Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Interpretive Letter #861
June 1999
12 CFR 16.6

February 5, 1999

Re: [ ](“Bank”), [*City, State*] and [*Bank2*] (collectively, the “Banks”)

Dear [ ]:

This responds to your request for written confirmation that staff of the Office of the Comptroller of the Currency (“OCC”) would not object if the Banks engage in the offer and sale of fixed and variable nonconvertible debt securities (“Notes”) as part of a multibank note offering pursuant to section 16.6 of the OCC’s securities offering disclosure regulations (12 CFR § 16.6), subject to one exception described in your letter. Based upon the facts set forth in your letter and on additional information and representations you have provided, we will not object to the proposed offering pursuant to section 16.6.

Background

Each of the Banks is a wholly owned subsidiary of [ ] (“Corporation”). The Corporation, in turn, is a wholly owned subsidiary of [Inc.], which is a wholly owned subsidiary of [ ] (“Parent Bank”). The Parent Bank is headquartered in [ ] with assets of approximately $412 billion and is a subsidiary of [ ] (“ *Co.*”), a [ ] corporation with shares that are publicly traded on the Amsterdam Stock Exchange.

The Banks intend on offering and selling the Notes with [*BankA, BankB, and BankC*] (together and individually, the “issuing banks”), as part of a multibank $6,000,000,000 debt offering. The Notes will range in maturities from 30 days to 10 years. The Notes will be offered and sold to accredited investors pursuant to an offering circular that fully discloses the terms and conditions under which the Notes will be offered and sold and significant regulatory matters which may affect the business

and financial condition of each banking organization. The Banks have further indicated that the Notes will be sold to new purchasers in minimum initial denominations of $1,000,000 or more, and to existing holders in subsequent minimum denominations of $250,000. The Notes will also be legended to preclude their transfer in denominations of less than $250,000. Each Note issued pursuant to the offering will be an obligation solely of the issuing bank and not be an obligation of, or otherwise guaranteed by, the other issuing banks, ["*Co.*"] or any other affiliate, and the offering circular and related subscription and confirmation documents will make this fact clear.

In a March 28, 1995 letter (the "1995 Letter"), we advised you that we would not object to the offer and sale of fixed and variable nonconvertible debt securities by the Bank in reliance on section 16.6, subject to certain conditions. As part of these conditions, the Bank agreed, among other things, that it would provide: (i) prospective purchasers with its recent financial statements and the Corporation's audited financial statements; and (ii) the OCC, and Note purchasers on request, with the annual report of ["*Co.*"], which is published in [ ]. The Bank also agreed to sell its debt to new purchasers in minimum initial denominations of $1,000,000 or more, and to existing holders in subsequent minimum denominations of $250,000. At the time the letter was written, the Bank could not technically rely upon section 16.6 because it was not a reporting bank under the Securities Exchange Act of 1934 (the "Exchange Act"), a subsidiary of an Exchange Act reporting holding company, or a federal branch or agency of a foreign bank.

Ordinary shares of ["*Co.*"] trade in the United States in the form of American Depository Shares (ADSs"), each of which represents the right to receive one ordinary share. Since May of 1997, the ADSs have been listed on the New York Stock Exchange and the underlying ordinary shares have been registered pursuant to section 12 of the Securities Exchange Act of 1934 ("Exchange Act"). As a result, ["*Co.*"] is subject to the reporting requirements that the Securities and Exchange Commission prescribes for foreign private issuers under section 13 of the Exchange Act. To comply with these requirements, ["*Co.*"] files Form 20-F with the SEC, which is used by foreign issuers for the annual report under section 13(a) of the Act, and Form 6-K, which foreign private issuers must file to report current information that is made public or required to be filed in the issuer's home country.

Discussion

As a result of ["*Co.*"]'s compliance with the Exchange Act requirements for registration of securities and periodic reporting, the Banks propose to follow the current requirements of the OCC's abbreviated disclosure procedure for debt securities in 12 CFR § 16.6 in their offer

and sale of the Notes, with one exception.[1] Section 16.6 requires that prior to or simultaneous with the sale of debt securities, each purchaser must receive an offering document that contains a description of the terms of the debt, the use of proceeds and the method of distribution, and incorporates the issuing bank's call report, as well as its (or its holding company's) quarterly, annual, and special (if any) reports filed under the Exchange Act on Forms 10-Q, 10-K, and 8-K. The Banks request that, instead of meeting the requirement to incorporate the holding company's Forms 10-Q, 10-K, and 8-K or continuing to rely on the 1995 Letter, they be permitted to substitute Form 20-F and other reports that [*"Co."*] files under the Exchange Act. You have represented that the information provided on the forms filed by [*"Co."*] is substantially similar or, in some cases, substantially equivalent to the information required by the forms specified in section 16.6. As a result, you believe that the use of the forms filed by [*"Co."*], in lieu of the forms specified in section 16.6, would fully satisfy the disclosure purposes underlying the section 16.6 requirements

We agree that the purposes of the abbreviated disclosure procedure in section 16.6 would be satisfied if the Banks were to incorporate by reference in the offering documents for the Notes the Forms 20-F and 6-K filed by [*"Co."*] under the Exchange Act in lieu of Forms 10-K, 10-Q, and 8-K. Therefore, the Banks may proceed with the offering of Notes as proposed in your letter, subject to the specific condition that, in addition to compliance with all other provisions of section 16.6, the Notes will be sold to new purchasers in minimum initial denominations of $1,000,000, as described above. This response is based solely on the facts as represented and any changes in the facts could require a different result. The OCC may impose additional limitations to address compliance issues that may arise.

If you have any questions regarding this response, please contact me at (202) 874-5210.

Sincerely,

/s/

Virginia S. Rutledge, Senior Attorney
Securities and Corporate Practices Division

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[1]You represent that the Banks would meet the remaining requirements of section 16.6. The Banks will sell the Notes only to accredited investors and in minimum initial denominations of $1,000,000. (Section 16.6 requires a minimum denomination of at least $250,000.) The Notes will be rated investment grade. The Banks or one of their holding companies will be subject to the reporting requirements of the Exchange Act. The Banks will file offering documents with the OCC no later than the fifth business day after which they are first issued.