for recordkeeping and reporting purposes.

(b) *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)–(xi) of the Act (15 U.S.C. 78c(a)(4)(B)(i) or 78c(a)(4)(B)(iii)–(xi)) and the rules issued thereunder, including any exemption related to such exceptions 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 for the account.

(c) *Advertising restrictions*—

(1) *In general*. A bank complies with the advertising restriction in section 3(a)(4)(B)(ii)(II) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)(II)) if advertisements by or on behalf of the bank do not advertise—

(i) That the bank provides securities brokerage services for trust or fiduciary accounts except as part of advertising the bank's broader trust or fiduciary services; and

(ii) The securities brokerage services provided by the bank to trust or fiduciary accounts more prominently than the other aspects of the trust or fiduciary services provided to such accounts.

(2) *Advertisement*. For purposes of this section, the term advertisement has the same meaning as in §218.760(g)(2).

§218.722 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)(ii)(I) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)(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:

(1) The bank meets the other conditions for the exception from the definition of the term ''broker'' under sections 3(a)(4)(B)(ii) and 3(a)(4)(C) of the Act (15 U.S.C. 78c(a)(4)(B)(ii) and 15 U.S.C. 78c(a)(4)(C)), including the advertising restrictions in section 3(a)(4)(B)(ii)(II) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)(II) as implemented by §218.721(c); and

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