

§ 250.260

bank subsidiaries of the holding company nor to maintain the availability of funds in its bank subsidiaries.

(d) The sale of the thrift notes, in the specific manner proposed, is an activity described in section 20 of the Banking Act of 1933 (12 U.S.C. 377), that is, "the issue, flotation, underwriting, public sale or distribution * * * of * * * notes, or other securities". Briefly stated, this statute prohibits a member bank to be affiliated with a company "engaged principally" in such activity. Since the continued issuance and sale of such securities would be necessary to permit maintenance of the holding company's activities without substantial contraction and would be an integral part of its operations, the Board concluded that the issuance and sale of such notes would constitute a principal activity of a holding company within the spirit and purpose of the statute. (For prior Board decisions in this connection, see 1934 Federal Reserve Bulletin 485, 12 CFR 218.104, 12 CFR 218.105 and 12 CFR 218.101.)

(e) In reaching this conclusion, the Board distinguished the proposed activity from the sale of short-term notes commonly known as *commercial paper*, which is a recognized form of financing for bank holding companies. For purposes of this interpretation, *commercial paper* may be defined as notes, with maturities not exceeding nine months, the proceeds of which are to be used for current transactions, which are usually sold to sophisticated institutional investors, rather than to members of the general public, in minimum denominations of \$10,000 (although sometimes they may be sold in minimum denominations of \$5,000). Commercial paper is exempt from registration under the Securities Act of 1933 by reason of the exemption provided by section 3(a)(3) thereof (15 U.S.C. 77c). That exemption is inapplicable where the securities are sold to the general public (17 CFR 231.4412). The reasons for such exemption, taken together with the abuses that gave rise to the passage of the Banking Act of 1933 ("the Glass-Steagall Act"), have led the Board to conclude that the issuance of commercial paper by a bank holding company

12 CFR Ch. II (1-1-06 Edition)

is not an activity intended to be included within the scope of section 20.

(Interprets and applies 12 U.S.C. 377 and 1843)
[Reg. Y, 38 FR 35231, Dec. 26, 1973]

§ 250.260 **Miscellaneous interpretations; gold coin and bullion.**

The Board has received numerous inquiries from member banks relating to the repeal of the ban on ownership of gold by United States citizens. Listed below are questions and answers which affect member banks and relate to the responsibilities of the Federal Reserve System.

(a) May gold in the form of coins or bullion be counted as vault cash in order to satisfy reserve requirements? No. Section 19(c) of the Federal Reserve Act requires that reserve balances be satisfied either by a balance maintained at the Federal Reserve Bank or by vault cash, consisting of United States currency and coin. Gold 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