(1) Additional reporting requirements related to the change of control; and

(2) Suspension of payments due to the recipient.

■ 7. Add § 600.355 to subpart D under the undesignated center heading ''Post-Award Requirements'' to read as follows:

§ 600.355 Novation of Financial Assistance Agreements.

(a) Financial assistance agreements are not assignable absent written consent from the contracting officer. At his or her sole discretion, the contracting officer may, through novation, recognize a third party as the successor in interest to a financial assistance agreement if such recognition is in the Government's interest, conforms with all applicable laws and the third party's interest in the agreement arises out of the transfer of:

(1) All of the recipient's assets; or

(2) The entire portion of the assets necessary to perform the project described in the agreement.

(b) When the contracting officer determines that it is not in the Government's interest to consent to the novation of a financial assistance agreement from the original recipient to a third party, the original recipient remains subject to the terms of the financial assistance agreement, and the Department may exercise all legally available remedies under 10 CFR 600.25, or that may be otherwise available, should the original recipient not perform.

(c) The contracting officer may require submission of any documentation in support of a request for novation, including but not limited to documents identified in 48 CFR Subpart 42.12. The contracting officer may use the format in 48 CFR 42.1204 as guidance for novation agreements identified in paragraph (a) of this section.

[FR Doc. 2014–11117 Filed 5–14–14; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 251

[Regulation XX; Docket No. R–1489]

RIN 7100–AE 18

Concentration Limits on Large Financial Companies

AGENCY: Board of Governors of the Federal Reserve System (''Board'').

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board invites comment on a proposed rule (Regulation XX) that would implement section 622 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 622, which adds a new section 14 to the Bank Holding Company Act of 1956, establishes a financial sector concentration limit that generally prohibits a financial company from merging or consolidating with, or acquiring, another company if the resulting company's liabilities upon consummation would exceed 10 percent of the aggregate liabilities of all financial companies as calculated under that section. In addition, the proposal would establish reporting requirements for certain financial companies that are necessary to implement section 622.

DATES: Comments must be received no later than July 8, 2014.

ADDRESSES: You may submit comments, identified by Docket No. R–1489 and RIN 7100 AE 18, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Laurie S. Schaffer, Associate General Counsel, (202) 452–2272, Christine Graham, Counsel, (202) 452–3005, or Joe Carapiet, Senior Attorney, (202) 973–6957, Legal Division; Felton Booker, Senior Supervisory Financial Analyst, (202) 912–4651, or Sean Healey, Senior Financial Analyst, (202) 912–4611, Division of Banking Supervision and Regulation; Dean Amel, Senior Economist, (202) 452–2911; Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

Section 622 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) established a financial sector concentration limit that prevents a financial company from merging or consolidating with, acquiring all or substantially all of the assets of, or otherwise acquiring control of another company (''covered acquisition'') if the resulting company's consolidated liabilities would exceed 10 percent of the aggregate consolidated liabilities of all financial companies.

The concentration limit supplements the nationwide deposit cap in Federal banking law by imposing an additional limit on liabilities of financial companies.[1] ''Financial companies'' subject to the concentration limit include insured depository institutions, bank holding companies, savings and loan holding companies, other companies that control an insured depository institution, foreign banks or companies that are treated as bank holding companies, and nonbank financial companies supervised by the Board.[2] Section 622 measures ''liabilities'' of a financial company as risk-weighted assets minus regulatory capital. For foreign financial companies, only the liabilities of the U.S. operations of the company are considered in applying the concentration limit.

Section 622 directs the Financial Stability Oversight Council (Council) to complete a study of the extent to which the statutory concentration limit would affect financial stability, moral hazard in

[1] 12 U.S.C. 1467a(e)(2)(E), 1828(c), 1842(d)(2), 1843(i)(8). The nationwide deposit cap generally prohibits the appropriate Federal banking agency from approving an application by a bank holding company, insured depository institution, or savings and loan holding company to acquire an insured depository institution located in a different home state than the acquiring company if the acquiring company controls, or following the acquisition would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

[2] Nonbank financial companies supervised by the Board are companies that have been designated by the Financial Stability Oversight Council for supervision by the Board pursuant to section 113 of the Dodd-Frank Act. *See* 12 U.S.C. 5323.

the financial system, the efficiency and competitiveness of U.S. financial firms and financial markets, and the cost and availability of credit and other financial services to households and businesses in the United States. The Council is further directed to make recommendations regarding any modifications to the concentration limit that the Council determines would more effectively implement section 622.[3]

On January 18, 2011, the Council issued its study on the concentration limit and recommended three modifications to more effectively implement section 622 (Council study).[4] In the Council study, the Council expressed the view that the concentration limit would have a positive impact on U.S. financial stability by reducing the systemic risks created by increased financial sector concentration arising from covered acquisitions involving the largest U.S. financial companies. It concluded that the concentration limit was likely to have little or no effect on moral hazard. With respect to the impact of the concentration limit on competitiveness, the Council expected the effect to be positive generally, but expressed concern that the limit introduces the potential for disparate treatment of covered acquisitions between the largest U.S. and foreign firms, depending on which firm is the acquirer or the target. Specifically, the statutory concentration limit could allow a large foreign-based firm with a small U.S. presence to purchase a U.S. target but prevent an equally-sized U.S.-based firm from making the same acquisition because the statute would count only the U.S. assets of a foreign acquirer, but would count the global assets of a U.S. acquirer, when determining compliance with the concentration limit. The Council also found that the concentration limit is unlikely to have a significant effect on the cost and availability of credit and other financial services.

The Council made three recommendations to more effectively implement section 622:

- Measure liabilities of financial companies not subject to consolidated risk-based capital rules using U.S. generally accepted accounting principles (GAAP) or other applicable accounting standards.
- Use a two-year average to calculate aggregate financial sector liabilities and publish annually by July 1 the current aggregate financial sector liabilities applicable to the period of July 1 through June 30 of the following year.
- Extend the ''failing bank exception'' to apply to the acquisition of any type of insured depository institution in default or in danger of default.[5]

The Council also noted that the differences in treatment between U.S. and foreign firms could increase the degree to which the largest firms operating in the U.S. financial sector are foreign-owned, and recommended that the Board continue to monitor and report on the effect of the concentration limit on the ability of U.S. firms to compete with foreign banking organizations. The Council stated that it would make a recommendation to Congress to address adverse competitive dynamics if the Council were to later determine that there are any significant negative effects of the concentration limit because of the disparate treatment of U.S. and foreign firms.

Section 622 provides that the concentration limit is ''subject to'' any recommendations made by the Council that the Council determines would more effectively implement section 622, and the Board is required to issue final regulations implementing section 622 that ''reflect any recommendations made by the Council.''[6] Section 622 also explicitly authorizes the Board to issue interpretations or guidance regarding application of the concentration limit to an individual financial company or to financial companies in general.[7] This proposal would implement section 622, as modified by the Council's recommendations.

II. Financial Sector Concentration Limit

Under section 622, a financial company is prohibited from consummating a covered acquisition if the ratio of the resulting financial company's liabilities to the aggregate consolidated liabilities of all financial companies exceeds 10 percent. A ''financial company'' is defined as a company that is a U.S. insured depository institution; a bank holding company; a foreign bank or company that is treated as a bank holding company for purposes of the Bank Holding Company Act; a savings and loan holding company; any other company that controls an insured depository institution (such as an industrial loan company, limited-purpose credit card bank, or limited-purpose trust bank); or a nonbank financial company designated by the Council for supervision by the Board. Financial companies that are not affiliated with an insured depository institution, such as stand-alone broker-dealers or insurance companies, are not subject to the concentration limit unless they have been designated by the Council for supervision by the Board. The concentration limit also does not constrain internal growth by a financial company, so long as that growth does not involve a covered acquisition such that the resulting company would exceed the limit.

A. Calculating a Financial Company's Liabilities

Section 622 measures ''liabilities'' of a financial company (other than an insurance company or other nonbank financial company supervised by the Board) as total risk-weighted assets, as determined under the risk-based capital rules applicable to bank holding companies, adjusted by an amount to reflect exposures that are deducted from regulatory capital, minus total regulatory capital under the risk-based capital rules. For foreign financial companies, the statute provides that only the liabilities of the U.S. operations of the company are considered in applying the concentration limit. The statute further provides that liabilities of an insurance company or a nonbank financial company supervised by the Board are defined as assets of the company, as specified by the Board, in order to provide for consistent and equitable treatment of such companies.

The Council recommended a modification to the definition of ''liabilities'' to address the calculation of ''liabilities'' for a company (other than an insurance company, a nonbank financial company supervised by the Board, or a foreign bank or a foreign-based financial company that is or is treated as a bank holding company) that is not subject to consolidated risk-based capital rules that are substantially similar to those applicable to bank holding companies. For such a financial company, the Council recommended

[3] *See* 12 U.S.C. 1852(e)(1).

[4] *Study and Recommendations Regarding Concentration Limits on Large Financial Companies* (January 2011), available at: *http://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/Study%20on%20Concentration%20Limits%20on%20Large%20Firms%2001-17-11.pdf.*

[5] *See* 76 FR 6756 (Feb. 8, 2011). The Council noted that it would review and, if appropriate, revise these recommendations in light of the comments it received. As of the date of this notice, the Council had not revised any recommendation made regarding the concentration limit and, as such, the proposal reflects the recommendations set forth in the Council's last publication in the **Federal Register**.

