

**§ 270.2a51-3**

**17 CFR Ch. II (4-1-10 Edition)**

(e) *Required consent: Consent provision.* For purposes of section 2(a)(51)(C) of the Act [15 U.S.C. 80a-2(a)(51)(C)], the consent of the beneficial owners of an excepted investment company (“owning company”) that beneficially owns securities of an excepted investment company that is seeking the consents required by section 2(a)(51)(C) (“consent company”) shall not be required unless the owning company directly or indirectly controls, is controlled by, or is under common control with, the consent company or the company with respect to which the consent company is, or will be, a qualified purchaser.

NOTES TO § 270.2A51-2: 1. On both April 30, 1996 and October 11, 1996, section 3(c)(1)(A) of the Act as then in effect provided that: (A) Beneficial ownership by a company shall be deemed to be beneficial ownership by one person, except that, if the company owns 10 per centum or more of the outstanding voting securities of the issuer, the beneficial ownership shall be deemed to be that of the holders of such company’s outstanding securities (other than short-term paper) unless, as of the date of the most recent acquisition by such company of securities of that issuer, the value of all securities owned by such company of all issuers which are or would, but for the exception set forth in this subparagraph, be excluded from the definition of investment company solely by this paragraph, does not exceed 10 per centum of the value of the company’s total assets. Such issuer nonetheless is deemed to be an investment company for purposes of section 12(d)(1).

2. Issuers seeking the consent required by section 2(a)(51)(C) of the Act should note that section 2(a)(51)(C) requires an issuer to obtain the consent of the beneficial owners of its securities and the beneficial owners of securities of any “excepted investment company” that directly or indirectly owns the securities of the issuer. Except as set forth in paragraphs (d) (with respect to indirect owners) and (e) (with respect to direct owners) of this section, nothing in this section is designed to limit this consent requirement.

[62 FR 17528, Apr. 9, 1997]

**§ 270.2a51-3 Certain companies as qualified purchasers.**

(a) For purposes of section 2(a)(51)(A) (ii) and (iv) of the Act [15 U.S.C. 80a-2(a)(51)(A) (ii) and (iv)], a company shall not be deemed to be a qualified purchaser if it was formed for the specific purpose of acquiring the securities offered by a company excluded from

the definition of investment company by section 3(c)(7) of the Act [15 U.S.C. 80a-3(c)(7)] unless each beneficial owner of the company’s securities is a qualified purchaser.

(b) For purposes of section 2(a)(51) of the Act [15 U.S.C. 80a-2(a)(51)], a company may be deemed to be a qualified purchaser if each beneficial owner of the company’s securities is a qualified purchaser.

[62 FR 17528, Apr. 9, 1997]

**§ 270.3a-1 Certain prima facie investment companies.**

Notwithstanding section 3(a)(1)(C) of the Act (15 U.S.C. 80a-3(a)(1)(c)), an issuer will be deemed not to be an investment company under the Act; *Provided, That:*

(a) No more than 45 percent of the value (as defined in section 2(a)(41) of the Act) of such issuer’s total assets (exclusive of Government securities and cash items) consists of, and no more than 45 percent of such issuer’s net income after taxes (for the last four fiscal quarters combined) is derived from, securities other than:

- (1) Government securities;
- (2) Securities issued by employees’ securities companies;
- (3) Securities issued by majority-owned subsidiaries of the issuer (other than subsidiaries relying on the exclusion from the definition of investment company in section 3(b)(3) or (c)(1) of the Act) which are not investment companies; and
- (4) Securities issued by companies:

- (i) Which are controlled primarily by such issuer;
- (ii) Through which such issuer engages in a business other than that of investing, reinvesting, owning, holding or trading in securities; and
- (iii) Which are not investment companies;

(b) The issuer is not an investment company as defined in section 3(a)(1)(A) or 3(a)(1)(B) of the Act (15 U.S.C. 80a-3(a)(1)(A) or 80a-3(a)(1)(B)) and is not a special situation investment company; and

(c) The percentages described in paragraph (a) of this section are determined on an unconsolidated basis, except that the issuer shall consolidate