§ 247.722 Exemption allowing banks to calculate trust and fiduciary compensation on a bank-wide basis.

(a) General. A bank is exempt from meeting the “chiefly compensated” condition in section 3(a)(4)(B)(i)(I) of the Act (15 U.S.C. 78c(a)(4)(B)(i)(I)) to the extent that it effects transactions in securities for any account in a trustee or fiduciary capacity within the scope of section 3(a)(4)(D) of the Act (15 U.S.C. 78c(a)(4)(D)) if:


(2) The aggregate relationship-total compensation percentage for the bank’s trust and fiduciary business is at least 70 percent.

(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 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)(ii)–(x) of the Act (15 U.S.C. 78c(a)(4)(B)(i) or 78c(a)(4)(B)(ii)–(x)) 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.

§ 247.723 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 § 247.721(a)(1) or § 247.722(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 § 247.721(a)(1) or § 247.722(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) Exception. For purposes of determining compliance with the chiefly compensated test in § 247.722(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...
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§ 247.740 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 Investment 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 investment company or the securities issued by an investment company, means, for securities of the class or series in which a bank effects transactions, 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 investment 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 service, or for the maintenance of shareholder accounts:

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