(''Section 3(c)(1) Transferor''), and securities of a Section 3(c)(7) Company that are owned by persons who received the securities from a qualified purchaser other than the Section 3(c)(7) Company (''Qualified Purchaser Transferor'') or a person deemed to be a qualified purchaser by this section shall be deemed to be acquired by a qualified purchaser (''Qualified Purchaser Transferee''), provided that the Transferee is:

(1) The estate of the Transferor;

(2) A Donee; or

(3) A company established by the Transferor exclusively for the benefit of (or owned exclusively by) the Transferor and the persons specified in paragraphs (b)(1) and (b)(2) of this section.

[62 FR 17529, Apr. 9, 1997]

§ 270.5b–1 Definition of "total assets."

The term *total assets,* when used in computing values for the purposes of sections 5 and 12 of the Act, shall mean the gross assets of the company with respect to which the computation is made, taken as of the end of the fiscal quarter of the company last preceding the date of computation. This section shall not apply to any company which has adopted either of the alternative methods of valuation permitted by § 270.2a–1.

[Rule N–5B–1, 6 FR 5920, Nov. 22, 1941]

§ 270.5b–2 Exclusion of certain guarantees as securities of the guarantor.

(a) For the purposes of section 5 of the act, a guarantee of a security shall not be deemed to be a security issued by the guarantor: *Provided,* That the value of all securities issued or guaranteed by the guarantor, and owned by the management company, does not exceed 10 percent of the value of the total assets of such management company.

(b) Notwithstanding paragraph (a) of this section, for the purposes of section 5 of the Act, a guarantee by a railroad company of a security issued by a terminal company, warehouse company, switching company, or bridge company, shall not be deemed to be a security issued by such railroad company: *Provided:*

(1) The security is guaranteed jointly or severally by more than one railroad company; and

(2) No one of such guaranteeing railroad companies directly or indirectly controls all of its co-guarantors.

(c) For the purposes of section 5 of the Act, a lease or other arrangement whereby a railroad company is or becomes obligated to pay a stipulated annual sum of rental either to another railroad company or to the security holders of such other railroad company shall not be deemed in itself a guarantee.

[Rule N–5B–2, 10 FR 581, Jan. 16, 1945]

§ 270.5b–3 Acquisition of repurchase agreement or refunded security treated as acquisition of underlying securities.

(a) *Repurchase Agreements.* For purposes of sections 5 and 12(d)(3) of the Act (15 U.S.C. 80a–5 and 80a–12(d)(3)), the acquisition of a repurchase agreement may be deemed to be an acquisition of the underlying securities, provided the obligation of the seller to repurchase the securities from the investment company is Collateralized Fully.

(b) *Refunded Securities.* For purposes of section 5 of the Act (15 U.S.C. 80a–5), the acquisition of a Refunded Security is deemed to be an acquisition of the escrowed Government Securities.

(c) *Definitions.* As used in this section:

(1) *Collateralized Fully* in the case of a repurchase agreement means that:

(i) The value of the securities collateralizing the repurchase agreement (reduced by the transaction costs (including loss of interest) that the investment company reasonably could expect to incur if the seller defaults) is, and during the entire term of the repurchase agreement remains, at least equal to the Resale Price provided in the agreement;

(ii) The investment company has perfected its security interest in the collateral;

(iii) The collateral is maintained in an account of the investment company with its custodian or a third party that qualifies as a custodian under the Act;

(iv) The collateral consists entirely of: