

§218.776

12 CFR Ch. II (1-1-08 Edition)

permissible for a security sold by a registered broker or dealer pursuant to any applicable rules adopted pursuant to section 22(b)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-22(b)(1)) by a securities association registered under section 15A of the Act (15 U.S.C. 78o-3); and

- (3) Any such transaction is effected:
 - (i) Through the National Securities Clearing Corporation; or
 - (ii) Directly with a transfer agent or with an insurance company or separate account that is excluded from the definition of transfer agent in Section 3(a)(25) of the Act.

(b) *Definitions.* For purposes of this section:

- (1) *Covered security* means:
 - (i) Any security issued by an open-end company, as defined by section 5(a)(1) of the Investment Company Act (15 U.S.C. 80a5(a)(1)), that is registered under that Act; and
 - (ii) Any variable insurance contract funded by a separate account, as defined by section 2(a)(37) of the Investment Company Act (15 U.S.C. 80a-2(a)(37)), that is registered under that Act.

(2) *Interdealer quotation system* has the same meaning as in 17 CFR 240.15c2-11.

(3) *Insurance company* has the same meaning as in 15 U.S.C. 77b(a)(13).

§218.776 Exemption from the definition of “broker” for banks effecting certain excepted or exempted transactions in a company’s securities for its employee benefit plans.

(a) 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 to the extent that it effects a transaction in the securities of a company directly with a transfer agent acting for the company that issued the security, if:

- (1) No commission is charged with respect to the transaction;
- (2) The transaction is conducted by the bank solely for the benefit of an employee benefit plan account;
- (3) Any such security is obtained directly from:
 - (i) The company; or
 - (ii) An employee benefit plan of the company; and

(4) Any such security is transferred only to:

- (i) The company; or
 - (ii) An employee benefit plan of the company.
- (b) For purposes of this section, the term *employee benefit plan account* has the same meaning as in §218.760(h)(4).

§218.780 Exemption for banks from liability under section 29 of the Securities Exchange Act of 1934.

(a) No contract entered into before March 31, 2009, shall be void or considered voidable by reason of section 29(b) of the Act (15 U.S.C. 78cc(b)) because any bank that is a party to the contract violated the registration requirements of section 15(a) of the Act (15 U.S.C. 78o(a)), any other applicable provision of the Act, or the rules and regulations thereunder based solely on the bank’s status as a broker when the contract was created.

(b) No contract shall be void or considered voidable by reason of section 29(b) of the Act (15 U.S.C. 78cc(b)) because any bank that is a party to the contract violated the registration requirements of section 15(a) of the Act (15 U.S.C. 78o(a)) or the rules and regulations thereunder based solely on the bank’s status as a broker when the contract was created, if:

- (1) At the time the contract was created, the bank acted in good faith and had reasonable policies and procedures in place to comply with section 3(a)(4)(B) of the Act (15 U.S.C. 78c(a)(4)(B)) and the rules and regulations thereunder; and
- (2) At the time the contract was created, any violation of the registration requirements of section 15(a) of the Act by the bank did not result in any significant harm or financial loss or cost to the person seeking to void the contract.

§218.781 Exemption from the definition of “broker” for banks for a limited period of time.

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)) until the first day of its first fiscal year commencing after September 30, 2008.