[6] *See* 12 U.S.C. 1852(e). As noted in the Senate report that accompanied the Senate Banking Committee reported bill which became the Dodd-Frank Act, ''[t]he intent [of this authority] is to have the Council determine how to effectively implement the concentration limit. . . .'' *See* S. Rep. 111–176 at 92 (Apr. 30, 2010).

[7] 12 U.S.C. 1852(d).

that ''liabilities'' be calculated pursuant to GAAP or other appropriate accounting standards applicable to such company, until such time that these companies are subject to risk-based capital rules or are required to report risk-weighted assets and regulatory capital. The proposal incorporates this recommendation.

1. U.S. Financial Companies Subject to Consolidated Risk-Based Capital Rules

Under the proposal, U.S. financial companies subject to consolidated risk-based capital rules would calculate liabilities as the difference between their risk-weighted assets (as adjusted upward to reflect amounts that are deducted from regulatory capital elements pursuant to section 22 of the agencies' regulatory capital rules) [8] and their total capital. Bank holding companies and insured depository institutions are subject to consolidated risk-based capital rules imposed by the Board, Federal Deposit Insurance Corporation (FDIC), or Office of the Comptroller of the Currency (OCC). For purposes of calculating their liabilities under section 622, these institutions would use the risk-based capital rules that are applicable to them.

With respect to savings and loan holding companies, the Board has determined to apply the regulatory capital framework for bank holding companies to certain savings and loan holding companies.[9] Accordingly, savings and loan holding companies (other than those that are substantially engaged in insurance or commercial activities) will become subject to the risk-based capital rules beginning January 1, 2015.[10] When savings and loan holding companies are subject to consolidated risk-based capital rules, they will calculate liabilities for purposes of section 622 using their risk-weighted assets and regulatory capital under such rules.

With respect to nonbank financial companies supervised by the Board, three nonbank financial companies—American International Group, General Electric Capital Corporation, and Prudential Financial, Inc.—have been designated by the Council for supervision by the Board. The Dodd-Frank Act requires the Board to impose enhanced prudential standards, including risk-based and leverage capital requirements, on nonbank financial companies supervised by the Board.[11] The Board is currently considering how to apply capital rules to nonbank financial companies supervised by the Board.

a. Adjustments for Amounts Deducted From Regulatory Capital

In calculating liabilities under the risk-weighted asset methodology under section 622, the statute requires a financial company to adjust its total risk-weighted assets to reflect exposures that are deducted from regulatory capital.[12]

The risk-based capital rules generally require institutions to calculate risk-weighted assets by applying risk-weights to assets and other exposures, and to hold a minimum of total capital equal to 8 percent of the total risk-weighted assets. In certain instances, the risk-based capital rules require an institution to deduct certain exposures, including intangible assets such as goodwill, from regulatory capital elements before calculating total capital. This deduction, in effect, requires the institutions to hold a dollar of capital against each dollar of such exposure. As section 622 measures a firm's systemic footprint using the risk-based capital methodology, the proposal would upwardly adjust an institution's risk-weighted assets as if the deducted amounts were risk-weighted and the firm's total capital ratio were held constant.

While section 622 mandates that an institution adjust its risk-weighted assets to reflect exposures that are deducted from regulatory capital, it is silent as to how to make the adjustment to risk-weighted assets to reflect the deducted exposures. In determining how to assign a risk-weight to the deducted exposures, the Board considered two methods. One method uses a standard risk-weight that would be applied to all deducted exposures for all institutions. The second method is an institution-specific approach that would apply a risk-weight for deducted exposures that is specific to each institution based on that institution's total risk-based capital ratio.

Under the first method, an institution would apply an 1150 percent risk-weight to all deducted exposures. Because a regulatory capital deduction requires an institution to hold $1 of regulatory capital against each $1 of asset subject to deduction, the equivalent risk weight for these assets would be 1250 percent given an 8 percent minimum total capital ratio ($1 asset * 1250% risk-weight * 8% total capital ratio = $1 of capital). In addition, the amount of the asset that had been deducted from regulatory capital would be added back to regulatory capital, or alternatively, the risk-weight initially applied to the deducted asset would be reduced by 100 percent (to 1150 percent). This method is simple and transparent and adjusts the deducted assets to take into account the greater risk that was the basis for the deduction. This approach, however, does not take into account the fact that institutions generally hold capital in excess of the 8 percent minimum total capital ratio and therefore would result in more risk-weighted assets than would result were the institution required to hold dollar-for-dollar capital against exposures deducted from regulatory capital elements.

The second method, which is the proposed method, would apply an institution-specific risk-weight to deducted exposures that would vary depending on the institution's actual total capital ratio. This institution-specific risk-weight would be equal to the inverse of the institution's total capital ratio minus one. Thus, the proposal would provide that an institution with a higher capital ratio would apply a smaller multiplier to the amounts deducted from regulatory capital. The formula subtracts one from the inverse of the total capital ratio to account for the fact that amounts deducted from regulatory capital are not added back into regulatory capital under section 622. To illustrate this method, if an institution's total capital ratio is equal to 8 percent (the regulatory minimum), the institution-specific factor would equal $1/.08 - 1$, or $12.5 - 1$, or 11.5. If an institution's total capital ratio is equal to 16 percent (twice the regulatory minimum), the institution-specific factor would equal $1/.16 - 1$ or $6.25 - 1$, or 5.25. This adjustment would have the effect of risk-weighting these assets as if the institution allocated a dollar of capital to each dollar of asset deducted from regulatory capital. This method is proposed as the arithmetically most precise way to convert a capital deduction to a risk-weighted asset amount without

[8] The proposal refers to these amounts as ''deducted from regulatory capital.'' *See* 12 CFR 3.22 (OCC); 12 CFR 217.22 (Board); and 12 CFR 324.22 (FDIC).

[9] 78 FR 62018 (October 11, 2013).

[10] The Board continues to consider how to design capital rules for savings and loan holding companies that are insurance companies or that have subsidiaries engaged in insurance underwriting or are substantially engaged in commercial activities.

[11] 12 U.S.C. 5365.

[12] *See* 12 U.S.C. 1852(a)(3)(A)(i) and (B)(i). Under the Federal banking agencies' regulatory capital rules, bank holding companies and insured depository institutions are required to deduct fully certain assets from regulatory capital, such as goodwill, certain mortgage servicing rights, deferred tax assets, and other intangibles. *See* 12 CFR 3.22 (OCC); 12 CFR 217.22 (Board); and 12 CFR 324.22 (FDIC).

changing the total capital ratio of the institution and would further the statutory purpose by measuring liabilities in an institution-specific manner.[13]

Either of the adjustment methods described above would significantly increase the liabilities measure of firms that have large amounts of goodwill and deferred tax assets—thereby making the limitation more binding for these firms. However, under the proposed method, this effect would be smaller for those institutions that had higher total capital ratios.

Question 1: Would an alternative adjustment method better achieve the purpose of the statute? Describe the alternative adjustment method and provide an explanation of why it would better achieve the purpose of the statute.

Question 2: Should the Board apply a risk-weight of 100 percent for some or all items deducted directly from capital? If so, provide a detailed explanation to support the alternative proposal.

Question 3: Should the Board apply a risk-weight of 1250 percent (equivalent to a risk-weighting where the minimum total risk-based capital ratio is 8 percent) for some or all items deducted directly from capital? If so, provide a detailed explanation to support the alternative proposal.

b. Advanced Approaches Financial Companies

Under the agencies' risk-based capital rules, companies subject to the advanced approaches capital rules must calculate total risk-weighted assets using the methodologies under both the generally applicable risk-based capital rules and the advanced approaches capital rules.[14] Beginning in 2015, standardized total risk-weighted assets will be the generally applicable measure of risk-weighted assets. For purposes of the concentration limit, an advanced approaches institution that has successfully completed its parallel run would be required to use the greater of its generally applicable total risk-weighted assets and its advanced approaches total risk-weighted assets in calculating its liabilities, and the Board would use the greater of those two amounts in calculating an institution's contribution to financial sector liabilities.

If the institution's advanced approaches risk-weighted assets were larger than its generally applicable risk-weighted assets, the institution's regulatory capital would be its advanced-approaches-adjusted total capital as defined in section 10(c)(3)(ii) of the regulatory capital rules.[15] This provision adjusts total capital by deducting any allowance for loan and lease losses included in tier 2 capital and adding any excess eligible credit reserves over total expected credit loss, to the extent that the excess reserve amount does not exceed 0.6 percent of the institution's credit risk-weighted assets.

2. U.S. Financial Companies That Are Not Subject to Risk-Based Capital Rules

As noted above, section 622 generally measures ''liabilities'' of a financial company as risk-weighted assets minus regulatory capital. In its recommendations, the Council recommended that the Board measure liabilities of financial companies not subject to consolidated risk-based capital rules using U.S. generally accepted accounting principles (GAAP) or other applicable accounting standards. Consistent with the Council's recommendation, the proposed rule would require a U.S. financial company that is not subject to consolidated risk-based capital rules to calculate its liabilities in accordance with applicable accounting standards. Currently, U.S. savings and loan holding companies, nonbank financial companies supervised by the Board, bank holding companies with total consolidated assets of less than $500 million, and U.S. depository institution holding companies that are not bank holding companies or savings and loan holding companies fall into this category.[16] However, as noted above, the Board is in the process of applying risk-based capital rules to savings and loan holding companies and the nonbank financial companies that are currently supervised by the Board.

