AUTHORITY: 15 U.S.C. 78c, 78o, 78q, 78w, and
78mm.

SOURCE: 72 FR 56554, Oct. 3, 2007, unless
otherwise noted.

§ 247.100 Definition.

For purposes of this part the fol-
lowing definition shall apply: *Act*
means the Securities Exchange Act of
1934 (15 U.S.C. 78a et seq.).

§ 247.700 Defined terms relating to the networking exception from the definition of "broker."

When used with respect to the Third
Party Brokerage Arrangements (''Net-
working'') Exception from the defini-
tion of the term ''broker'' in section
3(a)(4)(B)(i) of the Act (15 U.S.C.
78c(a)(4)(B)(i)) in the context of trans-
actions with a customer, the following
terms shall have the meaning provided:

(a) *Contingent on whether the referral
results in a transaction* means dependent
on whether the referral results in a
purchase or sale of a security; whether
an account is opened with a broker or
dealer; whether the referral results in a
transaction involving a particular type
of security; or whether it results in
multiple securities transactions; pro-
vided, however, that a referral fee may
be contingent on whether a customer:

(1) Contacts or keeps an appointment
with a broker or dealer as a result of
the referral; or

(2) Meets any objective, base-line
qualification criteria established by
the bank or broker or dealer for cus-
tomer referrals, including such criteria
as minimum assets, net worth, income,
or marginal federal or state income tax
rate, or any requirement for citizen-

ship or residency that the broker or
dealer, or the bank, may have estab-
lished generally for referrals for securi-
ties brokerage accounts.

(b)(1) *Incentive compensation* means
compensation that is intended to en-
courage a bank employee to refer cus-
tomers to a broker or dealer or give a
bank employee an interest in the suc-
cess of a securities transaction at a
broker or dealer. The term does not in-
clude compensation paid by a bank
under a bonus or similar plan that is:

(i) Paid on a discretionary basis; and

(ii) Based on multiple factors or vari-
ables and:

(A) Those factors or variables include
multiple significant factors or vari-
ables that are not related to securities
transactions at the broker or dealer;

(B) A referral made by the employee
is not a factor or variable in deter-
mining the employee's compensation
under the plan; and

(C) The employee's compensation
under the plan is not determined by
reference to referrals made by any
other person.

(2) Nothing in this paragraph (b)
shall be construed to prevent a bank
from compensating an officer, director
or employee under a bonus or similar
plan on the basis of any measure of the
overall profitability or revenue of:

(i) The bank, either on a stand-alone
or consolidated basis;

(ii) Any affiliate of the bank (other
than a broker or dealer), or any oper-
ating unit of the bank or an affiliate
(other than a broker or dealer), if the
affiliate or operating unit does not
over time predominately engage in the
business of making referrals to a
broker or dealer; or

(iii) A broker or dealer if:

(A) Such measure of overall profit-
ability or revenue is only one of mul-
tiple factors or variables used to deter-
mine the compensation of the officer,
director or employee;

(B) The factors or variables used to
determine the compensation of the of-
ficer, director or employee include
multiple significant factors or vari-
ables that are not related to the profit-
ability or revenue of the broker or
dealer;

(C) A referral made by the employee is not a factor or variable in determining the employee's compensation under the plan; and

(D) The employee's compensation under the plan is not determined by reference to referrals made by any other person.

(c) *Nominal one-time cash fee of a fixed dollar amount* means a cash payment for a referral, to a bank employee who was personally involved in referring the customer to the broker or dealer, in an amount that meets any of the following standards:

(1) The payment does not exceed:

(i) Twice the average of the minimum and maximum hourly wage established by the bank for the current or prior year for the job family that includes the employee; or

(ii) 1/1000th of the average of the minimum and maximum annual base salary established by the bank for the current or prior year for the job family that includes the employee; or

(2) The payment does not exceed twice the employee's actual base hourly wage or 1/1000th of the employee's actual annual base salary; or

(3) The payment does not exceed twenty-five dollars ($25), as adjusted in accordance with paragraph (f) of this section.

(d) *Job family* means a group of jobs or positions involving similar responsibilities, or requiring similar skills, education or training, that a bank, or a separate unit, branch or department of a bank, has established and uses in the ordinary course of its business to distinguish among its employees for purposes of hiring, promotion, and compensation.

(e) *Referral* means the action taken by one or more bank employees to direct a customer of the bank to a broker or dealer for the purchase or sale of securities for the customer's account.

(f) *Inflation adjustment*—(1) *In general.* On April 1, 2012, and on the 1st day of each subsequent 5-year period, the dollar amount referred to in paragraph (c)(3) of this section shall be adjusted by:

(i) Dividing the annual value of the Employment Cost Index For Wages and Salaries, Private Industry Workers (or any successor index thereto), as pub-

lished by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index (or successor) for the calendar year ending December 31, 2006; and

(ii) Multiplying the dollar amount by the quotient obtained in paragraph (f)(1)(i) of this section.

(2) *Rounding.* If the adjusted dollar amount determined under paragraph (f)(1) of this section for any period is not a multiple of $1, the amount so determined shall be rounded to the nearest multiple of $1.

§ 247.701 Exemption from the definition of "broker" for certain institutional referrals.

(a) *General.* A bank that meets the requirements for the exception from the definition of "broker" under section 3(a)(4)(B)(i) of the Act (15 U.S.C. 78c(a)(4)(B)(i)), other than section 3(a)(4)(B)(i)(VI) of the Act (15 U.S.C. 78c(a)(4)(B)(i)(VI)), is exempt from the conditions of section 3(a)(4)(B)(i)(VI) of the Act solely to the extent that a bank employee receives a referral fee for referring a high net worth customer or institutional customer to a broker or dealer with which the bank has a contractual or other written arrangement of the type specified in section 3(a)(4)(B)(i) of the Act, if:

(1) *Bank employee.* (i) The bank employee is:

(A) Not registered or approved, or otherwise required to be registered or approved, in accordance with the qualification standards established by the rules of any self-regulatory organization;

(B) Predominantly engaged in banking activities other than making referrals to a broker or dealer; and

(C) Not subject to statutory disqualification, as that term is defined in section 3(a)(39) of the Act (15 U.S.C. 78c(a)(39)), except subparagraph (E) of that section; and

(ii) The high net worth customer or institutional customer is encountered by the bank employee in the ordinary course of the employee's assigned duties for the bank.

(2) *Bank determinations and obligations*—(i) *Disclosures.* The bank provides