

§ 250.400

in bullion form is not United States currency. Since the bullion value of United States gold coins far exceeds their face value, member banks would not in practice distribute them over the counter at face value to satisfy customer demands.

(b) Will the Federal Reserve Banks perform services for member banks with respect to gold, such as safe-keeping or assaying? No.

(c) Will a Federal Reserve Bank accept gold as collateral for an advance to a member bank under section 10(b) of the Federal Reserve Act? No.

[39 FR 45254, Dec. 31, 1974]

INTERPRETATIONS OF SECTION 32 OF THE GLASS-STEAGALL ACT

§ 250.400 **Service of open-end investment company.**

An open-end investment company is defined in section 5(a)(1) of the Investment Company Act of 1940 as a company "which is offering for sale or has outstanding any redeemable security of which it is the issuer." Section 2(a)(31) of said act provides that a *redeemable security* means "any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof."

It is customary for such companies to have but one class of securities, namely, capital stock, and it is apparent that the more or less continued process of redemption of the stock issued by such a company would restrict and contract its activities if it did not continue to issue its stock. Thus, the issuance and sale of its stock is essential to the maintenance of the company's size and to the continuance of operations without substantial contraction, and therefore the issue and sale of its stock constitutes one of the primary activities of such a company.

Accordingly, it is the opinion of the Board that if such a company is issuing or offering its redeemable stock for sale, it is "primarily engaged in the

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issue * * * public sale, or distribution, * * * of securities" and that section 32 of the Banking Act of 1933, as amended, prohibits an officer, director or employee of any such company from serving at the same time as an officer, director or employee of any member bank. It is the Board's view that this is true even though the shares are sold to the public through independent organizations with the result that the investment company does not derive any direct profit from the sales.

If, however, the company has ceased to issue or offer any of its stock for sale, the company would not be engaged in the issue or distribution of its stock, and, therefore, the prohibition contained in section 32 would be inapplicable unless the company were primarily engaged in the underwriting, public sale or distribution of securities other than its own stock.

[16 FR 4963, May 26, 1951. Redesignated at 61 FR 57289, Nov. 6, 1996]

§ 250.401 **Director serving member bank and closed-end investment company being organized.**

(a) The Board has previously expressed the opinion (§218.101) that section 32 of the Banking Act of 1933 (12 U.S.C. 78) is applicable to a director of a member bank serving as a director of an open-end investment company, because the more or less continued process of redemption of the stock issued by such company makes the issuance and sale of its stock essential to the maintenance of the company's size and to the continuance of operations, with the result that the issuance and sale of its stock constitutes one of the primary activities of such a company. The Board also stated that if the company had ceased to issue or offer any of its stock for sale, the company would not be engaged in the issuance or distribution of its stock and therefore the prohibitions of section 32 would not be applicable. Subsequently, the Board expressed the opinion that section 32 would not be applicable in the case of a closed-end investment company.

(b) The Board has recently stated that it believed that a closed-end company which was in process of organization and was actively engaged in issuing and selling its shares was in the