''Applicable accounting standards'' are defined for purposes of the proposed rule as GAAP, or such other accounting standards applicable to the company that the Board determines are appropriate. The Board expects that most U.S. financial companies that are not subject to consolidated risk-based capital rules would use GAAP in calculating their liabilities. However, there are a small number of U.S. financial companies that only file financial statements in accordance with Statutory Accounting Principles (SAP) and do not report consolidated financial statements under GAAP. To avoid requiring financial companies that do not file consolidated GAAP financial statements to undertake the full burden of preparing consolidated GAAP financial statements, the proposal would allow such a company to request that it be permitted to file an estimate of its total consolidated liabilities using a method of estimation to convert SAP financial statements to GAAP financial statements. The Board may, subject to review and adjustment, permit the company to provide estimated total consolidated liabilities on an annual basis using that method of estimation.

To the maximum extent possible, the Board proposes to use information already reported by financial companies. For instance, bank holding companies report their risk-weighted assets, regulatory deductions, and total capital on the FR Y–9C, and the Board will use this information to calculate liabilities of these firms. For bank holding companies with total consolidated assets of less than $500 million, the Board proposes to measure consolidated liabilities by taking the difference between total consolidated assets minus the equity capital of such company on a consolidated basis, which amounts are reported on the Parent Company Only Financial Statements for Small Holding Companies (FR Y–9SP).

At present, U.S. financial companies (other than insured depository institutions, bank holding companies, and savings and loan holding companies) are not required to report the information necessary for the Board to calculate aggregate financial sector liabilities for purposes of the concentration limit. In March 2013, the Federal Financial Institutions Examination Council (FFIEC) proposed to amend the Bank Consolidated Reports of Condition and Income (Call Reports) to require an insured depository institution to report an estimate of the liabilities of its parent holding company, to the extent that the holding company was not a bank holding company or savings and loan holding company. Commenters provided views on this proposed collection. For instance, one commenter requested that the Board collect this information directly from the parent holding company in light of the depository institution's limited ability to certify this information, and asked that the Board move the timing back until after the parent company audits are complete. Another commenter

[13] *See* 54 FR 4186, 4196 (Jan. 27, 1989) (Board); 54 FR 4168, 4175 (Jan. 27, 1989) (OCC); 54 FR 11509 (Mar. 21, 1989) (FDIC); 12 U.S.C. 1828(n).

[14] *See* 12 CFR 3.10 (OCC); 12 CFR 217.10 (Board); and 12 CFR 324.10 (FDIC).

[15] 12 CFR 3.10(c)(3)(ii) (OCC); 12 CFR 217.10(c)(3)(ii) (Board); and 12 CFR 324.10(c)(3)(ii) (FDIC).

[16] Generally, bank holding companies with total consolidated assets of less than $500 million remain subject to the Board's Small Bank Holding Company Policy Statement. *See* 12 CFR part 225, appendix C (Small Bank Holding Company Policy Statement).

asserted that liabilities of some parent holding companies are not public information and requested that the Board permit filers to request confidential treatment of liabilities of the parent holding company. Another commenter requested that the Board permit an institution to use SAP in calculating liabilities.

In light of these comments, as explained below in section II.B.2 of this proposal, the Board is seeking comment on a reporting proposal that supersedes the March 2013 FFIEC proposal and would require financial companies that do not otherwise report consolidated financial information to the Board or other appropriate Federal banking agency to report their consolidated liabilities to the Board on an annual basis. Until these reporting requirements are adopted, the Board proposes to rely on publicly available information in order to estimate the total consolidated liabilities of these financial companies.

Section 622 defines the term ''liabilities'' for nonbank financial companies supervised by the Board to mean ''assets of the company as the Board shall specify by rule, in order to provide for consistent and equitable treatment of such companies.'' [17] The proposal provides for consistent and equitable treatment of nonbank financial companies supervised by the Board by permitting each nonbank financial company to calculate its liabilities using applicable accounting standards until such companies are subject to risk-based capital requirements. As noted above, the Board expects that the applicable accounting standard generally would be GAAP. However, the proposal would permit a company to request to use a standard other than GAAP to calculate its liabilities for purposes of the proposal if the company does not calculate its total consolidated assets under GAAP for any regulatory purpose. The Board may, in its discretion, subject to review and adjustment, permit the company to provide estimated total consolidated assets on an annual basis using this other accounting standard or method of estimation. After a nonbank financial company is subject to risk-based capital rules, the nonbank financial company would calculate liabilities using the risk-weighted asset methodology under those risk-based capital rules.

Question 4: Requiring a financial company to calculate its liabilities using applicable accounting standards could lead to a greater amount of liabilities for the company, and therefore a more binding limit for the company, than if the company measured liabilities as the difference between risk-weighted assets, as modified to reflect amounts that are deducted from regulatory capital, and regulatory capital. Should the Board permit U.S. financial companies that are not insured depository institutions, bank holding companies or saving and loan holding companies to make a permanent, one-time election to measure their liabilities using the risk-weighted methodology in the same manner as bank holding companies for purposes of the concentration limit? If so, how should a company that meets the threshold for an advanced approaches banking organization calculate risk-weighted assets?

Question 5: Are there instances where a company that is not subject to consolidated risk-based capital rules should be permitted to use a methodology other than applicable accounting standards?

Question 6: In what instances may a company request that the Board consider an alternative accounting standard or method of estimation other than GAAP? What factors should the Board consider in determining whether to permit a financial company to use an accounting standard or method of estimation other than GAAP in calculating its liabilities for purposes of the concentration limit?

3. Foreign Banking Organizations

Section 622 provides that the liabilities of a foreign financial company are to be calculated for purposes of the concentration limit based on the risk-weighted assets and regulatory capital attributable to the company's U.S. operations. The proposal would define ''U.S. operations'' of a foreign banking organization as the liabilities of all U.S. branches, agencies, and subsidiaries domiciled in the United States on a consolidated basis (including any lower-tier subsidiary of the U.S. subsidiary, whether domestic or foreign).[18]

While foreign banking organizations are subject to risk-based capital requirements on a consolidated basis established by their home country supervisors, they currently are not required to calculate the risk-weighted assets and risk-based capital of their U.S. operations independently from their consolidated group. An exception to this rule would be where a foreign banking organization conducts its U.S. operations through a U.S. bank holding company or directly through a U.S. insured depository institution, both of which would be subject to risk-based capital requirements.[19]

In furtherance of the Council's recommendations and to minimize burden on foreign banking organizations, the proposal would calculate ''liabilities'' of a foreign banking organization using GAAP assets to the extent that all or a portion of the foreign banking organization's U.S. operations does not calculate and report to the Board risk-weighted assets independently from the consolidated foreign banking organization. The ''liabilities'' figure for U.S. branches and agencies of foreign banks would not be reduced by equity capital because U.S. branches and agencies are not required to hold capital separately from their foreign bank parent. The amount of GAAP assets would include any net amounts that the branch, agency, or U.S. subsidiary has lent to the foreign bank's non-U.S. offices or non-U.S. affiliates (other than those non-U.S. affiliates owned by a U.S. subsidiary of the foreign banking organization). These balances represent exposures of the U.S. branch, agency, or U.S. subsidiary to the non-U.S. affiliates that are part of the institution's U.S. operations. However, the amount of GAAP assets would exclude amounts corresponding to balances and transactions between and among its U.S. branches, agencies, and U.S. subsidiaries (including any non-U.S. lower-tier subsidiaries of such U.S. subsidiaries) to the extent such items are not already eliminated in consolidation, to avoid double counting of assets by affiliates.

Top-tier U.S. subsidiaries of foreign banking organizations that are subject to U.S. consolidated risk-based capital requirements, such as bank holding companies or insured depository institutions, would measure liabilities based on their consolidated risk-weighted assets, modified to reflect amounts that are deducted from regulatory capital, and regulatory capital.[20] Similarly, top-tier U.S. subsidiaries that currently rely on Supervision and Regulation Letter SR

[17] *See* section 622 of the Dodd-Frank Act; 12 U.S.C. 1852(a)(3)(C).

[18] This is consistent with the definition of ''combined U.S. assets'' set forth in the Board's final rule implementing section 165 of the Dodd-Frank Act for foreign banking organizations. Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations (February 18, 2014), available at: *http://www.federalreserve.gov/aboutthefed/boardmeetings/20140218openmaterials.htm*.

[19] *See, e.g.,* 12 U.S.C. 3105(d); 12 U.S.C. 1842(c)(3)(B).

[20] The adjustment to reflect amounts that are deducted from regulatory capital applicable to U.S. subsidiaries would be calculated using the same methodology used for insured depository institutions and U.S. bank holding companies, as described in section II.A.1.a of this preamble.

