchange their shares of stock in a
holding company that had no signifi-
cant 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 com-
pany;
(c) The rights and interests of the se-
curity holders in the bank are substan-
tially the same as those in the holding
company prior to the transaction; and
§ 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.

[73 FR 22243, Apr. 24, 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