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church plan, governmental, multiemployer or other plan described in section 414(d), (e) or (f) of the Internal Revenue Code (26 U.S.C. 414(d), (e) or (f)), an incentive stock option plan described in section 422 of the Internal Revenue Code (26 U.S.C. 422); a Voluntary Employee Beneficiary Association Plan described in section 501(c)(9) of the Internal Revenue Code (26 U.S.C. 501(c)(9)), a non-qualified deferred compensation plan (including a rabbi or secular trust), a supplemental or mirror plan, and a supplemental unemployment benefit plan.

(5) *Individual retirement account or similar account* means an individual retirement account as defined in section 408 of the Internal Revenue Code (26 U.S.C. 408), Roth IRA as defined in section 408A of the Internal Revenue Code (26 U.S.C. 408A), health savings account as defined in section 223(d) of the Internal Revenue Code (26 U.S.C. 223(d)), Archer medical savings account as defined in section 220(d) of the Internal Revenue Code (26 U.S.C. 220(d)), Coverdell education savings account as defined in section 530 of the Internal Revenue Code (26 U.S.C. 530), or other similar account.

(6) *Sales literature* means any written or electronic communication, other than an advertisement, that is generally distributed or made generally available to customers of the bank or the public, including circulars, form letters, brochures, telemarketing scripts, seminar texts, published articles, and press releases concerning the bank's products or services.

(7) *Principal underwriter* has the same meaning as in section 2(a)(29) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(29)).

§ 247.771 Exemption from the definition of "broker" for banks effecting transactions in securities issued pursuant to Regulation S.

(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)), to the extent that, as agent, the bank:

(1) Effects a sale in compliance with the requirements of 17 CFR 230.903 of an eligible security to a purchaser who is not in the United States;

(2) Effects, by or on behalf of a person who is not a U.S. person under 17 CFR 230.902(k), a resale of an eligible security after its initial sale with a reasonable belief that the eligible security was initially sold outside of the United States within the meaning of and in compliance with the requirements of 17 CFR 230.903 to a purchaser who is not in the United States or a registered broker or dealer, provided that if the resale is made prior to the expiration of any applicable distribution compliance period specified in 17 CFR 230.903(b)(2) or (b)(3), the resale is made in compliance with the requirements of 17 CFR 230.904; or

(3) Effects, by or on behalf of a registered broker or dealer, a resale of an eligible security after its initial sale with a reasonable belief that the eligible security was initially sold outside of the United States within the meaning of and in compliance with the requirements of 17 CFR 230.903 to a purchaser who is not in the United States, provided that if the resale is made prior to the expiration of any applicable distribution compliance period specified in 17 CFR 230.903(b)(2) or (b)(3), the resale is made in compliance with the requirements of 17 CFR 230.904.

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

(1) *Distributor* has the same meaning as in 17 CFR 230.902(d).

(2) *Eligible security* means a security that:

(i) Is not being sold from the inventory of the bank or an affiliate of the bank; and

(ii) Is not being underwritten by the bank or an affiliate of the bank on a firm-commitment basis, unless the bank acquired the security from an unaffiliated distributor that did not purchase the security from the bank or an affiliate of the bank.

(3) *Purchaser* means a person who purchases an eligible security and who is not a U.S. person under 17 CFR 230.902(k).