01–01 (SR 01–01) report their risk-weighted assets and regulatory capital amounts to the Board as if they were subject to U.S. consolidated risk-based capital requirements and, therefore, would measure liabilities based on consolidated risk-weighted assets, adjusted to reflect amounts deducted from regulatory capital, and regulatory capital calculated under U.S. consolidated risk-based capital requirements.

On February 18, 2014, the Board approved a final rule adopting enhanced prudential standards for large U.S. and foreign banking organizations. The final rule would require foreign banking organizations with $50 billion or more in global total consolidated assets and $50 billion or more in total non-branch U.S. assets to organize their U.S. subsidiaries under a single top-tier U.S. intermediate holding company.[21] Under the final rule, the U.S. intermediate holding company is generally subject to the same risk-based capital requirements applicable to U.S. bank holding companies (other than the advanced approaches rules). A foreign banking organization that is required to form a U.S. intermediate holding company will be required to measure liabilities of its U.S. intermediate holding company as its risk-weighted assets, adjusted to reflect amounts deducted from regulatory capital, minus its regulatory capital calculated under the applicable U.S. risk-based capital requirements. The measure of total liabilities for the foreign banking organization generally will be the sum of the total liabilities for the U.S. intermediate holding company plus the total assets of the U.S. branches and agencies of the foreign banking organization.

In 2013, the Board amended the Capital and Asset Report for Foreign Banking Organizations (FR Y–7Q) to require foreign banking organizations to report a new item entitled ''Total combined assets of U.S. operations, net of intercompany balances and transactions between U.S. domiciled affiliates, branches, and agencies.'' Foreign banking organizations will begin reporting this item as of March 31, 2014.[22] As discussed in section II.B.1 of this preamble, the proposal would measure aggregate financial sector liabilities as the average of the financial sector liabilities as of December 31 of each of the preceding two calendar years. In order to permit the Board to calculate the aggregate financial sector liabilities as of the end of 2013, the Board intends to request foreign banking organizations to report their liabilities as of December 31, 2013.

Otherwise, the Board intends to use information from the Board's regulatory reports, including information reported on the FR Y–7Q, in calculating the liabilities of a foreign banking organization. To the extent that the foreign banking organization owns a U.S. insured depository institution or bank holding company, the Board also intends to use information reported on the FR Y–9C and the Call Report to calculate the U.S. liabilities of that foreign banking organization.[23]

Question 7: What alternative methods for calculating liabilities should the Board consider for foreign banking organizations? Should the Board calculate the liabilities of a foreign banking organization by multiplying its U.S. assets by the ratio of the foreign banking organization's total global consolidated risk-weighted assets to total global consolidated assets?

4. Foreign Financial Companies That Are Not Foreign Banking Organizations

Foreign financial companies subject to the concentration limit include foreign savings and loan holding companies, foreign companies that control U.S. insured depository institutions such as industrial loan companies and limited-purpose credit card banks, and foreign nonbank financial companies supervised by the Board.[24] ''U.S. operations'' of such a foreign company would include the operations of all subsidiaries domiciled in the United States on a consolidated basis (including any lower-tier subsidiary of the U.S. subsidiary, whether domestic or foreign). At present, there are foreign companies that control U.S. insured depository institutions, but there are no foreign savings and loan holding companies or foreign nonbank financial companies supervised by the Board.

Liabilities of such foreign financial companies would equal the sum of the liabilities of all top-tier U.S. subsidiaries subject to risk-based capital rules (calculated based on risk-weighted assets, adjusted to reflect amounts deducted from regulatory capital, and regulatory capital as determined under risk-based capital rules) and the sum of the liabilities of all other top-tier U.S. subsidiaries (calculated under applicable accounting rules).[25]

Consistent with the treatment of foreign banking organizations, the proposal would permit a foreign financial company to exclude amounts corresponding to balances and transactions between its U.S. subsidiaries (including any non-U.S. lower-tier subsidiaries of such U.S. subsidiaries) to the extent such items are not already eliminated in consolidation.

As noted above, section 622 requires the Board to establish the methodology for calculating the liabilities of an insurance company or other nonbank financial company supervised by the Board in order to provide for consistent and equitable treatment of such companies. For the reasons stated above, the proposal provides for consistent and equitable treatment of nonbank financial companies supervised by the Board by permitting each nonbank financial company to calculate its liabilities using applicable accounting standards.

Currently, foreign financial companies that are not bank holding companies or savings and loan holding companies do not report consolidated financial information to the Board. Accordingly, the Board proposes to issue a reporting proposal that would require such institutions to report their liabilities to the Board on an annual basis, as discussed further in section II.B.2 of this preamble.

Question 8: What alternative methods for calculating liabilities of a foreign nonbank financial company should the Board consider?

[21] Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations (February 18, 2014), available at: *http://www.federalreserve.gov/aboutthefed/boardmeetings/20140218openmaterials.htm.*

[22] Some respondents will not report the new item on the FR Y–7Q until December 2014.

[23] In calculating total combined U.S. assets, a foreign banking organization does not include assets attributable to investments in section 2(h)(2) companies; accordingly, these assets will not be included in liabilities for purposes of section 622. Until total combined U.S. assets are reported, the Board will use information provided on the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and the Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations (FR Y–7N/FR Y–7NS) as a proxy for liabilities.

[24] A foreign nonbank financial company supervised by the Board is a nonbank financial company designated by the Council for supervision by the Board that is incorporated or organized in a country other than the United States.

[25] As noted above, the Board contemplates that such a company would generally use GAAP in calculating liabilities. However, the proposal would permit a company to request to use a standard other than GAAP to calculate its liabilities if the company does not calculate its total consolidated assets or liabilities under GAAP for any regulatory purpose. The Board may, in its discretion and subject to Board review and adjustment, permit the company to provide estimated total consolidated liabilities on an annual basis using this other accounting standard or method of estimation.

B. Measuring Aggregate Financial Sector Liabilities

1. Timing of Measurement

Section 622 applies the liability cap based on the aggregate consolidated liabilities of all financial companies operating in the United States. Under the statute, the aggregate consolidated liabilities of all financial companies is measured as of the end of the calendar year preceding the transaction. The Council recommended modifying the concentration limit to measure the average amount of aggregate consolidated liabilities of all financial companies as reported by the Board as of the end of the two most recent calendar years.[26] The Council expressed the view that measuring the denominator for any given year as of a single date (*i.e.,* the end of the calendar year) may introduce excessive volatility into the concentration limit and its application, particularly given the large increase or decrease in the denominator that might occur from year to year as the result of specific one-time events, such as the Council's designation of a nonbank financial company for supervision by the Board, the rescission of such a designation, or the acquisition (or sale) of a bank by a large company that causes it to be newly included (or excluded) from the concentration limit denominator. The Council's recommendations further instruct the Board to publicly report, on an annual basis and no later than July 1 of any calendar year, a final calculation of the aggregate consolidated liabilities of all financial companies as of the end of the preceding calendar year. The Council believed that this would facilitate compliance with the limits of section 622 by establishing a single public baseline against which all firms could measure their compliance with the section's limits.[27]

As recommended by the Council, the proposal would measure aggregate financial sector liabilities as the average of the financial sector liabilities as of December 31 of each of the preceding two calendar years. To ease compliance and add certainty to the calculation, the Board would calculate and publish, by July 1 of each year, the aggregate financial sector liabilities as of December 31 for the preceding calendar year and the average of the financial sector liabilities for the preceding two calendar years. This two-year average would be the legally binding denominator for all calculations of the concentration limit from July 1 of that year until June 30 of the subsequent year.

The Board has estimated the financial sector liabilities as of December 31, 2013, using the methodology set forth above and information available to date. As of December 31, 2013, under the estimated proposed method, financial sector liabilities is approximately $18 trillion.[28]

Question 9: The Board has recently implemented revisions to its risk-based capital framework, including the June 2012 revisions to the market risk framework and the July 2013 revisions to the risk-based capital framework to implement the Basel III regulatory capital reforms from the Basel Committee on Banking Supervision and certain changes required by the Dodd-Frank Act.[29] Together, these rules may significantly increase the risk-weighted assets (and thus the amount of liabilities for purposes of the concentration limit) of certain companies, particularly companies with large trading activities. Because these rules are implemented over a period of years until January 2018, the calculation of the aggregate financial sector liabilities on a two-year rolling basis will include liabilities calculated under the old capital rules even after the firm adopts the new rules. Should the Board consider a transition period for calculating aggregate financial sector liabilities to reduce this disparity? For instance, should the Board consider measuring aggregate financial sector liabilities as of the previous calendar year-end, rather than the average of the previous two year-ends, during some or all of the Basel III phase-in period?

2. New Report To Collect Total Liabilities of a Financial Company That Does Not Report Consolidated Financial Information to the Board or Other Appropriate Federal Banking Agency

As previously described, the concentration limit applies to a ''financial company,'' which is defined to include an insured depository institution, a bank holding company, a savings and loan holding company, a nonbank financial company supervised by the Board, a company that controls an insured depository institution, and a foreign bank or company that is treated as a bank holding company for purposes of the Bank Holding Company Act.[30]

At present, many financial companies do not report consolidated financial information to the Board or other appropriate Federal banking agency. These institutions include savings and loan holding companies where the top-tier holding company is an insurance company that only prepares financial statements in accordance with SAP, holding companies of industrial loan companies, limited-purpose credit card banks, and limited-purpose trust banks, and currently, nonbank financial companies supervised by the Board.

