(m) The Board concluded that Insurance Company would be ''primarily engaged'' in issuing or distributing shares of Fund within the meaning of section 32 by not later than the time of realization of the aforementioned estimated annual rate of sale, and possibly before. As indicated in Board of Governors v. Agnew, 329 U.S. 441 at 446, the prohibition of the statute applies if the section 32 business involved is a ''substantial'' activity of the company.

(n) This, the Board observed, was not to suggest that officers, directors, or employees of Insurance Company who are also directors of member banks would be likely, as individuals, to use their positions with the banks to further sales of Fund's shares. However, as the Supreme Court pointed out in the Agnew case, section 32 is a ''preventive or prophylactic measure.'' The fact that the individuals involved ''have been scrupulous in their relationships'' to the banks in question ''is immaterial.''

(12 U.S.C. 248(i))

[33 FR 13001, Sept. 14, 1968. Redesignated at 61 FR 57289, Nov. 6, 1996]

§ 250.413 "Bank-eligible" securities activities.

Section 32 of the Glass-Steagall Act (12 U.S.C. 78) prohibits any officer, director, or employee of any corporation or unincorporated association, any partner or employee of any partnership, and any individual, primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities, from serving at the same time as an officer, director, or employee of any member bank of the Federal Reserve System. The Board is of the opinion that to the extent that a company, other entity or person is engaged in securities activities that are expressly authorized for a state member bank under section 16 of the Glass-Steagall Act (12 U.S.C. 24(7), 335), the company, other entity or individual is not engaged in the types of activities described in section 32. In addition, a securities broker who is engaged solely in executing orders for the purchase and sale of securities on behalf of others in the open market is not engaged in the business referred to in section 32.

[Reg. R, 61 FR 57289, Nov. 6, 1996]

PART 251—CONCENTRATION LIMIT (REGULATION XX)

Sec.

251.1 Authority, purpose, and other authorities.
251.2 Definitions.
251.3 Concentration limit.
251.4 Exceptions to the concentration limit.
251.5 No evasion.
251.6 Reporting requirements.

AUTHORITY: 12 U.S.C. 1818, 1844(b), 1852, 3101 *et seq*.

SOURCE: 79 FR 68104, Nov. 14, 2014, unless otherwise noted.

§ 251.1 Authority, purpose, and other authorities.

(a) *Authority*. This part is issued by the Board of Governors of the Federal Reserve System under 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) (February 8, 2011).

(b) *Purpose*. This subpart implements section 14 of the Bank Holding Company Act, which generally prohibits a financial company from merging or consolidating with, acquiring all or substantially all of the assets of, or otherwise acquiring control of, 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, acquiring all or substantially all of the assets of, or otherwise acquiring control of, 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 directly or indirectly merges or consolidates with, acquires all or substantially all of the assets of, or otherwise acquires control of another company. A covered acquisition does not include an acquisition of ownership or control of a company:

(1) 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) In a fiduciary capacity in good faith under applicable fiduciary law if the acquired 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) In connection with *bona fide* underwriting or market-making activities;

(4) 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; and

(5) That is, or will be, an issuer of asset back securities (as defined in Section 3(a) of the Securities and Exchange Act of 1934) so long as the financial company that retains an ownership interest in the company complies with the credit risk retention requirements in the regulations issued pursuant to section 15G of the Securities and Exchange Act of 1934.

(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) *Total risk-based capital ratio* means the ''total capital ratio'' as calculated under the applicable risk-based capital rules.

(o) *Total risk-weighted assets* means the measure of consolidated risk-

weighted assets that a financial company uses to calculate its risk-based capital ratios under the applicable risk-based capital rules.

(p) *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)).

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

(r) *U.S. financial company* means a financial company that is a U.S. company.

(s) *U.S. subsidiary* means any subsidiary, as defined in §225.2(o) of Regulation Y (12 CFR 225.2(o)), that is a U.S. company.

§ 251.3 Concentration limit.

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

(2) *Financial sector liabilities.* (i) Subject to paragraph (a)(2)(ii) of this section, as of 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) For the period beginning July 1, 2015, and ending June 30, 2016, financial sector liabilities are equal to the year-end financial sector liabilities figure as of December 31, 2014.

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

(iv) 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) of this section:

(1) *Covered acquisition by a U.S. company.* For a covered acquisition in which a U.S. company would acquire a U.S. company or a foreign company, liabilities of the resulting U.S. 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) *Covered acquisition by a foreign company of another foreign company.* For a covered acquisition in which a foreign company would acquire another foreign company, liabilities of the resulting foreign 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*) Covered acquisition by a foreign company of a U.S. company.* For a covered acquisition in which a foreign company would acquire a U.S. company, liabilities of the resulting foreign 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) *Liabilities of a U.S. company*—(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; 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.

