

§ 240.3a4-5

17 CFR Ch. II (4-1-03 Edition)

§ 240.3a4-5 Exemption from the definition of “broker” for banks effecting transactions in securities in a custody account.

(a) A bank is exempt from the definition of the term “broker” under Section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) solely for effecting transactions in securities in an account for which the bank acts as custodian under Section 3(a)(4)(B)(viii) of the Act (15 U.S.C. 78c(a)(4)(B)(viii)) if:

(1) The bank does not directly or indirectly receive any compensation for effecting such transactions;

(2) Any bank employee effecting such transactions:

(i) Is not an associated person of a broker or dealer;

(ii) Primarily performs duties for the bank other than effecting transactions in securities for customers;

(iii) Does not receive compensation for such transactions related to:

(A) The size, value, or completion of any securities transaction;

(B) The amount of securities-related assets gathered; or

(C) The size or value of any customer’s securities account; and

(iv) Does not receive compensation for the referral of any customer to the broker or dealer;

(3) The bank complies with Section 3(a)(4)(C) of the Act (15 U.S.C. 78c(a)(4)(C));

(4) The bank makes available to the account the securities of investment companies with similar characteristics that are not affiliated persons, as defined in Section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(3)), of the bank, if the bank makes available the securities of investment companies that are affiliated persons, as defined in Section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(3)); and

(5) The bank does not solicit securities transactions except through the following activities:

(i) Delivering advertising and sales literature for the security that is prepared by the registered broker-dealer that is the principal underwriter of an investment company, or prepared by an investment company that is not an affiliated person, as defined in Section 2(a)(3) of the Investment Company Act

of 1940 (15 U.S.C. 80a-2(a)(3)), of the bank;

(ii) Responding to inquiries of a potential purchaser in a communication initiated by the potential purchaser of the security; provided, however, that the content of such responses is limited to information contained in a registration statement for the security filed under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) or sales literature prepared by the principal underwriter that is a registered broker-dealer;

(iii) Advertising of trust activities, if any, permitted under Section 3(a)(4)(B)(ii)(II) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)(II)); and

(iv) Notifying its existing customers that it accepts orders for securities in conjunction with solicitations related to its other custody activities.

(b) For purposes of this section, the term *principal underwriter* has the meaning given in Section 2(a)(29) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(29)).

[66 FR 27796, May 18, 2001]

§ 240.3a4-6 Exemption from the definition of “broker” for banks that execute transactions in investment company securities through NSCC Mutual Fund Services.

A bank that meets the conditions for an exception or exemption from the definition of the term “broker,” except for the condition in Section 3(a)(4)(C)(i) of the Act (15 U.S.C. 78c(a)(4)(C)(i)), is exempt from such condition solely for transactions in investment company securities effected through the National Securities Clearing Corporation’s Mutual Fund Services.

[66 FR 27796, May 18, 2001]

§ 240.3a5-1 Exemption from the definition of “dealer” for a bank engaged in riskless principal transactions.

(a) A bank is exempt from the definition of the term “dealer” to the extent that it engages in or effects riskless principal transactions if the number of such riskless principal transactions during a calendar year combined with transactions in which the bank is acting as an agent for a customer pursuant to section 3(a)(4)(B)(xi) of the Act (15 U.S.C. 78c(a)(4)(B)(xi)) during that same year does not exceed 500.