related companies by the larger registered systems.[34] The proposed alternative limitation of $50 million is intended to benefit the smaller registered systems.[35] The Commission invites specific comment on whether the proposed investment limitations are reasonable under the circumstances. The Commission also requests specific comment as to whether a different measure of financial capacity, such as consolidated retained earnings, should be used for purposes of the rule.[36]

The Commission is not proposing a similar limitation upon acquisitions of securities of a gas-related company. The activities contemplated by the GRAA are *per se* closely related to the core utility business of the gas registered holding companies, and currently represent more than 60% of the consolidated assets of these systems. There is no indication that Congress intended for the Commission to place investment limits on these activities.[37] Even if a limitation were deemed appropriate, it is difficult, as a practical matter, to select a limitation that would fairly take account of the disparities among the gas registered holding companies as to the nature and extent of GRAA-related investments to date.[38] The Commission requests particular comment, however, as to the appropriateness of a limitation in proposed rule 58 upon investments in gas-related companies.

The Commission is aware that the magnitude of the investments proposed to be exempted by rule 58 may cause concerns as to whether these investments, together with other factors affecting the registered holding company system, may have potential adverse effects on the system's utility companies and their customers. Consequently, the Commission seeks comment on whether rule 58 should include additional conditions to take account of other adverse conditions that may be present, and what form such conditions should take. Commenters are invited to address the need for additional conditions to use of the rule 58 exemption based on the financial condition of the registered holding company system, the extent of losses experienced by the system over recent periods, prior bankruptcies of system companies, and any other basis specified by the commenter.

The proposed rule defines the term ''aggregate investment'' to mean all amounts invested or committed to be invested in energy-related companies, for which there is recourse, directly or indirectly, to the registered holding company. The term is intended to have a meaning similar to that given the term in rule 53.[39] Aggregate investment, for purposes of rule 58, would thus include amounts actually invested in an energy-related company, as well as any amounts committed under the terms of subscription agreements or stand-by or other similar capital funding agreements.[40]

In addition, proposed rule 58(c) would require a registered holding company relying upon the rule to file with this Commission and each state commission having jurisdiction over the retail rates of the registered system operating companies a quarterly report disclosing acquisitions pursuant to the rule and certain other information required by proposed Form U–9C–3, discussed further *infra*. The reporting requirements are intended to enable the Commission and the state and local regulatory authorities to monitor energy-related and gas-related investments and activities, including any intrasystem transactions involving the operating companies in registered systems.

The Commission believes it is unnecessary to restrict the extent to which an energy-related company or a gas-related company may serve nonassociate companies.[41] Prior orders of the Commission have not subjected gas-related businesses to any restriction in this regard. In addition, the Commission recently determined that it was appropriate to remove a percentage limitation that had previously been imposed upon the energy management services business of a nonutility subsidiary of a registered holding company.[42] The Commission's decision was based on a number of factors, including evidence of the fundamental changes that the utility industry has undergone in recent years, such that the industry no longer focuses primarily upon the need to meet increased demand through the construction of new generating capacity. Specifically, the Commission noted that energy conservation and demand-side measures are today ''an important complement to the utility business,'' and determined that the energy management services business would further an important national policy, namely, the promotion of energy conservation and efficiency.[43]

On the basis of the Commission's experience to date and its assessment of the significant changes now underway in the energy and energy services industries, the Commission believes that energy-related businesses (as defined in

[34] As an example, the Southern Company's consolidated capitalization was approximately $17.8 billion for the year ended December 31, 1994. Pursuant to proposed rule 58 and the related proposed amendment to rule 45(b), Southern could invest up to $2.7 billion in energy-related companies, excluding existing subsidiaries.

[35] For example, the consolidated capitalization of UNITIL Corporation, at December 31, 1994, was approximately $129.7 million. The proposed percentage limitation would allow UNITIL to invest an amount of up to $19.451 million in energy-related companies, excluding existing subsidiaries.

[36] See, *e.g.*, rule 53, which creates a safe harbor for a financing in connection with investments in exempt wholesale generators if, among other conditions, aggregate investment in exempt wholesale generators and foreign utility companies would not exceed 50% of consolidated retained earnings.

[37] As noted previously, Congress intended that the GRAA, by permitting gas registered holding companies to invest in gas production, transportation, storage, marketing and similar activities, would promote competition in the natural gas markets. The Commission retains jurisdiction over the financing activities of the gas registered holding companies, which finance the operations of their subsidiaries at the parent company level.

[38] With respect to section 2(a) of the GRAA, NFG had invested approximately $292.1 million in gas pipeline transportation and gas storage as of December 31, 1994, whereas Columbia had invested approximately $1.65 billion and CNG approximately $980.6 million. With respect to section 2(b), CNG had invested approximately $876.5 million in exploration and development as of that date, whereas Columbia had invested approximately $373.1 million and NFG approximately $237.5 million.

[39] See Holding Co. Act Release No. 25886 (Sept. 23, 1993), 58 FR 51488 (Oct. 1, 1993). Rule 53(a)(1)(i) (17 CFR 250.53(a)(1)(i)) defines ''aggregate investment'' to mean:

> all amounts invested, or committed to be invested, in exempt wholesale generators and foreign utility companies, for which there is recourse, directly or indirectly, to the registered holding company. Among other things, the term includes, but is not limited to, preliminary development expenses that culminate in the acquisition of an exempt wholesale generator or a foreign utility company; and the fair market value of assets acquired by an exempt wholesale generator or a foreign utility company from a system company (other than an exempt wholesale generator or a foreign utility company).

[40] For purposes of the rule, aggregate investment would not include the portion of a registered holding company's book investment in an energy-related company that is attributable to increases in retained earnings or to indebtedness issued by any such subsidiary with respect to which there is no recourse directly or indirectly to the registered holding company. ''Aggregate investment'' would also not include the amount invested by one energy-related subsidiary company in another such company.

[41] Prior orders of the Commission have sometimes restricted transactions on behalf of nonassociates by imposing conditions to limit, geographically or otherwise, the operations or source of revenues of a nonutility business. See, e.g., Eastern Utilities Associates, Holding Co. Act Release No. 24273 (Dec. 19, 1986) (50% limitation upon energy management service activities outside New England); National Fuel Gas Co., Holding Co. Act Release No. 24381 (May 1, 1987) (50% limitation on gas well and pipeline construction on behalf of nonassociates); CSW Credit, Inc., Holding Co. Act Release No. 25995 (Mar. 2, 1994) (50% limitation on amount of accounts receivable factored for nonassociates).

[42] Eastern Utilities Associates, Holding Co. Act Release No. 26232 (Feb. 15, 1995).

[43] *Id.*