



CENTER FOR CAPITAL MARKETS
C O M P E T I T I V E N E S S

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February 2, 2015

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

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

Dear Mr. deV. Frierson:

The U.S. Chamber of Commerce¹ (“Chamber”) created the Center for Capital Markets Competitiveness (“CCMC”) to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. We appreciate the opportunity to comment on ***Application of Enhanced Prudential Standards and Reporting Requirements to General Electric Capital Corporation*** (“proposal”) published in the Federal Register on December 3, 2014.

The CCMC appreciates this first step in developing enhanced prudential regulations for systemically important non-bank financial firms. However, the CCMC has serious concerns regarding the proposal:

1. The proposal is not sufficiently tailored to meet the business model of General Electric Capital Corporation (“GECC”);
2. The proposal will adversely impact Main Street businesses, thereby harming capital formation and competition;

¹ The Chamber is the world’s largest business federation representing the interests of over three million companies of every size, sector and region. The Chamber represents a broad number of financial and non-financial businesses that may be subject to the systemic risk designation process and enhanced regulation.

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3. The proposal fails to include an economic analysis as required under the Riegle Community Development and Regulatory Improvement Act of 1994 (“Riegle Act”);
4. The proposal will require corporate governance structures that conflict with existing federal and state legal requirements and may not meet the needs of investors; and
5. The proposal will impose bank style capital and liquidity requirements that do not fit the business model causing harm to GECC.

Our concerns are discussed in greater detail below.

Discussion

Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) creates the mechanism for the Financial Stability Oversight Council (“FSOC”) to identify and designate banks and non-bank financial companies as Systemically Important Financial Institutions (“SIFIs”) for enhanced prudential regulation by the Board of Governors of the Federal Reserve System (“Federal Reserve”).² The purpose of enhanced prudential regulations of SIFIs, as authorized under Section 165 of the Dodd-Frank Act, is to avert or minimize the risks to the financial stability of the United States in the event of a failure of a SIFI. On July 8, 2013, FSOC determined that GECC should be subjected to enhanced prudential standards and designated it as a SIFI. GECC is currently the only non-bank non-insurance company to have such a designation.³ Consequently, General Electric (“GE”) is the first and only industrial and consumer products company to have a subsidiary designated as a SIFI.

² The CCMC has filed extensive comments with the Treasury Department, Federal Reserve and other banking regulators on proposal to implement Title I. These include comment letters of November 5, 2010, March 30, 2011, May 25, 2012, August 6, 2012 and January 15, 2015. Additionally, the CCMC has also proposed a set of FSOC reforms to improve the SIFI designation and regulatory process. The FSOC reform agenda and the referenced comment letters can be found at http://www.centerforcapitalmarkets.com/wp-content/uploads/2013/08/2013_Financial-Stability-Oversight-Council-Reform-Agenda.pdf

³ On July 31, 2014, FSOC determined not to rescind the determination. It should also be noted that FSOC is currently considering procedural changes to the determination and reevaluation processes with a vote expected in February, 2015.

While Section 165 prudential regulations were promulgated for banks automatically designated as SIFIs, the proposal is the first set of Section 165 prudential standards for a non-bank SIFI. Accordingly, we believe that the proposal must be narrowly tailored to fit the unique business model of GECC, as a non-bank non-insurance company, without causing unforeseen adverse consequences for its parent, customers, or the broader economy. As a rule of first impression, we believe that this approach is necessary as the proposal may become the template for other non-bank SIFI Section 165 rulemakings.

I. The proposal is not sufficiently tailored to meet the business model of GECC.

The proposal states:

The Board has thoroughly assessed the business model, capital structure, risk profile and systemic footprint of GECC and has considered the factors set forth in sections 165 (a) (2) and 165 (b) (3) of the Dodd-frank Act in proposing the enhanced prudential standards that would apply to GECC. This assessment indicates that GECC's activities and risk profile are similar to those of large bank holding companies, and that enhanced prudential standards similar to those that apply to large bank holding companies would be appropriate.⁴

The proposal therefore treats GECC as comparable to a large bank holding company ("BHC"), rather than a financing arm for industrial and consumer products. The CCMC disagrees with this assessment and believes that the proposal, as a result, is seriously flawed.

GECC is a wholly-owned subsidiary of GE which produces industrial and defense products, machinery, consumer goods, and energy products as well as various other goods and services. The services provided by GECC range from consumer lending to commercial leasing and financing of products produced by GE. While its balance sheet may resemble a BHC, GECC is not a large depository institution.

⁴ Federal Register, Volume 79, No. 232, Wednesday December 3, 2014, Page 71770.

The activities, aims, and risk profile of a financing arm are inherently different from a BHC and as a wholly-owned subsidiary of an industrial, consumer, and services conglomerate, GECC has a different management structure and consumer base. BHC-tailored prudential standards are a gross mismatch when applied to an industrial/consumer financing arm that is a subsidiary of an industrial/consumer products/services company. This mismatch can create ripples of adverse and unforeseen consequences for GECC, the GE parent, and their customers—business and consumer alike. Each of those stakeholder interests must be addressed in tailoring section 165 prudential standards for GECC, particularly the unique services GECC provides for its parent and the broader business community.