In order to implement section 622, this proposal would create a new report, the Financial Company (as defined) Report of Consolidated Liabilities (FR Y–17) on which a financial company that does not otherwise report consolidated financial information to the Board or other appropriate Federal banking agency would be required to report information on its liabilities for purposes of calculating the aggregate financial sector liabilities.

Specifically, financial companies domiciled in the United States would be required to report their total consolidated liabilities under applicable accounting standards.[31] With respect to

[26] Under the statute, the Board is required to issue regulations implementing section 622 in accordance with the Council's recommendations, including the definition of terms, as necessary. *See* 12 U.S.C. 1852(d).

[27] *See* Council study, p. 20.

[28] The Board notes that limitations in existing reporting requirements, such as those discussed in section II.B.2 of this proposal, may result in underestimation of the aggregate financial sector liabilities calculated as of December 31, 2013. The estimate of aggregate financial sector liabilities was derived using information contained in publicly-available regulatory reports as of December 31, 2013 or the most current reporting date. The scope of regulatory reports were generally determined by category of financial company: Bank holding companies (FR Y–9C), small bank holding companies (FR Y–9SP), foreign banking organizations (FR 2886B, FR Y–7N and FR Y–7NS, FFIEC 002, and SEC Form X–17A–5), savings and loan holding companies (FR 2320), other depository institutions (FFIEC 031 and 041), and nonbank financial companies and other holding companies (SEC Form 10–Q).

[29] 78 FR 62018 (October 11, 2013), 77 FR 53060 (August 30, 2012).

[30] A parent holding company has control over a depository institution if (A) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the depository institution; (B) the company controls in any manner the election of a majority of the directors or trustees of the depository institution; or (C) the Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the depository institution.

[31] ''Applicable accounting standards'' are defined for purposes of the proposed rule as GAAP, or such other accounting standards applicable to the company that the Board determines are appropriate. If a company does not calculate its total consolidated assets or liabilities under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may submit a request to the Board that it use an accounting standard or method of estimation other

Continued

a financial company domiciled in a country other than the United States, the financial company would be required to report the sum of the total consolidated liabilities of each top-tier U.S. subsidiary of the financial company, as determined under applicable accounting standards. A parent holding company is permitted, but is not required, to reduce total liabilities by amounts corresponding to balances and transactions between U.S. subsidiaries of the parent holding company to the extent such items would not already be eliminated in consolidation.

Information contained in this report generally would be made available to the public upon request on an individual basis. However, a reporting holding company may request confidential treatment for the report if the holding company believes that disclosure of specific commercial or financial information in the report would likely result in substantial harm to its competitive position or that disclosure of the submitted information would result in unwarranted invasion of personal privacy.

The Board intends to collect this report beginning in the first quarter of 2015. However, as discussed in section II.B.1 of this preamble, the proposal would measure aggregate financial sector liabilities as the average of the financial sector liabilities as of December 31 of each of the preceding two calendar years. In order to permit the Board to calculate the aggregate financial sector liabilities as of the end of 2013, the Board intends to request that, in the first report, all holding companies report their liabilities as of December 31, 2013 and as of December 31, 2014.

Question 10: Should the Board measure aggregate financial sector liabilities for purposes of the initial period between July 1, 2015 and June 30, 2016 solely using a one year measure of the aggregate financial sector liabilities for 2014 (as of year end 2013) or a two year measure using year end numbers 2013 and 2014?

C. Applying the Concentration Limit

Section 622 prohibits a financial company from consummating a covered acquisition if the liabilities of the resulting financial company upon consummation of the covered acquisition would exceed 10 percent of aggregate financial sector liabilities. As section 622 incorporates the concentration limit into a new section of the Bank Holding Company Act, the proposal would define ''control'' using the Bank Holding Company Act's definition of control.

1. Measuring Liabilities Upon Consummation of a Covered Acquisition

As discussed above, the proposal implements the statutory definition of liabilities, measuring liabilities of a U.S. financial company on the basis of the liabilities of its global operations and liabilities of a foreign financial company on the basis of the liabilities of its U.S. operations. In general, liabilities of the U.S. operations of a foreign financial company include liabilities of each U.S. company owned by the foreign bank and any of its subsidiaries, whether the subsidiary is U.S. or foreign.[32] Consistent with section 622, where a covered acquisition involves a U.S. acquirer and a U.S. target, the proposal provides that liabilities upon consummation of the covered acquisition would equal the total consolidated liabilities of the resulting U.S. company. Where a covered acquisition involves a foreign acquirer and a foreign target, liabilities upon consummation of the covered acquisition would equal the total consolidated liabilities of the U.S. operations of the resulting foreign financial company.

In the case of a cross-border covered acquisition, the proposal would calculate the liabilities of a U.S. company to include the liabilities of its U.S. and foreign subsidiaries, regardless of whether the U.S. company is the acquirer or target. This approach is consistent with the calculation of liabilities of a U.S. financial company provided in the statute.[33] Consequently, for a covered acquisition where the acquiring organization is a U.S. financial company and the target is foreign-based, the liabilities of the financial company upon consummation of the covered acquisition would equal the total consolidated liabilities of the resulting U.S. company, which would include all the consolidated liabilities of the foreign target. Similarly, for a covered acquisition where the acquiring organization is a foreign financial company and the target is U.S.-based, the proposed rule would calculate liabilities of the resulting financial company upon consummation as including all of the consolidated liabilities of the U.S. target.

Question 11: What alternative methods for measuring liabilities upon consummation of a covered acquisition should the Board consider?

2. Transactions for Which a Notice or Application Is Not Otherwise Required

The section 622 concentration limit is applicable to any covered acquisition, regardless of whether a notice or application of the transaction is otherwise required to be filed with the Board or another regulator. To the extent that the Board receives a notice or application with respect to a covered acquisition, the Board would review the application of the concentration limit in connection with its review of the transaction.

Under the proposal, in circumstances where there is not a requirement to file a prior notice or application with respect to a transaction with the Board, a financial company would be required to provide written notice to the Board if, as of the date of consummation of the transaction, the liabilities of the resulting financial company (estimated on the basis of the company's pro forma financial statements) would be above 8 percent of aggregate financial sector liabilities and the covered acquisition would increase the liabilities of the resulting financial company by more than $2 billion, when aggregated with all other covered acquisitions during the twelve months preceding the consummation of the transaction. The deadline for the notification would be the earlier of (i) 60 days before consummation of the covered acquisition or (ii) 10 days after execution of the transaction agreement. The notice must include a description of the proposed covered transaction, estimates of the pro forma liabilities and assets of the resulting company upon consummation of the transaction, and any other information that the Board determines would be appropriate. This simple notice will allow the Board to monitor compliance with the statute.

Question 12: Should an alternative threshold at which a company is required to notify the Board of a proposed transaction be considered? If so, provide a description of the alternative threshold and an explanation of why it should be adopted.

3. Acquisitions by Nonfinancial Companies

Under the proposal, covered acquisitions between a financial company and a company that is not a financial company under section 622, including those in which the

than GAAP to calculate its liabilities for purposes of this subpart. The Board may, in its discretion and subject to Board review and adjustment, permit the company to provide estimated total consolidated liabilities on an annual basis using this accounting standard or method of estimation.

[32] With respect to a foreign financial company that is a foreign bank, liabilities also include liabilities of U.S. branches and agencies of the foreign bank.

[33] 12 U.S.C. 1852(a)(3)(A).

nonfinancial company is the acquirer, and becomes a financial company as a result of the transaction, would generally be covered by the limit.

Question 13: The proposal would treat a covered acquisition as subject to the concentration limit if the resulting company is a financial company. Are there alternatives that the Board should consider?

D. Exceptions to the Concentration Limit

The statute exempts three types of acquisitions from the concentration limit: (i) An acquisition of a bank in default or in danger of default; (ii) an acquisition with respect to which the FDIC provides assistance under section 13(c) of the Federal Deposit Insurance Act; and (iii) an acquisition that would result only in a *de minimis* increase in the liabilities of the financial company.[34]

1. Exceptions to the Concentration Limit

a. Failing Bank Exception

In its recommendations, the Council recommended that the concentration limit under section 622 be modified to expand the ''failing bank exception'' to apply to the acquisition of any type of insured depository institution in default or in danger of default. The Council noted that section 622 does not restrict an acquisition of a ''bank'' (as that term is defined in the Bank Holding Company Act) in default or in danger of default, subject to the prior written consent of the Board; however, this exception applies by its terms to a failing ''bank,'' rather than all types of failing insured depository institutions, including savings associations, industrial loan companies, and limited-purpose credit card banks. According to the Council, ''the important policy that supports the exception for the acquisition of failing banks–namely, the strong public interest in limiting the costs to the Deposit Insurance Fund that could arise if a bank were to fail, which might be partly or wholly limited through acquisition of a failing bank by another firm–applies equally to insured depository institutions generally, and is not limited to ''banks'' as that term is defined in the [Bank Holding Company Act].''

