The Board notes, however, that the current limit is expressed as *the lesser of* $25 million or 5 percent of tier 1 capital; the $25 million limit on general consent investments has proved to be the constraining factor, particularly for U.S. banking organizations that would meet the strongly capitalized standard. The Board believes that a general consent limit of 5 percent of tier 1 capital, in the absence of an absolute dollar cap, would be too high even for organizations that are strongly capitalized and well managed because an initial capital investment in, for example, a subsidiary, may be leveraged many times resulting in a potential total exposure far in excess of the initial 5% of capital. The Board has therefore decided to retain the proposed 2 percent limit in the final rule.

In response to a comment seeking clarification that the existing authorization for general consent investments will continue to be available, the Board notes that the expanded authority is parallel authority for making investments by banking organizations that meet the strongly capitalized and well managed standards. As is clear from section 211.5(c)(2)(i)(B) and (C) of Regulation K, however, the limits on investment in any one organization apply on a cumulative basis over time and include investments made under the existing as well as the expanded authority.

Several commenters argued that expanded authority should be available for additional investments in existing subsidiaries. The Board notes that, as indicated in section 211.5(c)(2)(iv)(D) of the final rule, using the expanded authority for making additional investments in existing subsidiaries and joint ventures is permissible under the terms of the final rule, subject to the investment limits and the other investment restrictions.

Aggregate Investment Limit

The proposed rule provided for an overall aggregate investment limit on all investments made during the previous 12-month period under the existing and the expanded authority. Under this limit, all such investments, when aggregated with the proposed investment, may not exceed the lesser of 50 percent of the Edge or agreement corporation's total capital or 5 percent of the parent member bank's total capital, in the case of an Edge or agreement corporation, or 5 percent of its total capital, in the case of a member bank or a bank holding company. A number of commenters supported the Board's position that the aggregate limits apply only to general consent investments and not to investments made pursuant to prior notice or specific consent.

However, one commenter argued that investments made under existing general consent authority should not count toward the aggregate limit because once the aggregate limit is reached, prior notice would be required for small investments representing little risk to the investor. The Board agrees that the additional regulatory burden associated with including investments made under the existing general consent authority in calculating the aggregate limits outweighs any supervisory benefits. Accordingly, the aggregate limit shall apply only to investments made under the expanded general consent authority.

The proposal also provided that, in determining compliance with the aggregate limits and in order to avoid double counting of investments, an investment in a subsidiary shall be counted only once notwithstanding that such subsidiary may, within the next 12 months, downstream all or part of such investment to another subsidiary. Several commenters argued for a longer time period in which to make downstream investments or that no time limit should be imposed. The Board believes the 12 month time limit should be retained as it strikes an appropriate balance between easing regulatory burden and maintaining adequate oversight, given that the condition of a banking organization may change over time. Supervisory views regarding downstreaming investments also may change over time in light of changed circumstances.

One commenter argued that downstream investments should not be subject to the individual investment limits as well as the aggregate investment limits. However, the Board believes that supervisory concerns regarding the need to monitor diversification of investments in view of any changed circumstances relating to the investor means that the limits on investments in one organization should include downstream investments.

Finally, a commenter argued that restructurings (through the contribution of an investment from one affiliate to another) should also be encompassed within the same exclusion as that provided for downstream investments. The Board notes in response to this comment that Regulation K already provides general consent authority for transfers among affiliates at net asset value.

Eligible Investments

The proposal limited the types of investments eligible for the expanded authority, as well as the types of activities that may be conducted by the organization in which the investment is to be made. Ineligible investments included an investor's initial entry into a foreign country, the establishment or acquisition of an initial subsidiary bank in a foreign country, investments in general partnerships or unlimited liability companies, and an acquisition of shares or assets of a corporation that is not an affiliate of the investor. Exclusion of the latter type of acquisition was intended to limit the expanded authority to investments in de novo subsidiaries (including subsequent investments in such subsidiaries) by excluding the acquisition of going concerns.

Commenters requested clarification as to whether additional investments made in existing subsidiaries and joint ventures would be eligible investments under the expanded authority. The final rule authorizes investments in existing subsidiaries and joint ventures, provided they meet the remaining criteria for eligible investments and the criteria for eligible activities.

Several commenters opposed the proposal's exclusion of initial acquisitions of going concerns from the expanded investment authority. However, the Board continues to believe such exclusion is appropriate in light of the potential additional risk associated with such investments. These risks are greater than simply the amount of capital invested, extending also, for example, to the value and quality of the acquired organization's assets. The Board therefore considers that prior notice of such an investment is appropriate.

Several commenters argued that the acquisition or establishment of an initial bank subsidiary in a foreign country should be permissible without prior notice to the Board where the investor already has a branch in that country. The Board believes that such a change may be inconsistent with its responsibility as home country supervisor under the Minimum Standards for Supervision of Internationally Active Banks established by the Basle Supervisors Committee, in those cases where the Board has not previously approved or reviewed the establishment of a significant subsidiary bank in that country. The Minimum Standards contemplate that the home country supervisor should specifically authorize any outward expansion by a bank, both to inform the home country