GE Capital

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Ms. Jennifer J. Johnson
Secretary, Board of Governors
of the Federal Reserve System
20th Street and Constitution Avenue, NW.
Washington, DC 20551

RE: Notice of proposed rulemaking: Definitions of "Predominantly Engaged in Financial Activities" and "Significant" Nonbank Financial Company and Bank Holding Company [RIN 7100-AD64]

Dear Ms. Johnson:

General Electric Company ("GE") appreciates the work of the Board of Governors of the Federal Reserve System (the "Fed") and the other federal financial regulatory agencies to implement the provisions of the Dodd-Frank Act ("DFA") to enhance financial stability. The recent financial crisis underscored the importance of effective and improved financial supervision and elimination of regulatory gaps. As an organization subject to regulation by the Office of Thrift Supervision ("OTS") and the Federal Deposit Insurance Corporation ("FDIC"), and soon to be subject to Fed supervision, GE and its affiliates will continue to work closely with their federal and state supervisors to effect the rules, standards and practices advancing these necessary and important purposes.

Title I of the DFA sets forth a process whereby certain non-bank companies that are "predominantly engaged in financial activities" may be brought within the supervision of the Fed. The definition of "predominantly engaged in financial activities" set forth in section 102 (a)(6) determines which nonbank financial companies ("NBFCs") may be designated by the Financial Stability Oversight Council ("FSOC") as subject to supervision under the DFA Title I. Section 102(a)(6) defines this with express reference to section 4(k) of the BHCA. The proposed rule would add new Subpart N to Regulation Y (the "Proposed Rule").

The touchstone for this rulemaking should be implementing a fundamental policy objective in the DFA that distinguishes between financial and commercial activities. This policy is integral to the entire NBFC structure and is expressly embodied in the provisions of the DFA section 113(c) and section 167(b) that seek to ensure that the Fed's supervisory responsibilities do not extend to commercial activities. The DFA provides that "financial activities" are the activities that are considered financial in nature under section 4(k) of the Bank Holding Company ("BHC") Act (as amended by the Gramm-Leach-Bliley Act) and that are related to the ownership or control of an insured depository institution. The DFA is also clear that this definition excludes not only "nonfinancial" activities, but also other nonbanking activities and services that are referenced in section 4 of the BHC Act, but not encompassed within the terms of section 4(k) (as discussed below). Indeed, any final rule should expressly provide that no revenues "derived from" nonfinancial activities and no assets "related to" nonfinancial activities may be counted for the "predominantly engaged in financial activities" NBFC test.

A. The final rule should be consistent with statutory authority and tailored to incorporate statutory exclusions

Despite the DFA's language that defines "financial activities" to include only those that are financial in nature under section 4(k) <u>and</u> related to the ownership or control of an insured depository institution, the Proposed Rule could be read to expand its scope with the inclusion of the following:

> (d)(2) Effect of other authority. Any activity described in paragraph (d)(1) of this section is considered financial in nature for purposes of this section regardless of whether-- (i) A bank holding company (including a financial holding company or a foreign bank) may be authorized to engage in the activity, or own or control shares of a company engaged in such activity, under any other provisions of the BHC Act or other Federal law including, but not limited to, section 4(a)(2), section 4(c)(5), section 4(c)(6), section 4(c)(7), section 4(c)(9), or section 4(c)(13) of the BHC Act (12 U.S.C. 1843(a)(2), (c)(5), (c)(6), (c)(7), (c)(9), or (c)(13)) and the Board's implementing regulations;[1]

We believe that activities permitted under 4(c)(1) – (4) should not be treated as section 4(k) activities. We also believe that the inclusion of section 4(c)(6)-(7) investments under § 225.301(d)(2) is similarly inappropriate. These provisions are a longstanding statutory exception that allows for equity investments in financial and nonfinancial companies. Equity investments under section 4(c)(6)-(7) are not a distinct "activity" and it would not be consistent with the statutory language of the DFA to include any such investment in the calculation of "predominantly engaged in financial activities."

