

Securities and Exchange Commission

§ 270.3a-3

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) or (a)(2) of the Act 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 its financial statements with the financial statements of any wholly-owned subsidiaries.

[46 FR 6881, Jan. 22, 1981]

§ 270.3a-2 Transient investment companies.

(a) For purposes of section 3(a)(1) and 3(a)(3) of the Act, an issuer is deemed not to be engaged in the business of investing, reinvesting, owning, holding or trading in securities during a period of time not to exceed one year; *Provided*, That the issuer has a *bona fide* intent to be engaged primarily, as soon as is reasonably possible (in any event by the termination of such period of time), in a business other than that of investing, reinvesting, owning, holding or trading in securities, such intent to be evidenced by:

- (1) The issuer's business activities; and
- (2) An appropriate resolution of the issuer's board of directors, or by an appropriate action of the person or persons performing similar functions for any issuer not having a board of direc-

tors, which resolution or action has been recorded contemporaneously in its minute books or comparable documents.

(b) For purposes of this rule, the period of time described in paragraph (a) shall commence on the earlier of:

- (1) The date on which an issuer owns securities and/or cash having a value exceeding 50 percent of the value of such issuer's total assets on either a consolidated or unconsolidated basis; or
- (2) The date on which an issuer owns or proposes to acquire investment securities (as defined in section 3(a) of the Act) having a value exceeding 40 percent of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

(c) No issuer may rely on this section more frequently than once during any three-year period.

[46 FR 6883, Jan. 22, 1981]

§ 270.3a-3 Certain investment companies owned by companies which are not investment companies.

Notwithstanding section 3(a)(1) or section 3(a)(3) of the Act, an issuer will be deemed not to be an investment company for purposes of the Act; *Provided*, That all of the outstanding securities of the issuer (other than short-term paper, directors' qualifying shares, and debt securities owned by the Small Business Administration) are directly or indirectly owned by a company which satisfies the conditions of paragraph (a) of rule 3a-1 (17 CFR 270.3a-1) under the Act and which is:

- (a) A company that is not an investment company as defined in section 3(a) of the Act;
- (b) A company that is an investment company as defined in section 3(a)(3) of the Act, but which is excluded from the definition of the term "investment company" by section 3(b)(1) or 3(b)(2) of the Act; or
- (c) A company that is deemed not to be an investment company for purposes of the Act by rule 3a-1.

[46 FR 6884, Jan. 22, 1981]