

## § 14.50

(7) *Consumer acknowledgment.* A covered person must obtain from the consumer, at the time a consumer receives the disclosures required under paragraphs (a) or (b) of this section, or at the time of the initial purchase by the consumer of an insurance product or annuity, a written acknowledgment by the consumer that the consumer received the disclosures. A covered person may permit a consumer to acknowledge receipt of the disclosures electronically or in paper form. If the disclosures required under paragraphs (a) or (b) of this section are provided in connection with a transaction that is conducted by telephone, a covered person must:

(i) Obtain an oral acknowledgment of receipt of the disclosures and maintain sufficient documentation to show that the acknowledgment was given; and

(ii) Make reasonable efforts to obtain a written acknowledgment from the consumer.

(d) *Advertisements and other promotional material for insurance products or annuities.* The disclosures described in paragraph (a) of this section are required in advertisements and promotional material for insurance products or annuities unless the advertisements and promotional materials are of a general nature describing or listing the services or products offered by the bank or Federal savings association.

[65 FR 75839, Dec. 4, 2000, as amended at 79 FR 28398, May 16, 2014]

## § 14.50 Where insurance activities may take place.

(a) *General rule.* A bank or Federal savings association must, to the extent practicable, keep the area where the bank or Federal savings association conducts transactions involving insurance products or annuities physically segregated from areas where retail deposits are routinely accepted from the general public, identify the areas where insurance product or annuity sales activities occur, and clearly delineate and distinguish those areas from the areas where the bank's or Federal savings association's retail deposit-taking activities occur.

(b) *Referrals.* Any person who accepts deposits from the public in an area

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where such transactions are routinely conducted in the bank or Federal savings association 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.

[65 FR 75839, Dec. 4, 2000, as amended at 79 FR 28399, May 16, 2014]

## § 14.60 Qualification and licensing requirements for insurance sales personnel.

A bank or Federal savings association 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.

[65 FR 75839, Dec. 4, 2000, as amended at 79 FR 28399, May 16, 2014]

## APPENDIX A TO PART 14—CONSUMER GRIEVANCE PROCESS

Any consumer who believes that any bank, Federal savings association, or any other person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the bank or Federal savings association, or on behalf of the bank or Federal savings association, has violated the requirements of this part should contact the Customer Assistance Group, Office of the Comptroller of the Currency, (800) 613-6743, P.O. Box 53570, Houston, TX 77052, or [www.helpwithmybank.gov](http://www.helpwithmybank.gov).

[87 FR 27483, May 9, 2022]

## PART 15 [RESERVED]

## PART 16—SECURITIES OFFERING DISCLOSURE RULES

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AUTHORITY: 12 U.S.C. 1 *et seq.*, 93a, 1462a, 1463, 1464, and 5412(b)(2)(B).

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

### § 16.1 Authority, purpose, and scope.

(a) *Authority*. This part is issued under the rulemaking authority of the Comptroller of the Currency (OCC) for national banks in 12 U.S.C. 1 *et seq.*, and 93a, and for Federal savings associations in 12 U.S.C. 1462a, 1463, 1464, and 5412(b)(2)(B).

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

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

[59 FR 54798, Nov. 2, 1994, as amended at 82 FR 8107, Jan. 23, 2017]

### § 16.2 Definitions.

For purposes of this part, the following definitions apply:

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

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

(c) *Exchange Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

(d) *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)).

(e) *Federal savings association* means an existing Federal savings association chartered under section 5 of the Home

Owners' Loan Act (HOLA) (12 U.S.C. 1464 *et seq.*) or a Federal savings association in organization.

(f) *Investment grade* means the issuer of a security has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected.

(g) *Issuer* means a national bank or Federal savings association that issues or proposes to issue any security.

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

(i) *Nonconvertible debt* means a general obligation of the national bank or Federal savings association, whether senior or subordinated, that is not convertible into any class of common or preferred stock or any derivative thereof.

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

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

(l) *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).

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

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

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

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

(q) *Underwriter* means the same as in section 2(a)(11) of the Securities Act (15 U.S.C. 77b(a)(11)). SEC Rules 137, 140, 141, 142, and 144 (17 CFR 230.137, 230.140,

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230.141, 230.142, and 230.144) (which apply to section 2(a)(11) of the Securities Act) apply to this part.

