

§ 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.* Notwithstanding 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 operating under § 218.721(a)(1) shall not be considered a broker for purposes of section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) solely because a trust or fiduciary account does not meet the chiefly compensated standard in § 218.721(a)(1) 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 entity 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 fiduciary account if:

(1) The bank maintains records demonstrating that the securities transactions conducted by or on behalf of the account were undertaken by the bank in the exercise of its trust or fiduciary responsibilities with respect to the account;

(2) The total number of accounts excluded by the bank under this paragraph (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 (d) with respect to such account during the immediately preceding year.