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February 2, 2015

BY EMAIL

Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Ladies and Gentlemen:

Re: Docket No. R-1503: Application of Enhanced Prudential Standards and Reporting Requirements to General Electric Capital Corporation

This letter is submitted on behalf of Business Roundtable, an association of chief executive officers of leading U.S. companies working to promote sound public policy and a thriving U.S. economy. Business Roundtable's CEO members lead U.S. companies with $7.2 trillion in annual revenues and nearly 16 million employees. Business Roundtable member companies comprise more than a quarter of the total value of the U.S. stock market and invest $190 billion annually in research and development—equal to 70 percent of U.S. private R&D spending. Our companies pay more than $230 billion in dividends to shareholders and generate more than $470 billion in sales for small and medium-sized businesses annually. Business Roundtable companies give more than $3 billion a year in combined charitable contributions.

Business Roundtable appreciates the opportunity to comment on the enhanced prudential standards that the Federal Reserve Board is proposing to apply to General Electric Capital Corporation (GECC), a wholly-owned subsidiary of General Electric Company (GE). Business Roundtable has long been at the forefront of efforts to improve corporate governance. We have been issuing "best practices" statements in this area for over three decades, including, most recently, *Principles of Corporate Governance* (2012).

Business Roundtable has serious concerns about the governance provisions in the Federal Reserve Board's (the Board) proposal, which would require GECC's board of directors to include a minimum of two members who are independent of GE and GECC management and independent of GE's board of

directors (the Proposal). In practice, the Proposal would mandate that GECC's board include at least two directors who are not employees of GE or GECC and who are not members of GE's board of directors. We question the Board's authority to adopt such an unprecedented intrusion into a company's corporate governance practices, and as discussed below we believe that in seeking to impose these criteria the Proposal both runs contrary to accepted definitions of director independence and common practices involving subsidiary governance and threatens to undermine longstanding principles of state corporate law.

For the reasons discussed below, Business Roundtable strongly urges the Board to amend the Proposal consistent with current practice and the sound principles of corporate governance and law that underlie them.

I. Accepted Definitions of Director Independence and Common Practice

The Proposal runs contrary to accepted definitions of director independence adopted by the New York Stock Exchange (NYSE) and the Securities and Exchange Commission (SEC) and common practices involving subsidiary governance. The Proposal does not articulate a specific definition of "independence" for directors. However, under the Proposal, independent members of GE's board of directors would not qualify as independent, and could not serve as independent members of the GECC board, solely because of their service on the GE board.

The commonly accepted definition of "independence" for directors, as reflected in the NYSE listing standards, which were approved by the SEC, recognizes that in assessing independence, "the concern is independence from management."[1] Therefore, serving on the board of GECC's parent company should not bar a GECC director from being considered independent. Yet, the Proposal would impose a new standard, contrary to existing practice and reason. Similarly, the Proposal also reflects a lack of awareness about customary practice at public companies, where it is common for parent company independent directors to serve on the boards of subsidiaries. Rules adopted by other federal agencies recognize this practice. For example, when the SEC adopted heightened independence rules for audit committee members under the Sarbanes-Oxley Act of 2002, the SEC specifically addressed, and permitted, situations where parent company audit committee members also were serving on the boards of subsidiaries.[2] Under the SEC's rules, an audit committee member who sits on the board of directors of both a parent company and its subsidiary is considered independent (as long as that person otherwise meets the requirements for independence).[3] In short, the SEC recognizes that dual board service, by itself, does not preclude independence. By way of contrast, the Proposal would treat members of GE's board of directors as non-independent and bar them from serving as independent

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1 New York Stock Exchange Rule 303A.02(a)(ii) (Commentary).

2 *See Standards Relating to Listed Company Audit Committees*, SEC Release Nos. 33-8220; 34-47654 § II.A.5 (Apr. 10, 2003).

3 *See* Securities Exchange Act of 1934, Rule 10A-3(b)(1)(iv)(B).

directors on GECC's board. Such an outcome is inconsistent with common practice and the findings of the SEC and NYSE.

II. State Corporate Law

By seeking to regulate the composition of GECC's board of directors, the Proposal also threatens to undermine well-established principles of state corporate law. Historically, state corporations statutes have been the primary source of corporate law establishing and facilitating organizing principles in the area of corporate governance. State corporate law is often described as "enabling" because it generally gives corporations flexibility to structure their operations in a manner appropriate to the conduct of their business. By its very nature, state corporate law permits shareholders and companies to adopt individualized approaches to corporate governance.

The Proposal is fundamentally inconsistent with the practice of addressing corporate governance matters primarily at the state level through private ordering by shareholders, boards and companies acting within the framework established by state corporate law. At GE, a determination was made that the Risk Committee of GE's board of directors should provide direct oversight of GECC's enterprise risks, and the charter of the Risk Committee explicitly states that the committee's role "includes the independent oversight of" GECC. The Proposal would preclude the independent members of the GE Risk Committee from also serving as independent members of the GECC board, and thereby prevent GECC and GE, its sole shareholder, from structuring GECC's board of directors in the manner that they deem to be most appropriate and effective. As with many other aspects of corporate governance, in the area of subsidiary governance, experts have observed that "[t]here is no 'one size fits all' superior system." Instead, "[t]he right system depends on a company's strategies, operations, and culture. The best systems are nimble and will evolve as a company grows and changes."[4]

By prescribing rules in an area that is the province of state corporate law, the Proposal also creates the potential for further federal intrusion into matters of corporate governance. In recent years, there has been a growing trend of increasing federalization of corporate governance matters, as evidenced by the Sarbanes-Oxley Act of 2002 and the Dodd-Frank Wall Street Reform and Consumer Protection Act. With limited exceptions, these statutes apply only to companies that have public shareholders. The Proposal goes one step further by drilling down beyond the public company parent level and seeking to regulate the corporate governance of a wholly-owned subsidiary. This sets a dangerous precedent that could erode the corporate governance practices of public companies and their subsidiaries through regulation by federal agencies that do not have deep expertise in this area.

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[4] Thomas J. Sabatino & Susan Ellen Wolf, *Subsidiary Governance: What It Is, Why It Matters and How to Build a Good System*, The Corporate Governance Advisor 5, at 5 (Vol. 18, No. 3, May/June 2010).

Finally, the Proposal is premised on a misconception that there are "potential conflict [sic] of interests in the relationship between GE and GECC." According to the Proposal, the presence of "independent/independent" directors on the GECC board of directors is necessary so that these directors can focus on "the business operations and safety and soundness of GECC itself, apart from the needs of its parent GE." However, under Delaware law (GECC's state of incorporation), the board of directors of a wholly-owned subsidiary has an obligation to oversee the subsidiary's operations in the best interests of the parent company and the parent company's shareholders. Likewise, the board of directors of a parent company—in this case GE—is responsible for overseeing the operations of the company—including the company's subsidiaries—on behalf of the company's shareholders. As noted in our *Principles of Corporate Governance* (2012), a set of guiding principles intended to assist corporate boards of directors and management in their individual efforts to implement best practices of corporate governance, "[t]he business of a corporation is managed under the oversight of the corporation's board." This means that the board of directors oversees the entire corporation, including—in the case of a parent corporation—the operations of subsidiaries.

Thank you for considering our comments. Please do not hesitate to contact Michael J. Ryan, Jr. of the Business Roundtable at (202) 496-3275 if we can provide further information.

Sincerely,

John A. Hayes
Chairman, President and Chief Executive Officer
Ball Corporation
Chair, Corporate Governance Committee
Business Roundtable

JH/mr