[59 FR 54798, Nov. 2, 1994, as amended at 73 FR 22243, Apr. 24, 2008; 77 FR 35258, June 13, 2012; 82 FR 8107, Jan. 23, 2017]

### § 16.3 Registration statement and prospectus requirements.

(a) No person shall offer or sell, directly or indirectly, any national bank or Federal savings association 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 national bank or Federal savings association 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) SEC Rule 174 (17 CFR 230.174—Delivery of prospectus by dealers; Exemptions under section 4(a)(3) of the Act) applies to transactions by dealers in national bank and Federal savings association issued securities.

[59 FR 54798, Nov. 2, 1994, as amended at 82 FR 8107, Jan. 23, 2017]

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### § 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 SEC 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 SEC 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 SEC 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 SEC Rule 135c (17 CFR 230.135c); and

(7) A communication that satisfies the requirements of SEC 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.

[59 FR 54798, Nov. 2, 1994, as amended at 82 FR 8107, Jan. 23, 2017]

### § 16.5 Exemptions.

The registration statement and prospectus requirements of § 16.3 do not

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apply to an offer or sale of national bank or Federal savings association 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)(5) (exemption for savings association securities), section 3(a)(11) (exemption for intrastate offerings), and section 3(a)(12) (exemption for bank holding company formation) of the Securities Act.

(b) In a transaction exempt from registration under section 4 of the Securities Act (15 U.S.C. 77d). SEC Rules 152 and 152a (17 CFR 230.152 and 230.152a) (which apply to sections 4(a)(2) and 4(a)(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 SEC Rule 144, 144A, or 236 (17 CFR 230.144, 230.144A, or 230.236);

(f) In a transaction that satisfies the requirements of SEC Rule 701 (17 CFR 230.701);

(g) In a transaction that is an offer or sale occurring outside the United States under SEC 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; 82 FR 8107, Jan. 23, 2017]

### § 16.6 Sales of nonconvertible debt.

(a) The OCC will deem offers or sales of national bank or Federal savings association 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 national bank or Federal savings association issuing the debt has securities registered under the Exchange Act or is a subsidiary of a 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 national bank or Federal savings association in smaller denominations;

(4) The debt is 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 national bank's or Federal savings association's latest Consolidated Reports of Condition and Income (Call Report) and the national bank's, Federal savings association's, or the holding company's Forms 10-K, 10-Q, 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 SEC Rule 12g3-2(b) (17 CFR 240.12g3-2(b)) and provides purchasers the information specified in SEC 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 SEC 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; 77 FR 35258, June 13, 2012; 82 FR 8107, Jan. 23, 2017]

### § 16.7 Nonpublic offerings.

(a) The OCC will deem offers and sales of national bank or Federal savings association issued securities that

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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 SEC 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 national bank or Federal savings association issued securities subject to the limitations on resale of SEC 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 SEC Rule 144 (17 CFR 230.144), SEC 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 national bank or Federal savings association issued securities shall be made in reliance on SEC 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; 82 FR 8108, Jan. 23, 2017]

### § 16.8 Small issues.

(a) The OCC will deem offers and sales of national bank or Federal savings association issued securities that satisfy the requirements of SEC Regulation A (17 CFR part 230, Regulation A—Conditional Small Issues Exemption) to be exempt from the registra-

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tion and prospectus requirements of §16.3 pursuant to §16.5(d) of this part.

(b) A filer should consult the SEC'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 SEC 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.

[59 FR 54798, Nov. 2, 1994, as amended at 82 FR 8108, Jan. 23, 2017]

### § 16.9 Securities offered and sold in holding company dissolution.

Offers and sales of national bank or Federal savings association issued securities in connection with the dissolution of the holding company of the national bank or Federal savings association 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 national bank or Federal savings association 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 or savings association, for bank or savings association stock;

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

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

(d) The national bank or Federal savings association 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, as amended at 82 FR 8108, Jan. 23, 2017]

### § 16.10 Sales of securities at an office of a Federal savings association.

Sales of securities of a Federal savings association or its affiliates at an

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office of a Federal savings association may be made only in accordance with the provisions of 12 CFR 163.76. For the purpose of this section, “affiliate” has the same meaning as in 12 CFR 161.4.

