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the principal underwriting areas in which it functions.

(k) In view of the above information, the Board concluded that the enterprise consisting of Partnership and Corporation was ''primarily engaged'' in section 32 business. Accordingly, the Board stated that the partners in Partnership, including X, were forbidden by that section and by this part 218 (Reg. R), issued pursuant to the statute, to serve as officers, directors, or employees of any member banks.

[29 FR 5315, Apr. 18, 1964. Redesignated at 61 FR 57289, Nov. 6, 1996]

§ 250.408 Short-term negotiable notes of banks not securities under section 32, Banking Act of 1933.

(a) The Board of Governors has been asked whether short-term unsecured negotiable notes of the kinds issued by some of the large banks in this country as a means of obtaining funds are ''other similar securities'' within the meaning of section 32, Banking Act of 1933 (12 U.S.C. 78) and this part.

(b) Section 32 forbids certain interlocking relationships between banks which are members of the Federal Reserve System and individuals or organizations ''primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities * * *.'' Therefore, if such notes are securities similar to stocks or bonds, any dealing therein would be an activity covered in section 32 and would have to be taken into consideration in determining whether the individual or organization involved was ''primarily engaged'' in such activities.

(c) The Board has concluded that such short-term notes of the kind described above are not ''other similar securities'' within the meaning of section 32 and this part.

[29 FR 16065, Dec. 2, 1964. Redesignated at 61 FR 57289, Nov. 6, 1996]

§ 250.409 Investment for own account affects applicability of section 32.

(a) The Board of Governors has been presented with the question whether a certain firm is primarily engaged in the activities described in section 32 of the Banking Act of 1933. If the firm is so engaged, then the prohibitions of section 32 forbids a limited partner to serve as employee of a member bank.

(b) The firm describes the bulk of its business, producing roughly 60 percent of its income, as ''investing for its own account.'' However, it has a seat on the local stock exchange, and acts as specialist and odd-lot dealer on the floor of the exchange, an activity responsible for some 30 percent of its volume and profits. The firm's ''off-post trading,'' apart from the investment account, gives rise to about 5 percent of its total volume and 10 percent of its profits. Gross volume has risen from $4 to $10 million over the past 3 years, but underwriting has accounted for no more than one-half of 1 percent of that amount.

(c) Section 32 provides that

> No officer, director, or employee of any corporation or unincorporated association, no partner, or employee of any partnership, and no individual, primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale, or retail, or through syndicate participation, of stocks, bonds, or other similar securities, shall serve the same time (sic) as an officer, director, or employee of any member bank * * *

(d) In interpreting this language, the Board has consistently held that underwriting, acting as a dealer, or generally speaking, selling, or distributing securities as a principal, is covered by the section, while acting as broker or agent is not.

(e) In one type of situation, however, although a firm was engaged in selling securities as principal, on its own behalf, the Board held that section 32 did not apply. In these cases, the firm alleged that it bought and sold securities purely for investment purposes. Typically, those cases involved personal holding companies or small family investment companies. Securities had been purchased only for members of a restricted family group, and had been held for relatively long periods of time.

(f) The question now before the Board is whether a similar exception can apply in the case of the investment account of a professional dealer. In order to answer this question, it is necessary to analyze, in the light of applicable principles under the statute, the three main types of activity in which the