other benchmarks will, of course, depend on whether the purpose of the particular benchmark in question parallels the Commission's objective in identifying ownership interests that confer on their holders the ability to influence the day-to-day operations of a licensee, and commenters should address, in detail, why a particular agency's benchmark may or may not be applicable, by analogy, to our analysis. The Commission is particularly interested in whether the purposes underlying other regulatory benchmarks are comparable to our competition and diversity concerns, and why that agency believed the percentage it selected reflects a substantial enough interest to constitute the level of influence or control that implicates its underlying ownership limitation, and, in particular, whether is analytical methodology would be applicable to our rules.

20. The Commission seeks comment on how to devise rules that are consistent with the administrative concerns expressed in our section devoted to our underlying principles, and that would accommodate the principles as discussed in the full text of his NPRM. Should there be an exemption, similar to the single majority stockholder exemption, for stockholders in firms where management holds some threshold level of stock, on the ground that the inherent control afforded managers would preclude significant influence by other stockholders? Can the Commission's stockholding benchmarks rely on, or take cognizance of, the size of a stockholding relative to others in the firm?

B. Voting Stock: Passive Investors

21. In the Attribution Order, the Commission adopted a 10 percent attribution benchmark for certain institutional investors (bank trust departments, insurance companies, and mutual funds) that we deemed to be 'passive" in nature in order to "increase the investment flexibility of these entities and, in so doing, expand the availability of capital to the broadcast and cable industries without significant risk of attribution errors." The Capital Formation Notice proposed increasing the passive investor benchmark from 10 percent to 20 percent. The commenters who addressed this issue unanimously supported increasing the voting stock attribution level for passive investors, but provided no basis on which to conclude such a change is appropriate. Commenters are invited to delineate what specific assurances we would have that passive investors that hold large stock interests cannot or would not exert influence or control over broadcast

licensees and that raising the benchmark would therefore not exclude from attribution holders of interests that have a significant and realistic potential to influence station operations. Are there common factors, intrinsic to all passive investors, or institutional or other safeguards that could provide such assurance? Moreover, the comments do not, in the Commission's view, dispose of the Commission's concern regarding the impact on corporate decision-making that could result, even unintentionally, by the trading and voting of large blocks of stock of assertedly passive investors. Commenters are asked to address the foundations of the Commission's concern about the possible effect of large stock trades and whether there have, in fact, been any stock transactions of this nature. If so, how substantial have such stock transactions been, and do the costs of the exclusion of such interests from attribution outweigh any potential benefits that might be realized from an increased attribution benchmark?

22. The Commission seeks additional analysis on the degree of increased investment that would likely stem from any adjustment of our rules and on the need for such increased investment. Additionally, the commenting parties did not adequately address the Commission's concerns that any increase in these attribution levels not implicate our concerns about the potential for influence. Finally, if the benchmark for all investors is raised to 10 percent, does that reduce any need there might be to facilitate broadcast investment by increasing the passive investor benchmark?

Several commenters raised a closely related issue not discussed in our Capital Formation Notice. They requested that the Commission further expand the passive investor class to include other institutional investors, such as pension funds, investment and commercial banks, and certain investment advisors. The Commission does not intend to revisit its decision of 1984 in order to broaden the category of passive investors to include such entities. However, commenters are invited to argue why this tentative conclusion is incorrect. Similarly, the Commission is not prepared to expand the category of passive investors to include Small Business Investment Companies ("SBICs") and Specialized Small Business Investment Companies ("SSBICs"), formerly known as Minority **Enterprise Small Business Investment** Companies ("MESBICs"), as proposed in the Capital Formation Notice. The Commission has received no evidence

in the comments made thus far to alter our first conclusion that these entities do not meet our definition of "passive." In the above cited *NPRM* in MM Docket Nos. 94–149 and 92–140, adopted simultaneously with this *NPRM*, the Commission is, however, considering other rule changes to facilitate capital investment and entry by minorities and women without broadening our definition of "passive" investors.

C. Minority Stockholdings in Corporations With a Single Minority Shareholder

24. Minority voting stock interests held in a corporate licensee are not attributable if there is a single majority shareholder of more than 50 percent of the corporate licensee's outstanding voting stock. The Commission invites comment as to whether we should restrict the availability of this exemption. The Commission is concerned that this exemption not be used to evade the multiple ownership limits and that our previous conclusion that a minority stockholder could not exert significant influence on a licensee where there is a single majority stockholder may not be a valid conclusion in all circumstances. For example, if the minority voting stockholder has contributed a significant proportion of the equity, holds 49 percent of the voting stock, and combines that holding with a large proportion of the nonvoting shares or debt financing, would that minority shareholder have the potential to influence the licensee such that the multiple ownership rules would be implicated? The Commission invites comment on how we should approach our concerns in this area. Should the availability of the exemption be restricted? If so, should the Commission do so on a case-by-case basis or restrict it in specified circumstances?

D. Non-Voting Stock

25. Under the Commission's attribution rules, all non-voting stock interests (including most preferred stock classes) are generally nonattributable. The Commission solicits comment on whether to amend the attribution rules to consider nonvoting shares as attributable, at least in certain circumstances. The Commission is concerned, for example, that a nonvoting shareholder who has contributed a large part or all of the equity of a corporate licensee may carry appreciable influence that is not now attributed. If the Commission decides to attribute nonvoting shares, should we do so only where substantial equity holdings are held in combination with