The proposal would implement this statutory provision, as modified by the Council's recommendation.

b. De Minimis Transaction

Under section 622, with prior written consent of the Board, the concentration limit in section 622 does not apply to an acquisition that would result only in a *de minimis* increase in the liabilities of the financial company. The proposal defines a *de minimis* increase for purposes of the concentration limit as an increase in the total consolidated liabilities of a financial company that does not exceed $2 billion, when aggregated with all other acquisitions by the company under the *de minimis* authority during the twelve months preceding the date of the transaction. Under this proposal, an acquisition that increases a financial company's concentration limit liabilities by $2 billion or less is unlikely on its own to raise financial stability concerns.[35]

Under the proposal, a financial company seeking to make an acquisition that qualifies for an exception described above must obtain the prior written consent of the Board, in addition to any other regulatory notices or approvals otherwise required for the acquisition. The Board expects that a financial company that seeks to rely on the *de minimis* exception to the concentration limit cap will make a written request at least 60 days before it intends to consummate the transaction. The Board also is seeking comment on whether in connection with granting consent to a *de minimis* transaction, the Board should consider requests by the financial company that the Board pre-approve *de minimis* transactions below a lower threshold, such as $25 million.

2. Ordinary Business Transactions

Neither the statute nor the proposal limits the ability of financial firms to grow or expand their activities other than through a covered acquisition or to engage in certain types of ordinary business transactions, such as acquiring shares in the ordinary course of collecting a debt previously contracted, in a fiduciary capacity, in connection with underwriting or market making, or merchant or investment banking activity, or as part of an internal corporate reorganization. In these instances, shares are generally held for a limited time period or do not involve the expansion of the firm.

a. Debt Previously Contracted

Under the proposal, securities or other assets acquired by a financial company in the ordinary course of collecting a debt previously contracted would not be treated as an acquisition for purposes of the concentration limit, so long as the securities or other assets are acquired in good faith and divested within the time period permitted by the appropriate Federal banking agency (including extensions) or, if the financial company does not have an appropriate Federal banking agency, five years.

Question 14: Should the Board shorten or expand the five-year time period under which a financial company must divest assets acquired in connection with collecting a debt previously contracted where the financial company does not have an appropriate Federal banking agency? If so, why?

b. Fiduciary Capacity

The acquisition of securities or other assets by a financial company in a *bona fide* fiduciary capacity would not be treated as an acquisition for purposes of the concentration limit so long as the acquisition is in good faith and the securities or other assets are held in the ordinary course of fiduciary business and not acquired for the benefit of the company or its shareholders, employees, or subsidiaries.

c. Underwriting or Market Making

The acquisition of securities or other assets by a financial company in connection with *bona fide* underwriting or market making activities would not be treated as an acquisition for purposes of the concentration limit because the financial company acquires the shares for resale and does not exert managerial control over the underlying companies.

d. Merchant or Investment Banking Activity

The acquisition of securities as part of a financial company's *bona fide* merchant or investment banking activity would not be treated as an acquisition for purposes of the concentration limit. This is because merchant banking is authorized as a financial activity under which the financial company acquires the shares for passive investment, holds the shares for a limited period of time, and does not exert managerial control over the investment.[36]

e. Internal Corporate Reorganization

An internal corporate reorganization conducted by a financial company would not be treated as an acquisition for purposes of the concentration limit. The proposal would define an internal corporate reorganization to include the merger of subsidiaries of the financial company, the transfer of control or ownership of a subsidiary between one subsidiary of the financial company and another subsidiary of the financial

[34] *See* 12 U.S.C. 1852(c).

[35] *See, e.g., Capital One Financial Corporation,* FRB Order No. 2012–2 (Feb. 14, 2012).

[36] *See* 4(k) of the Bank Holding Company Act; 12 CFR 225.170 through 225.177; 12 CFR 242.

company, the transfer of control or ownership of a subsidiary of the financial company between the financial company and one of its other subsidiaries, and the formation by a financial company of a newly-incorporated or organized subsidiary. Under the proposal, the reorganization must represent only an internal corporate reorganization, and the companies involved must be lawfully controlled and operated by the financial company both before and following the reorganization.

E. Anti-Evasion

In order to ensure that the concentration limit is effectively applied across all financial companies, the proposal contains an anti-evasion provision that would prohibit a financial company from organizing or operating its business or structuring any acquisition of, or merger or consolidation with, another company in such a manner that would result in evasion of application of the concentration limit. For instance, a U.S. financial company would not be subject to different treatment under the concentration limit if it changed its charter of incorporation to become a foreign financial company in order to evade application of the concentration limit.

Other provisions of the Dodd-Frank Act require the Board, in evaluating applications or notices under section 3 or 4 of the Bank Holding Company Act or under section 163 of the Dodd-Frank Act, to consider the risks to financial stability posed by a merger or acquisition by a financial company.[37] These provisions may result in more stringent limitations than the concentration limit for a particular transaction or proposal, depending on the Board's analysis of the effects of the proposal on financial stability. Furthermore, other restrictions on acquisitions, such as the competitive restrictions contained in the Bank Holding Company Act or Federal antitrust laws, may also limit certain transactions by financial companies.[38] The concentration limit does not constrain internal growth by a financial company, so long as that growth does not involve the consummation of a covered acquisition such that the resulting company would exceed the limit.

[37] *See* sections 163, 173, and 604(d), (e) and (f) of the Dodd-Frank Act; 12 U.S.C. 1842(c), 1843(j)(2)(A), 1828(c)(5), 5363, and 5373.

[38] *See, e.g.,* 12 U.S.C. 1842(d) and 1843(j); 12 CFR 225.14(c)(5) and (6).

III. Administrative Law Matters

A. Solicitation of Comments on the Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. No. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the proposed rule in a simple and straightforward manner, and invites comment on the use of plain language.

For example:

- Have we organized the material to suit your needs? If not, how could the rule be more clearly stated?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would make the regulation easier to understand?
- Would more, but shorter, sections be better? If so, which sections should be changed?
- What else could we do to make the regulation easier to understand?

B. Paperwork Reduction Act Analysis

Request for Comment on Proposed Information Collection

In accordance with section 3512 of the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501–3521) (PRA), the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board will obtain an OMB control number. The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

The proposed rule contains requirements subject to the PRA. The reporting requirements are found in sections 251.6(a) and (b). To implement the reporting requirement set forth in 251.6(a), the Board proposes to create a new reporting form, the Financial Company Report of Consolidated Liabilities (FR Y–17). This information collection requirement would implement section 622 of the Dodd-Frank Act.

Comments are invited on:

(a) Whether the proposed collections of information are necessary for the proper performance of the Board's functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the proposed information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on the collection of information should be sent to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. A copy of the comments may also be submitted to the OMB desk officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by facsimile to 202–395–6974.

Proposed Information Collection

Title of Information Collection: Financial Company Report of Consolidated Liabilities (FR Y–17); Reporting Requirements Associated with Regulation XX (Concentration Limits on Large Financial Companies) (Reg XX).

Frequency of Response: FR Y–17: Annual.

Reporting Requirements Associated with section 251.6(b) of Regulation XX: On occasion.

Affected Public: Businesses or other for-profit.

Respondents:

Financial Company Report of Consolidated Liabilities (FR Y–17): U.S. and foreign financial companies that do not otherwise report consolidated financial information to the Board or appropriate Federal banking agency.

Reporting Requirements Associated with section 251.6(b) of Regulation XX: Insured depository institutions, bank holding companies, foreign banking organizations, savings and loan holding company, companies that control insured depository institutions, and nonbank financial companies supervised by the Board.

Abstract: Section 622 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which adds a new

section 14 to the Bank Holding Company Act of 1956, as amended, establishes a financial sector concentration limit that generally prohibits a financial company from merging or consolidating with, or acquiring, another company if the resulting company's liabilities upon consummation would exceed 10 percent of the aggregate liabilities of all financial companies as calculated under that section. In addition, the proposal would require certain financial companies to report information necessary to calculate the financial sector concentration limit.

Section 251.6(a) would require financial companies that do not report consolidated financial information to the Board or other appropriate Federal banking agency to report information on their total liabilities. At present, many financial companies do not report consolidated financial information to the Board or other appropriate Federal banking agency. These institutions include savings and loan holding companies where the top-tier holding company is an insurance company that only prepares financial statements in accordance with SAP, holding companies of industrial loan companies, limited-purpose credit card bans, and limited-purpose trust banks. Because this information is necessary to implement section 622, this proposal would create a new report, the Financial Company (as defined) Report of Consolidated Liabilities (FR Y–17) on which a financial company that does not otherwise report consolidated financial information to the Board or other appropriate Federal banking agency would be required to report information on their total liabilities.

Because the Board is required to report a final calculation based on data collected as of the end of each calendar year, this proposed new report would be completed annually beginning with the report as of December 31, 2013 and as of December 31, 2014. The Board intends to collect the first two reports by March 31, 2015.

Specifically, with respect to a financial company domiciled in the United States, the institution would be required to report total consolidated liabilities of the financial company under applicable accounting standards.[39] With respect to a financial company domiciled in a country other than the United States, the financial company would be required to report the total consolidated liabilities of the combined U.S. operations of the financial company as of December 31. ''Total consolidated liabilities of the combined U.S. operations of the financial company'' would mean the sum of the total consolidated liabilities of each top-tier U.S. subsidiary of financial company, as determined under GAAP. A parent holding company is permitted, but is not required, to reduce ''total consolidated liabilities of the combined U.S. operations of the parent holding company'' by amounts corresponding to balances and transactions between U.S. subsidiaries of the parent holding company to the extent such items would not already be eliminated in consolidation.