[82 FR 8108, Jan. 23, 2017]

### § 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 national bank or Federal savings association would be eligible to use were it required to register the securities under the Securities Act and must meet the requirements of the SEC regulations referred to in the applicable form for registration. A filer should consult the SEC’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 SEC 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 national bank or Federal savings association that is not in compliance with the regulatory capital requirements set forth in 12 CFR part 3, as applicable 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 or Federal savings association 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, or as part of its

offering statement for the offer and sale of its securities pursuant to 12 CFR 16.8, 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 or Federal savings association.

[59 FR 54798, Nov. 2, 1994, as amended at 73 FR 12010, Mar. 6, 2008; 79 FR 11312, Feb. 28, 2014; 82 FR 8108, Jan. 23, 2017; 85 FR 42641, July 14, 2020]

### § 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 SEC 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.

[59 FR 54798, Nov. 2, 1994, as amended at 82 FR 8108, Jan. 23, 2017]

### § 16.17 Filing requirements and inspection of documents.

(a) Except as otherwise provided in this section, all registration statements, offering documents, amendments, notices, or other documents must be filed with the OCC’s Law Department electronically at <http://www.banknet.gov/>. Documents may be signed electronically using the signature provision in SEC Rule 402 (17 CFR 230.402).

(b) All registration statements, offering documents, amendments, notices, or other documents relating to a national bank or Federal savings association in organization must be filed with the appropriate district office of the OCC at <http://www.banknet.gov/>. All registration statements, offering documents, amendments, notices, or other documents relating to a mutual to stock conversion pursuant to 12 CFR

part 192 must be filed with the appropriate OCC licensing office at <http://www.banknet.gov/>.

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

(d) Provided the person filing the document has complied with all requirements regarding the filing, including the submission of any fee required under §16.33, the date of filing of the document is the date the OCC receives the filing. An electronic filing that is submitted on a business day by direct transmission commencing on or before 5:30 p.m. Eastern Standard or Daylight Savings Time, whichever is currently in effect, would be deemed received by the OCC on the same business day. An electronic filing that is submitted by direct transmission commencing after 5:30 p.m. Eastern Standard or Daylight Savings Time, whichever is currently in effect, or on a Saturday, Sunday, or Federal holiday, would be deemed received by the OCC on the next business day. If an electronic filer in good faith attempts to file a document with the OCC in a timely manner but the filing is delayed due to technical difficulties beyond the electronic filer's control, the electronic filer may request that the OCC adjust the filing date of such document. The OCC may grant the request if it appears that such adjustment is appropriate and consistent with the public interest and the protection of investors.

(e) Notwithstanding paragraph (d) of this section, any registration statement or any post-effective amendment thereto filed pursuant to SEC Rule 462(b) (17 CFR 230.462(b)) shall be deemed received by the OCC on the same business day if its submission commenced on or before 10 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect, and on the next business day if its submission commenced after 10 p.m. Eastern Standard or Daylight Savings Time, whichever is currently in effect, or any time on a Saturday, Sunday, or Federal holiday.

(f) If a national bank or Federal savings association experiences unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing, the bank or savings association may, upon notice to the OCC's Law Department or district office, as appropriate, file the subject filing in paper format no later than one business day after the date on which the filing was to be made. Paper filings should be submitted to the OCC's Law Department or appropriate district office, at the address provided at [www.occ.gov](http://www.occ.gov).

(g) Any filing of amendments or revisions must include two copies, one of which must be marked to indicate clearly and precisely, by underlining or in some other appropriate manner, the changes made.

(h) 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 §4.14 of this chapter.

[82 FR 8108, Jan. 23, 2017, as amended at 85 FR 42641, July 14, 2020]

#### § 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 OCC's Law Department at the address provided at *www.occ.gov*;

(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.

[59 FR 54798, Nov. 2, 1994, as amended at 82 FR 8109, Jan. 23, 2017; 85 FR 42641, July 14, 2020]

#### **§ 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 or unsound practices.**

(a) No person in the offer or sale of national bank or Federal savings association 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 national bank or Federal savings association.

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

[59 FR 54798, Nov. 2, 1994, as amended at 82 FR 8109, Jan. 23, 2017]

#### **§ 16.33 Filing fees.**

(a) The OCC may require filing fees to accompany certain filings made under this part before it will accept those filings. The OCC provides an applicable fee schedule 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 or by other means acceptable to the OCC.

[82 FR 8109, Jan. 23, 2017]

## **PART 19—RULES OF PRACTICE AND PROCEDURE**

Sec.

19.0 Applicability date.