(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 (other than a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter)), consolidated liabilities are equal to the total liabilities of such company on a consolidated basis, as determined under applicable accounting standards.

(3) *Qualifying community banking organizations.* For a U.S. company that is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), consolidated liabilities are equal to:

(i) Average total consolidated assets (as used in § 217.12 of this chapter) of the company as last reported on the qualifying community banking organization's applicable regulatory filing with the qualifying community banking organization's appropriate Federal banking agency; minus

(ii) The company's tier 1 capital (as defined in § 217.2 of this chapter and calculated in accordance with § 217.12(b) of this chapter).

(d) *Liabilities of a foreign company*—(1) *Foreign banking organization.* For a foreign banking organization, U.S. liabilities are equal to:

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

(ii) The total consolidated liabilities of each 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 consolidated risk-weighted assets of the subsidiary; plus

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

(C) Total consolidated regulatory capital of the subsidiary; plus

(iii) The total consolidated assets of each 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, calculated in accordance with applicable accounting standards.

(2) *Foreign financial company that is not a foreign banking organization.* For a foreign company that is not a foreign banking organization, U.S. liabilities are equal to:

(i) The total consolidated liabilities of each 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 consolidated risk-weighted assets of the subsidiary; plus

(B) The amount of assets that are deducted from the subsidiary'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 subsidiary; plus

(ii) The total consolidated liabilities of each top-tier U.S. subsidiary that is not subject to applicable risk-based capital rules, calculated in accordance with applicable accounting standards.

(3) *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 (d) 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 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 reflected in the measure of liabilities.

(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 (d) by amounts corresponding to intercompany balances and intercompany transactions between the foreign organization's U.S. domiciled affiliates to the extent such items are not already eliminated in consolidation; provided that it increases consolidated liabilities by net intercompany balances and intercompany transactions between a non-U.S. domiciled affiliate and a U.S. domiciled affiliate, to the extent such items are not already reflected in the measure of liabilities.

(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 the company 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.

[79 FR 68104, Nov. 14, 2014, as amended at 84 FR 61802, Nov. 13, 2019]

§ 251.4 Exceptions to the concentration limit.

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

(1) A covered acquisition of an insured depository institution that is 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) A covered 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) A covered 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 projected date of the acquisition.

(b) *Prior written consent*—(1) *General.* Except as provided in paragraph (c) of this section, a financial company must request that the Board provide prior written consent before the financial company consummates a transaction described in paragraph (a) of this section.

(2) *Contents of request.* (i) A request for prior written consent under paragraph (a) of this section must contain:

(A) A description of the covered acquisition;

(B) The projected increase in the company's liabilities resulting from the acquisition;

(C) If the request is made pursuant to paragraph (a)(3) of this section, the projected aggregate increase in the company's liabilities from acquisitions during the twelve months preceding the projected date of the acquisition; and

(D) Any additional information requested by the Board.

(ii) A financial company may satisfy the requirements of this paragraph (b) if:

(A) The proposed transaction otherwise requires approval by, or prior notice to, the Board under the Change in Bank Control Act, Bank Holding Company Act, Home Owners' Loan Act, International Banking Act, or any other applicable statute, and any regulation thereunder; and

(B) The financial company includes the information required in paragraph (b)(2) of this section in the notice or request for prior approval described in paragraph (b)(2)(ii)(A) of this section.

(3) *Procedures for providing written consent.* (i) The Board will act on a request for prior written consent filed under this paragraph (b) within 90 calendar days after the receipt of a complete request, unless that time period

is extended by the Board. To the extent that a proposed transaction otherwise requires approval from, or prior notice to, the Board under another provision of law, the Board will act on that request for prior written consent concurrently with its action on the request for approval or notice.

(ii) In acting on a request under this paragraph (b), the Board will consider whether the consummation of the covered acquisition could pose a threat to financial stability.

(c) *General consent.* The Board grants prior written consent for a covered acquisition that would result in an increase in the liabilities of the financial company that does not exceed $100 million, when aggregated with all other covered acquisitions by the financial company made pursuant to this paragraph (c) during the twelve months preceding the date of the acquisition. A financial company that relies on prior written consent pursuant to this paragraph (c) must provide a notice to the Board within 10 days after consummating the covered acquisition that describes the covered acquisition, the increase in the company's liabilities resulting from the acquisition, and the aggregate increase in the company's liabilities from covered acquisitions during the twelve months preceding the date of the acquisition.

§ 251.5 No evasion.

A financial company may not 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.

By March 31 of each year:

(a) 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 in the manner and form prescribed by the Board; and

(b) 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 in the manner and form prescribed by the Board.

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

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