Information contained in this report generally would be made available to the public upon request on an individual basis. However, a reporting holding company may request confidential treatment for the report if the holding company is of the opinion that disclosure of specific commercial or financial information in the report would likely result in substantial harm to its competitive position, or that disclosure of the submitted information would result in unwarranted invasion of personal privacy.

Section 251.6(b) would require a financial company to provide written notification to the Board if the liabilities of the resulting financial company (estimated on the basis of the company's pro forma financial statements) would be above 8 percent of financial sector liabilities as of the date of the transaction and the covered acquisition would increase the liabilities of the financial company by more than $2 billion, when aggregated with all other covered acquisitions during the twelve months preceding the date of the acquisition. The deadline for the notification would be the earlier of (1) 60 days before consummation of the covered acquisition and (2) 10 days after execution of the transaction agreement. The written notification must include a description of the proposed covered acquisition, estimates of the pro forma assets and liabilities of the resulting company upon consummation of the transaction, calculated pursuant to § 251.6, and any other information that the Board determines would be appropriate.

Estimated Burden per Response: 30 minutes (FR Y–17); 10 hours (Reg XX).

Number of Respondents: 80 (FR Y–17); 3 (Reg XX).

Total Estimated Annual Burden: 40 hours (FR Y–17); 30 hours (Reg XX).

C. Regulatory Flexibility Act Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act[40] (RFA), the Board is publishing an initial regulatory flexibility analysis of the proposed rule. The RFA requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule for which a general notice of proposed rulemaking is required or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered.

The Board is proposing to add Regulation XX (12 CFR 251 *et seq.*) to implement section 622 of the Dodd-Frank Act, reflecting the recommendations of the Council.[41] Section 622 establishes a financial sector concentration limit that generally prohibits a financial company from merging or consolidating with, or acquiring, another company if the resulting company's liabilities upon consummation would exceed 10 percent of the aggregate liabilities of all financial companies as calculated under that section.

Under regulations issued by the Small Business Administration (SBA), a ''small entity'' includes those firms within the ''Finance and Insurance'' sector with asset sizes that vary from $35.5 million or less in assets to $500 million or less in assets.[42] The Finance and Insurance sector constitutes a reasonable universe of firms for these purposes because such firms generally engage in actives that are financial in nature. Consequently, bank holding companies or nonbank financial companies with assets sizes of $500

[39] ''Applicable accounting standards'' are defined for purposes of the proposed rule as GAAP, or such other accounting standards applicable to the company that the Board determines are appropriate. If a company does not calculate its total consolidated assets or liabilities under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may submit a request to the Board that it use an accounting standard or method of estimation other than GAAP to calculate its liabilities for purposes of this subpart. The Board may, in its discretion and subject to Board review and adjustment, permit the company to provide estimated total consolidated liabilities on an annual basis using this accounting standard or method of estimation.

[40] 5 U.S.C. 601 *et seq.*

[41] *See* 12 U.S.C. 5365 and 5366.

[42] 13 CFR 121.201.

million or less are small entities for purposes of the RFA.

As discussed in the Supplementary Information, the proposed rule prohibits a financial company from merging or consolidating with, or acquiring, another company if the resulting company's liabilities upon consummation would exceed 10 percent of the aggregate liabilities of all financial companies as calculated under that section, unless the transaction would qualify for an exception to the prohibition. For instance, transactions that involve only a *de minimis* increase in the liabilities of a financial company would not be subject to the concentration limit. A *de minimis* increase would be defined as an increase of $2 billion, when aggregated with all other acquisitions by the company under the *de minimis* authority during the twelve months preceding the date of the acquisition.

A company with $500 million or less in assets would not, in practice, be affected by the proposal, which limits covered acquisitions only by firms whose liabilities will exceed ten percent of the aggregate financial sector liabilities. As noted above, as of December 31, 2013, under the estimated proposed method, financial sector liabilities is approximately $18 trillion. Furthermore, the reporting requirement proposed for financial companies that do not otherwise report consolidated financial information to the Board or other appropriate Federal banking agency is anticipated to result in an aggregate annual burden of only 25 hours.

As noted above, because the proposed rule is not likely to apply to any company with assets of $500 million or less, if adopted in final form, it is not expected to apply to any small entity for purposes of the RFA. The Board does not believe that the proposed rule duplicates, overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board does not believe that the proposed rule, if adopted in final form, would have a significant economic impact on a substantial number of small entities supervised. Nonetheless, the Board seeks comment on whether the proposed rule would impose undue burdens on, or have unintended consequences for, small organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with section 622 of the Dodd-Frank Act.

List of Subjects in 12 CFR Part 251

Administrative practice and procedure, Banks, Banking, Concentration Limit, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons stated in the Supplementary Information, the Board of Governors of the Federal Reserve System proposes to add part 251 as follows:

PART 251—CONCENTRATION LIMIT (REGULATION XX)

Sec.

Authority: 12 U.S.C. 1835, 1844(b), 1852.

§ 251.1 Authority, purpose, and other authorities.

(a) *Authority.* This part is issued by the Board of Governors of the Federal Reserve System under section 622 of Title VI of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376, 12 U.S.C. 1852); sections 5 and 14 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844 and 1852); section 8 of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1818); the International Banking Act of 1978, as amended (12 U.S.C. 3101 et seq.); and the recommendations of the Financial Stability Oversight Council (76 **Federal Register** 6756).

(b) *Purpose.* This part implements section 14 of the Bank Holding Company Act, which generally prohibits a financial company from merging or consolidating with, or acquiring, another company if the resulting company's consolidated liabilities would exceed 10 percent of the aggregate consolidated liabilities of all financial companies.

(c) *Other authorities.* Nothing in this part limits the authority of the Board under any other provision of law or regulation to prohibit or limit a financial company from merging or consolidating with, or otherwise acquiring, another company.

§ 251.2 Definitions.

Unless otherwise specified, for the purposes of this part:

(a) *Applicable accounting standards* means, with respect to a company, U.S. generally accepted accounting principles (GAAP), or such other accounting standard or method of estimation that the Board determines is appropriate pursuant to § 251.3(e).

(b) *Applicable risk-based capital rules* means consolidated risk-based capital rules established by an appropriate Federal banking agency that are applicable to a financial company.

(c) *Appropriate Federal banking agency* has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(d) *Control* has the same meaning as in § 225.2(e) of the Board's Regulation Y (12 CFR 225.2(e)).

(e) *Council* means the Financial Stability Oversight Council established by section 111 of the Dodd-Frank Act (12 U.S.C. 5321).

(f) *Covered acquisition* means a transaction in which a company merges or consolidates with, acquires all or substantially all of the assets of, or otherwise acquires control of another company, and the resulting company is a financial company. A covered acquisition does not include:

(1) An acquisition of securities or other assets, by foreclosure or otherwise, by a financial company in the ordinary course of collecting a debt previously contracted in good faith if the acquired securities or assets are divested within the time period permitted by the appropriate Federal banking agency (including extensions) or, if the financial company does not have an appropriate Federal banking agency, five years;

(2) An acquisition of securities or other assets in good faith in a fiduciary capacity if the securities or assets are held in the ordinary course of business and not acquired for the benefit of the company or its shareholders, employees, or subsidiaries;

(3) An acquisition of ownership or control of securities or other assets by a financial company in connection with a *bona fide* merchant or investment banking activity, provided that the acquisition and control of such securities or assets complies with the conditions and requirements of section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k)) and the Board's Regulation Y thereunder (12 CFR Part 225);

(4) An acquisition of ownership or control of securities or assets by a financial company in connection with *bona fide* underwriting or market-making activities; and

(5) An acquisition of ownership or control of securities or assets of a financial company that is solely in connection with a corporate reorganization and the companies involved are lawfully controlled and operated by the financial company both before and following the reorganization.

(g) *Financial company* includes:

(1) An insured depository institution;
(2) A bank holding company;
(3) A savings and loan holding company;
(4) A company that controls an insured depository institution;
(5) A nonbank financial company supervised by the Board; and
(6) A foreign bank or company that is treated as a bank holding company for purposes of the Bank Holding Company Act.

(h) *Foreign financial company* means a financial company that is incorporated or organized in a country other than the United States.

(i) *Insured depository institution* has the same meaning as in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)).

(j) *Nonbank financial company supervised by the Board* means any nonbank financial company that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect.

(k) *State* means any state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

(l) *U.S. agency* has the same meaning as the term ''agency'' in § 211.21(b) of the Board's Regulation K (12 CFR 211.21(b)).

(m) *Total regulatory capital* has the same meaning as the term ''total capital'' as defined under the applicable risk-based capital rules.

(n) *U.S. branch* has the same meaning as the term ''branch'' in § 211.21(e) of the Board's Regulation K (12 CFR 211.21(e)).

(o) *U.S. company* means a company that is incorporated in or organized under the laws of the United States or any State.

(p) *U.S. financial company* means a financial company that is incorporated in or organized under the laws of the United States or any State.

