(b) Aggregate relationship-total compensation percentage. For purposes of this section, the aggregate relationship-total compensation percentage for a bank’s trust and fiduciary business shall be the mean of the bank’s yearly bank-wide compensation percentage for the immediately preceding year and the bank’s yearly bank-wide compensation percentage for the year immediately preceding that year.

(c) Yearly bank-wide compensation percentage. For purposes of this section, a bank’s yearly bank-wide compensation percentage for a year shall be:

(1) Equal to the relationship compensation attributable to the bank’s trust and fiduciary business as a whole during the year divided by the total compensation attributable to the bank’s trust and fiduciary business as a whole during that year, with the quotient expressed as a percentage; and

(2) Calculated within 60 days of the end of the year.

(d) Revenues derived from transactions conducted under other exceptions or exemptions. For purposes of calculating the yearly compensation percentage for a trust or fiduciary account, a bank may, at its election exclude the compensation associated with any securities transaction conducted in accordance with the exceptions in section 3(a)(4)(B)(i) or sections 3(a)(4)(B)(iii)–(xii) of the Act (15 U.S.C. 78c(a)(4)(B)(i) or 78c(a)(4)(B)(iii)–(xii)) and the rules issued thereunder, including any exemption related to such sections jointly adopted by the Commission and the Board, provided that if the bank elects to exclude such compensation, the bank must exclude the compensation from both the relationship compensation (if applicable) and total compensation of the bank.

§ 218.723 Exemptions for special accounts, transferred accounts, foreign branches and a de minimis number of accounts.

(a) Short-term accounts. A bank may, in determining its compliance with the chiefly compensated test in §218.721(a)(1) or §218.722(a)(2), exclude any trust or fiduciary account that had been open for a period of less than 3 months during the relevant year.

(b) Accounts acquired as part of a business combination or asset acquisition. For purposes of determining compliance with the chiefly compensated test in §218.721(a)(1) or §218.722(a)(2), any trust or fiduciary account that a bank acquired from another person as part of a merger, consolidation, acquisition, purchase of assets or similar transaction may be excluded by the bank for 12 months after the date the bank acquired the account from the other person.

(c) Non-shell foreign branches—(1) Exemption. For purposes of determining compliance with the chiefly compensated test in §218.722(a)(2), a bank may exclude the trust or fiduciary accounts held at a non-shell foreign branch of the bank if the bank has reasonable cause to believe that trust or fiduciary accounts of the foreign branch held by or for the benefit of a U.S. person as defined in 17 CFR 230.902(k) constitute less than 10 percent of the total number of trust or fiduciary accounts of the foreign branch.

(2) Rules of construction. Solely for purposes of this paragraph (c), a bank will be deemed to have reasonable cause to believe that a trust or fiduciary account of a foreign branch of the bank is not held by or for the benefit of a U.S. person if

(i) The principal mailing address maintained and used by the foreign branch for the accountholder(s) and beneficiary(ies) of the account is not in the United States; or

(ii) The records of the foreign branch indicate that the accountholder(s) and beneficiary(ies) of the account is not a U.S. person as defined in 17 CFR 230.902(k).

(3) Non-shell foreign branch. Solely for purposes of this paragraph (c), a non-shell foreign branch of a bank means a branch of the bank

(i) That is located outside the United States and provides banking services to residents of the foreign jurisdiction in which the branch is located; and

(ii) For which the decisions relating to day-to-day operations and business of the branch are made at that branch and are not made by an office of the bank located in the United States.
(d) Accounts transferred to a broker or
dealer or other unaffiliated entity. Not-
withstanding section 3(a)(4)(B)(ii)(I) of
the Act (15 U.S.C. 78c(a)(4)(B)(ii)(I)) and
§ 218.721(a)(1) of this part, a bank oper-
ating under § 218.721(a)(1) shall not be
considered a broker for purposes of sec-
tion 3(a) of the Act (15 U.S.C. 78c(a)(4)) if,
within 3 months of the end of the year in
which the account fails to meet such
standard, the bank transfers the
account or the securities held by or on
behalf of the account to a broker or
dealer registered under section 15 of
the Act (15 U.S.C. 78o) or another enti-
ity that is not an affiliate of the bank
and is not required to be registered as
a broker or dealer.

(e) De minimis exclusion. A bank may,
in determining its compliance with the
chiefly compensated test in
§ 218.721(a)(1), exclude a trust or fidu-
ciary account if:

(1) The bank maintains records dem-
onstrating that the securities trans-
actions conducted by or on behalf of
the account were undertaken by the
bank in the exercise of its trust or fidu-
ciary responsibilities with respect to
the account;

(2) The total number of accounts ex-
cluded by the bank under this para-
graph (d) does not exceed the lesser of—

(i) 1 percent of the total number of
trust or fiduciary accounts held by
the bank, provided that if the number so
obtained is less than 1 the amount shall
be rounded up to 1; or

(ii) 500; and

(3) The bank did not rely on this
paragraph (e) with respect to such an
account during the immediately pre-
ceding year.

at 73 FR 20780, Apr. 17, 2008]

§ 218.740 Defined terms relating to the
sweep accounts exception from
the definition of “broker.”

For purposes of section 3(a)(4)(B)(v) of
the Act (15 U.S.C. 78c(a)(4)(B)(v)), the
following terms shall have the meaning
provided:

(a) Deferred sales load has the same
meaning as in 17 CFR 270.6c–10.

(b) Money market fund means an open-
end company registered under the In-
vestment Company Act of 1940 (15
U.S.C. 80a–1 et seq.) that is regulated as
a money market fund pursuant to 17
CFR 270.2a–7.

(c)(1) No-load, in the context of an in-
vestment company or the securities
issued by an investment company,
means, for securities of the class or se-
ries in which a bank effects trans-
actions, that:

(i) That class or series is not subject
to a sales load or a deferred sales load;
and

(ii) Total charges against net assets
of that class or series of the invest-
ment company’s securities for sales or
sales promotion expenses, for personal
service, or for the maintenance of
shareholder accounts do not exceed 0.25
of 1% of average net assets annually.

(2) For purposes of this definition,
charges for the following will not be
considered charges against net assets
of a class or series of an investment
company’s securities for sales or sales
promotion expenses, for personal serv-
vice, or for the maintenance of share-
holder accounts:

(i) Providing transfer agent or sub-
transfer agent services for beneficial
owners of investment company shares;

(ii) Aggregating and processing pur-
chase and redemption orders for invest-
ment company shares;

(iii) Providing beneficial owners with
account statements showing their pur-
chases, sales, and positions in the in-
vestment company;

(iv) Processing dividend payments for
the investment company;

(v) Providing sub-accounting services
to the investment company for shares
held beneficially;

(vi) Forwarding communications
from the investment company to the
beneficial owners, including proxies,
shareholder reports, dividend and tax
notices, and updated prospectuses; or

(vii) Receiving, tabulating, and
transmitting proxies executed by bene-
ficial owners of investment company
shares.

(d) Open-end company has the same
meaning as in section 5(a)(1) of the In-
vestment Company Act of 1940 (15
U.S.C. 80a–5(a)(1)).