(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:

(A) Cash items;

(B) Government Securities; or

(C) Securities that the investment company's board of directors, or its delegate, determines at the time the repurchase agreement is entered into:

(*1*) Each issuer of which has an exceptionally strong capacity to meet its financial obligations; and

NOTE TO PARAGRAPH (C)(1)(IV)(C)(*1*): For a discussion of the phrase ''exceptionally strong capacity to meet its financial obligations'' see Investment Company Act Release No. 30847, (December 27, 2013).

(*2*) Are sufficiently liquid that they can be sold at approximately their carrying value in the ordinary course of business within seven calendar days; and

(v) Upon an Event of Insolvency with respect to the seller, the repurchase agreement would qualify under a provision of applicable insolvency law providing an exclusion from any automatic stay of creditors' rights against the seller.

(2) *Event of Insolvency* means, with respect to a person:

(i) An admission of insolvency, the application by the person for the appointment of a trustee, receiver, rehabilitator, or similar officer for all or substantially all of its assets, a general assignment for the benefit of creditors, the filing by the person of a voluntary petition in bankruptcy or application for reorganization or an arrangement with creditors; or

(ii) The institution of similar proceedings by another person which proceedings are not contested by the person; or

(iii) The institution of similar proceedings by a government agency responsible for regulating the activities of the person, whether or not contested by the person.

(3) *Government Security* means any ''Government Security'' as defined in section 2(a)(16) of the Act (15 U.S.C. 80a–2(a)(16)).

(4) *Issuer*, as used in paragraph (c)(1)(iv)(C)(*1*) of this section, means the issuer of a collateral security or the issuer of an unconditional obligation of a person other than the issuer of the collateral security to undertake to pay, upon presentment by the holder of the obligation (if required), the principal amount of the underlying collateral security plus accrued interest when due or upon default.

(5) *Refunded Security* means a debt security the principal and interest payments of which are to be paid by Government Securities (''deposited securities'') that have been irrevocably placed in an escrow account pursuant to an agreement between the issuer of the debt security and an escrow agent that is not an ''affiliated person,'' as defined in section 2(a)(3)(C) of the Act (15 U.S.C. 80a–2(a)(3)(C)), of the issuer of the debt security, and, in accordance with such escrow agreement, are pledged only to the payment of the debt security and, to the extent that excess proceeds are available after all payments of principal, interest, and applicable premiums on the Refunded Securities, the expenses of the escrow agent and, thereafter, to the issuer or another party; *provided* that:

(i) The deposited securities are not redeemable prior to their final maturity;

(ii) The escrow agreement prohibits the substitution of the deposited securities unless the substituted securities are Government Securities; and

(iii) At the time the deposited securities are placed in the escrow account, or at the time a substitution of the deposited securities is made, an independent certified public accountant has certified to the escrow agent that the deposited securities will satisfy all scheduled payments of principal, interest and applicable premiums on the Refunded Securities.

(6) *Resale Price* means the acquisition price paid to the seller of the securities plus the accrued resale premium on such acquisition price. The accrued resale premium is the amount specified in the repurchase agreement or the daily amortization of the difference between the acquisition price and the resale price specified in the repurchase agreement.

[66 FR 36161, July 11, 2001, as amended at 74 FR 52373, Oct. 9, 2009; 79 FR 1329, Jan. 8, 2014]

§ 270.6a–5 Purchase of certain debt securities by companies relying on section 6(a)(5) of the Act.

For purposes of reliance on the exemption for certain companies under section 6(a)(5)(A) of the Act (15 U.S.C. 80a–6(a)(5)(A)), a company shall be deemed to have met the requirement for credit-worthiness of certain debt securities under section 6(a)(5)(A)(iv)(I) of the Investment Company Act (15 U.S.C. 80a–6(a)(5)(A)(iv)(I)) if, at the time of purchase, the board of directors (or its delegate) determines or members of the company (or their delegate) determine that the debt security is:

(a) Subject to no greater than moderate credit risk; and

(b) Sufficiently liquid that it can be sold at or near its carrying value within a reasonably short period of time.

[77 FR 70120, Nov. 23, 2012]

§ 270.6b–1 Exemption of employees' securities company pending determination of application.

Any employees' securities company which files an application for an order of exemption under section 6(b) of the Act (54 Stat. 801; 15 U.S.C. 80a–6) shall be exempt, pending final determination of such application by the Commission, from all provisions of the Act applicable to investment companies as such.

[Rule N–6B–1, 6 FR 6126, Dec. 2, 1941]

§ 270.6c–3 Exemptions for certain registered variable life insurance separate accounts.

A separate account which meets the requirements of paragraph (a) of Rule 6e–2 (17 CFR 270.6e–2) or paragraph (a) of Rule 6e–3(T) (17 CFR 270.6e–3(T)) and registers as an investment company under section 8(a) of the Act (15 U.S.C. 80a–8(a)), and the investment adviser, principal underwriter and depositor of such separate account, shall be exempt from the provisions of the Act specified in paragraph (b) of Rule 6e–2 or paragraph (b) of Rule 6e–3(T), except for sections 7 (15 U.S.C. 80a–7) and 8(a) of the Act, under the same terms and conditions as a separate account claiming exemption under Rule 6e–2 or Rule 6e–3(T).

(Secs. 6(c); 15 U.S.C. 80a–6(C) and 38(a))

[49 FR 49228, Dec. 3, 1984]

§ 270.6c–6 Exemption for certain registered separate accounts and other persons.

(a) As used in this section,