to amend rule 52 to encompass nonutility as well as utility subsidiaries. So doing, the Commission noted that absent further amendment of the rule, routine gas intrasystem financings would remain subject to the requirement of prior approval.[14]

Section 6(b) provides that the Commission shall exempt the issue and sale of a security of a nonutility subsidiary of a registered holding company for the purpose of financing the subsidiary's business, subject to such terms and conditions as the Commission deems appropriate in the public interest or for the protection of investors or consumers. In enacting section 6(b), Congress intended the Commission ''to exempt the issue of securities by subsidiary companies in cases where holding company abuses are unlikely to exist.[15]

In the past, the Commission has granted exemptions for nonutility financings by order on a case-by-case basis. The Commission, in 1989, also considered an exemption by rule for such financings. In the release proposing the original rule 52, the Commission deferred action, citing its concern ''with the adverse consequences that potential growth of debt in the nonutility subsidiary companies could have for the holding-company system and the public utility subsidiaries.'' [16]

Our experience since that time suggests to the Commission that a case-by-case approach to nonutility financings is no longer necessary. In addition, the extensive reporting requirements imposed on registered holding company systems by the Act and other federal securities laws, and the level of scrutiny of reporting companies by investors and by the financial community suggest that the rule may appropriately encompass nonutility as well as utility subsidiaries. All of the registered holding companies submitting comments support expansion of the rule to exempt routine nonutility subsidiary financings.

GPU, noting the widespread use of partnership interests and other types of securities in nonutility financing, particularly in the context of project finance, recommends the inclusion of such securities in rule 52(b).[17] Because the Commission is proposing a further amendment to rule 52 to extend the exemption of the rule to all types of securities issued by subsidiary companies of a registered holding company, so long as the other conditions of the rule are met, we do not think it necessary to address the status of partnership interests separately at this time.[18]

In the Proposing Release, the Commission invited comment on whether, to avoid excess leveraging, the availability of the exemption for security issuances of nonutility subsidiaries should be conditioned upon a requirement that an issuance not cause the consolidated debt/equity ratio of the holding company system to exceed 65/30.[19] None of the commenting holding companies support such a measure. Most observe that market forces affecting the parent holding company's common stock, as well as the desire to maintain credit quality ratings on public utility debt, will effectively deter management from over-leveraging the holding company capital structure.[20]

GPU notes that financing of independent power project subsidiaries is typically non-recourse to other companies in the holding company system, so that including such debt in a consolidated capitalization ratio would overstate the exposure of the registered system. GPU also states that the use of a consolidated debt/equity ratio would not be consistent with the Commission's approval of higher debt ratios in numerous project financing applications.[21] New Orleans, however, supported by NARUC, believes that such a consolidated capitalization ratio is necessary if proposed rule 52(b) is adopted, which, as previously indicated, these commenters oppose.

Total investment by registered holding companies in nonutility subsidiaries, to date, has not been significant in amount. As of December 31, 1994, the registered holding companies had invested only $1.1 billion (1.4% of over $80 billion of total capitalization) in all energy-related businesses, exclusive of exempt wholesale generators, foreign utility companies and gas holding company transportation and supply operations.

The Commission has concluded that it is unnecessary to condition an exemption under rule 52(b) upon the maintenance of a consolidated debt/equity ratio of 65/30.[22] We agree with the arguments of the holding companies in this respect. We also note that the Commission will continue to have jurisdiction over securities sales by registered holding companies. The Commission will thus be able to monitor, on a continuing basis, the effects of holding company financing on the consolidated capital structure of the registered system.

Because rule 52(c) currently exempts only acquisitions of securities issued and sold by a public utility subsidiary, the Commission proposed to amend rule 52 to extend the exemption to acquisitions of securities of nonutility subsidiaries as well. The Commission is adopting the proposed amendment. Paragraph (c) of the rule, with this change, becomes paragraph (d).

In a separate release, the Commission is today seeking comment on a rule that would allow registered holding companies to diversify through new or existing subsidiaries into certain categories of ''energy-related'' businesses, subject to financial and other limitations. In this connection, the Commission intends to revisit rule 52(d) to conform or limit its scope.

3. Capital Contributions and Open Account Advances, Without Interest, to Subsidiary Companies

Rule 52, as amended, does not provide an exemption for certain other common intrasystem financing transactions. For example, a capital contribution from a registered holding company to any of its subsidiary companies is regulated as an intercompany loan under section 12(b)

[14] The Commission noted that the nonutility operations of registered gas holding companies rival in size the utility operations, largely because the Act does not include transmission assets in the definition of a gas utility company.

[15] H. R. Conf. Rep. No. 1903, 74th Cong., 1st Sess. 66–67 (1935).

[16] Holding Co. Act Release No. 24891 (May 17, 1989), 54 FR 22314 (May 23, 1989) (proposing rule 52).

[17] GPU at 3.

[18] Filings with the Commission to date suggest that the kinds and types of securities issued by nonutility subsidiaries, such as independent power subsidiaries, will vary more than those issued by public utility subsidiaries.

[19] The Commission noted that this condition is drawn from section 7(d)(1), which requires the Commission, in reviewing an issuance of securities, to consider whether the security is reasonably adapted to the security structure of the company issuing the security and the other companies in the registered holding company system. Under that section, the Commission generally has required a registered holding company system and its public utility subsidiaries to maintain a 65/30 debt/common equity ratio, the balance generally being preferred equity. Such a debt/equity capitalization requirement was included in rule 52, as originally adopted, as applied to securities issued by public utility subsidiaries, but was eliminated in 1992.

[20] The Commission also notes the emphasis placed upon these considerations in many comments received in response to our request for comment concerning the modernization of regulation under the Act. See Holding Co. Act Release No. 26153 (Nov. 2, 1994), 59 FR 55573 (Nov. 8, 1994).

[21] GPU at 3–4.

[22] As in the case of a debt instrument issued by a public utility subsidiary pursuant to the rule, the interest rates and maturity dates of any debt security issued by a nonutility subsidiary to an associate company would be required to parallel the effective cost of capital of the associate company. See the discussion *supra*, at 6–7, 8–9.