(q) *U.S. subsidiary* means any subsidiary, as defined in § 225.2(o) of Regulation Y (12 CFR 225.2(o)), that is organized in the United States or in any State.

§ 251.3 Concentration limit.

(a) *In general.* (1) Except as otherwise provided in § 251.4, a financial company may not consummate a covered acquisition if the liabilities of the resulting financial company upon consummation of the transaction would exceed 10 percent of the financial sector liabilities.

(2) *Financial sector liabilities.* (i) Beginning on July 1 of a given year, financial sector liabilities are equal to the average of the year-end financial sector liabilities figure for the preceding two calendar years. The measure of financial sector liabilities will be in effect until June 30 of the following calendar year.

(ii) The year-end financial sector liabilities figure equals the sum of the total consolidated liabilities of all top-tier U.S. financial companies (calculated under paragraph (b) of this section) and the U.S. liabilities of all top-tier foreign financial companies (calculated under paragraph (c) of this section) as of December 31 of that year.

(iii) On an annual basis and no later than July 1 of any calendar year, the Board will calculate and publish the financial sector liabilities for the preceding calendar year and the average of the financial sector liabilities for the preceding two calendar years.

(b) *Calculating total consolidated liabilities.* For purposes of paragraph (a)(2)(i) of this section:

(1) For a covered acquisition in which a U.S. company would acquire a U.S. company or a foreign company, liabilities of the resulting financial company equal the consolidated liabilities of the resulting U.S. financial company, calculated on a pro forma basis in accordance with paragraph (c) of this section.

(2) For a covered acquisition in which a foreign company would acquire another foreign company, liabilities of the resulting financial company equal the U.S. liabilities of the resulting financial company, calculated on a pro forma basis in accordance with paragraph (d) of this section.

(3) For a covered acquisition in which a foreign company would acquire a U.S. company, liabilities of the resulting financial company equal the sum of:

(i) The U.S. liabilities of the foreign company immediately preceding the transaction (calculated in accordance with paragraph (d) of this section); and

(ii) The consolidated liabilities of the U.S. company immediately preceding the transaction (calculated in accordance with paragraph (c) of this section), reduced by the amount corresponding to any balances and transactions that would be eliminated in consolidation upon consummation of the transaction.

(c) *Consolidated liabilities.* (1) *U.S. company subject to applicable risk-based capital rules.* For a U.S. company subject to applicable-risk based capital rules, consolidated liabilities are equal to:

(i) Total risk-weighted assets of the company, as determined under the applicable risk-based capital rules; plus

(ii) The amount of assets that are deducted from the company's regulatory capital elements under the applicable risk-based capital rules, times a multiplier that is equal to the inverse of the company's total risk-based capital ratio minus one; minus

(iii) Total regulatory capital of the company on a consolidated basis.

(2) *U.S. company not subject to applicable risk-based capital rules.* For a U.S. company that is not subject to applicable risk-based capital rules, consolidated liabilities are equal to the total liabilities of such company on a consolidated basis, as determined under applicable accounting standards.

(d) *U.S. liabilities of a foreign company.* (1) U.S. liabilities of a foreign company are equal to the sum of:

(i) The total consolidated assets of each U.S. branch or U.S. agency of the foreign financial company, calculated in accordance with applicable accounting standards;

(ii) The total consolidated liabilities of a top-tier U.S. subsidiary that is subject to applicable risk-based capital rules (or reports information to the Board regarding its capital under risk-based capital rules applicable to bank holding companies), calculated as:

(A) Total risk-weighted assets of the company, calculated as the sum of the total risk-weighted assets of such company on a consolidated basis, as determined under the applicable risk-based capital rules; plus

(B) The amount of assets that are deducted from the company's regulatory capital elements under the applicable risk-based capital rules, times a multiplier that is equal to the inverse of the company's total risk-based capital ratio minus one; minus

(C) Total regulatory capital of the company on a consolidated basis, as determined under the applicable risk-based capital rules.

(iii) The total consolidated assets of a top-tier U.S. subsidiary that is not subject to applicable risk-based capital rules and does not report information regarding its capital under risk-based capital rules applicable to bank holding companies.

(2) *Intercompany balances and transactions.* (i) *Foreign banking organization.* A foreign banking organization must reduce the amount of consolidated liabilities of its U.S. operations calculated pursuant to this paragraph by amounts corresponding to intercompany balances and

intercompany transactions between the foreign banking organization's U.S. domiciled affiliates, branches or agencies to the extent such items are not already eliminated in consolidation, and increase consolidated liabilities by net intercompany balances and intercompany transactions between a non-U.S. domiciled affiliate and a U.S. domiciled affiliate, branch, or agency of the foreign banking organization, to the extent such items are not already reflected.

(ii) *Foreign financial company.* A foreign company that is not a foreign banking organization may reduce the amount of consolidated liabilities of its U.S. operations calculated pursuant to this paragraph by amounts corresponding to intercompany balances and intercompany transactions between the foreign banking organization's U.S. domiciled affiliates, branches or agencies to the extent such items are not already eliminated in consolidation, and increase consolidated liabilities by net intercompany balances and intercompany transactions between a non-U.S. domiciled affiliate and a U.S. domiciled affiliate, branch, or agency of the foreign banking organization, to the extent such items are not already reflected.

(e) *Applicable accounting standard.* If a company does not calculate its total consolidated assets or liabilities under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may submit a request to the Board that it use an accounting standard or method of estimation other than GAAP to calculate its liabilities for purposes of this part. The Board may, in its discretion and subject to Board review and adjustment, permit the company to provide estimated total consolidated liabilities on an annual basis using this accounting standard or method of estimation.

§ 251.4 Exceptions to the concentration limit.

(a) With the prior written consent of the Board, the concentration limit under § 251.3 shall not apply to:

(1) An acquisition of an insured depository institution in default or in danger of default, as determined by the appropriate Federal banking agency of the insured depository institution, in consultation with the Board;

(2) An acquisition with respect to which assistance is provided by the Federal Deposit Insurance Corporation under section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)); or

(3) An acquisition that would result in an increase in the liabilities of the financial company that does not exceed $2 billion, when aggregated with all other acquisitions by the financial company made pursuant to this paragraph (a)(3) during the twelve months preceding the date of the acquisition.

(b) [Reserved]

§ 251.5 No evasion.

No financial company may organize or operate its business or structure any acquisition of or merger or consolidation with another company in such a manner that results in evasion of the concentration limit established by section 14 of the Bank Holding Company Act or this part.

§ 251.6 Reporting requirements.

(a) *Reporting of liabilities by financial companies that do not file regulatory reports.* (1) *General.* By March 31 of each year:

(i) A U.S. financial company (other than a U.S. financial company that is required to file the Bank Consolidated Reports of Condition and Income (Call Report), the Consolidated Financial Statements for Holding Companies (FR Y–9C), the Parent Company Only Financial Statements for Small Holding Companies (FR Y–9SP), or the Parent Company Only Financial Statements for Large Holding Companies (FR Y–9LP), or is required to report consolidated total liabilities on the Quarterly Savings and Loan Holding Company Report (FR 2320)) must report to the Board its consolidated liabilities as of the previous calendar year-end calculated pursuant to § 251.3(c); and

(ii) A foreign financial company (other than a foreign financial company that is required to file a FR Y–7) must report to the Board its U.S. liabilities as of the previous calendar year-end calculated pursuant to § 251.3(d).

(2) *Initial reporting period.* For purposes of the report due March 31, 2015, a U.S. financial company and a foreign financial company subject to paragraph (a)(1) of this section must report to the Board its consolidated or U.S. liabilities, respectively, as of December 31, 2013 and December 31, 2014.

(b) *Prior notification of covered acquisitions by financial companies that are not otherwise required to obtain prior approval or prior notice.* (1) A financial company must provide written notification to the Board no later than the earlier of 60 days before consummating a covered acquisition with a company and 10 days after execution of the agreement specifying the terms of the covered acquisition if:

(i) The consolidated liabilities of the resulting financial company would exceed 8 percent of the financial sector liabilities;

(ii) The acquisition would increase the liabilities of the financial company by more than $2 billion, when aggregated with all other covered acquisitions by the financial company during the twelve months preceding the date of the acquisition; and

(iii) The financial company is not otherwise required to obtain prior approval of or provide prior notice to the Board.

(2) The written notification must include a description of the proposed covered acquisition, estimates of the pro forma assets and liabilities of the resulting company upon consummation of the transaction, calculated pursuant to § 251.3, and any other information that the Board determines would be appropriate.

By order of the Board of Governors of the Federal Reserve System, May 8, 2014.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2014–10956 Filed 5–14–14; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0251; Directorate Identifier 2013–NM–179–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A330–200 Freighter, A330–200, A330–300, A340–200, –300, –500, and –600 series airplanes. This proposed AD was prompted by a determination that the service life limits of the cabin pressure control system (CPCS) safety valves installed on the aft pressure bulkhead were being exceeded. This proposed AD would require repetitive replacement of the CPCS safety valves with serviceable valves. We are proposing this AD to prevent exceeding the service life limits of the CPCS safety valves, which, in the event of a failure, could result in excessive positive or negative differential pressure in the fuselage and consequent