B. Assets and revenues should be counted toward the 85% test only if they are related to or derived from section 4(k) financial activities

The DFA and the Proposed Rule expressly provide that, for purposes of the 85% test, revenues must be "derived from" section 4(k) financial activities and assets must be "related to" section 4(k)

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[1] §225.301(d)(2)

financial activities. Under this definition, the test is not whether the asset is a financial asset (such as cash or loan receivables) or a non-financial asset (such as plant and equipment), but whether it is "related to" a section 4(k) financial activity. Similarly, revenues must be analyzed to determine if they are "derived by" the company from section 4(k) activities. This is a critical distinction in applying the Definition and we request that the final rule confirm that the following types of revenues or assets are neither derived from, nor related, to a section 4(k) financial activity and therefore not to be included when determining whether a nonbank company is "predominantly engaged in financial activities":

- *Cash, liquidity instruments, corporate treasury assets, and similar holdings.* Cash, liquidity, hedging, or treasury investments and other similar assets held in connection with general corporate operations represent no distinct "activity" of the company, nor are they derived from or related to a section 4(k) financial activity. These types of assets are held by companies in the ordinary course of their corporate functioning and are not part of a "financial activity."

- *Assets or revenues incidental to nonfinancial activities.* Financial assets that are integral to a nonfinancial line of business or activity or generated as an element or a feature of a nonfinancial transaction and necessary for the completion of that transaction are related to a nonfinancial activity. Revenues that result from holding that asset likewise are derived from a nonfinancial activity. These revenues or assets are thus not "financial" for purposes of the DFA section 102(a)(6) and should not be included in the calculations thereunder. For example, sales of nonfinancial products often result in receivables that are recorded as assets on the books of the company. Just as the revenues from the sale itself would not be "derived" from a section 4(k) activity, these resulting receivables should not be treated as assets "relating to" a section 4(k) financial activity.

- *Proceeds from the sale of a nonfinancial subsidiary or securities issuance.* Any cash or other financial assets resulting from the sale of a nonfinancial company or business, or a debt or equity issuance, are not assets "related to" section 4(k) financial activities, and revenues from those assets are not "derived from" section 4(k) financial activities. (Of course, if these proceeds were subsequently used for 4(k) activities then the character of the asset would change, as would future revenues that it generates.)

- *Goodwill and similar intangible assets.* Corporate transactions may result in the inclusion of goodwill or other similar intangible assets on the books of the company. When these assets derive from a nonfinancial transaction, such as the purchase or sale of a nonfinancial company or business, they do not "relate to" a section 4(k) financial activity and should not be treated as a financial asset for purposes of the 85% test.

C. An efficient means for making determinations in a multi-tier company should be used

The final rule should provide that in the case of a multi-tier company, the "predominantly engaged in financial activities" test should be applied first to the ultimate parent, and if that company is found to be less than 85% financial, the calculation should then be made for the company or companies immediately below the parent, and if none of these is 85% financial, to the next lower tier, and so forth. Once the uppermost company in any chain of subsidiaries is determined to be 85% financial then no further calculation should be needed for any subsidiary of that company.

D. Investments should be counted toward the 85% test only if they are related to or derived from a section 4(k) financial activity and no analysis of the activities of the company invested in should be required

We submit that any equity investment in a company that is not a subsidiary and not consolidated by the company ("investor") is not a 4(k) permissible activity *unless* it is made in connection with merchant banking or securities underwriting and dealing. For example, in connection with its operations, GE has made equity investments in companies that are not subsidiaries of GE. These investments were not structured to fall under the merchant banking rules. Therefore, these investments were not made in connection with, and do not relate to, a section 4(k) activity and GE should not be required to conduct an analysis of the assets and revenues of these companies to determine if such non-subsidiaries are predominantly engaged in financial activities. However, as written, Section 301(e) of the Proposed Rule would require a company to conduct an analysis of the assets and revenues of *any* company in which it has a greater than 5% equity interest if the assets and revenues of that company are not consolidated with those of the investor and the investment is not permitted under section 4(k).

If the Fed decides to adopt a standard similar to the one provided in the Proposed Rule, we recommend that the final rule incorporate an objective, publicly available reference for making such determinations, such as SIC-code categorizations. In many cases, it will be impractical for a company that holds a minority investment in another company to obtain the information necessary to determine whether the latter company is "predominantly engaged in financial activities".

The DFA contemplates that a commercial company may own a NBFC that could be supervised by the Fed without subjecting the commercial operations of the company to comprehensive Fed oversight. GE is an example of such a commercial company. It is consistent with the DFA language and intent that GE should not be viewed as being "predominantly engaged in financial activities", despite its ownership of GE Capital, whose predominant focus is financial activities. Thus, we would urge the Fed to craft the regulations implementing Title I carefully to achieve the result that Congress intended.

We appreciate the opportunity to submit this letter.

Respectfully,

David G. Nason