II. The proposal will adversely impact Main Street businesses harming capital formation and competition.

The Federal Reserve must take into account the impact the proposal will have upon liquidity and capital formation for Main Street businesses. Financial institutions provide capital and liquidity to businesses and serve as a conduit to match investors and lenders with entities that need funding. While GECC does provide these services, it also provides financing for businesses and consumers to purchase products—ranging from household appliances to aircraft engines to industrial machinery—from GE.

As discussed earlier, GECC is not a bank, but rather a financing arm that Main Street businesses use to purchase critical infrastructure, supplies, and services. Therefore, how the proposal affects the ability of GECC to lend and extend credit will have a direct impact on the ability of Main Street businesses to access the resources and products needed to operate and expand, likely stunting job and economic growth. In studying the proposal, it appears the Federal Reserve is not taking these down-stream effects on Main Street businesses and broader economic impacts into account.

In short, the Federal Reserve should consider the effects of the proposal upon all of the customers, particularly Main Street businesses of GECC.

As will be discussed below, these effects on Main Street businesses, particularly small businesses require further analysis and public commentary before the proposal can be finalized.

III. The proposal fails to include a Riegle Act mandated economic analysis.

Along with our many substantive concerns, the CCMC is concerned with the process associated with the proposal. Specifically, we note that the proposal could have wide ranging economic impacts and that the proposal failed to provide a cost-benefit analysis. Without a cost-benefit analysis, the proposal does not provide commenters with information to understand the economic impacts of the rules and standards under consideration. These procedural irregularities impaired the ability of commenters to provide the regulators with informed comments on the proposed leverage ratio rules. We write today to further explain these procedural concerns associated with the absence of an economic analysis in the proposal.

The proposal also lacks any analysis that fulfills the Federal Reserve's statutory obligations under the Riegle Act. This law applies to all "Federal banking agencies" defined by cross-reference in Section 4801 of the Riegle Act (12 U.S.C. §1813) to include the OCC, FDIC and Federal Reserve. The Riegle Act mandates that "[i]n determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency shall consider, consistent with the principles of safety and soundness and the public interest (1) any administrative burdens that such regulations would place on depository institutions, including small depository institutions and customers of depository institutions; and (2) the benefits of such regulations."

The Federal banking agencies covered by the Riegle Act must meet these commitments whether or not they are raised by commenters in the course of a rulemaking because they are statutory requirements for their exercise of rulemaking authority imposing "additional reporting, disclosure, or other requirements on insured depository institutions." Even though GECC is not structured as a BHC, it does own a depository institution and the proposal therefore imposes additional obligations on insured depository institutions for purposes of the Riegle Act. As an organization representing both depository institutions and their customers, the CCMC has an interest in ensuring that regulators honor their obligations under the Riegle Act. We note that these requirements also apply to many other regulations associated with implementation of the Dodd-Frank Act by the Federal Reserve and other Federal banking agencies, and not just the proposal cited in this letter.

To date, however, we have not seen the required analysis for the proposal and respectfully request that a Riegle Act analysis be submitted for comment. Additionally, the CCMC believes that the proposal is economically significant rulemaking, especially when consideration is given to the proposal's impact on Main Street businesses as discussed above. Thus, the proposal requires enhanced analysis in order to meet various statutory requirements.⁵ The CCMC respectfully requests that the Federal Reserve declare this rulemaking to be economically significant and submit for comment enhanced analysis to reflect this fact.⁶

IV. The proposal conflicts with existing federal and state corporate governance requirements and may impair the functioning of GECC's board.

Corporate governance in the United States is administered through a dual system. This encompasses organic and structural mandates, as required through the state incorporation laws which a corporation is organized under, as well as the legal requirements, normally disclosure based, as imposed under federal securities laws, administered by the Securities and Exchange Commission ("SEC"). Within this legal framework, directors, management, and investors decide the governance structures best suited for the unique needs of a business. This tripartite arrangement creates different governance systems best suited for a corporation.⁷

⁵ The Regulatory Flexibility Act, 5 U.S.C. 603 (c).

⁶ The Federal Reserve, as recently as October 24, 2011, wrote a letter to the Government Accountability Office acknowledging the need to engage in a cost-benefit analysis and how the Federal Reserve's use of such an analysis, since 1979, has mirrored the provisions of regulatory reform as articulated in Executive Order 13563. *See*, Board of Governors of the Federal Reserve System, Statement of Policy Regarding Expanded Rulemaking procedures, 44 Fed. Reg. 3957 (1979) and letter from Scott Alvarez, General Counsel of the Federal Reserve, to Nicole Clowers, Director of Financial Markets and Community Investment of the General Accountability Office.

⁷ In a February 6, 2009 letter to Treasury Secretary Timothy Geithner, the Chamber outlined its principles for corporate governance. Those principles include:

- Corporate governance policies must promote long-term shareholder value and profitability but should not constrain reasonable risk-taking and innovation.
- Long-term strategic planning should be the foundation of managerial decision-making.
- Corporate executives' compensation should be premised on a balance of individual accomplishment, corporate performance, adherence to risk management and compliance with laws and regulations, with a focus on shareholder value.
- Management needs to be robust and transparent in communicating with shareholders.

The CCMC is concerned that the proposal conflicts with legal mandates required by state corporate law and the SEC. Such conflict can harm investor protection and impair the ability of investors to appropriately make decisions thereby harming capital formation. By overlaying requirements that conflict with existing duties, the ability of directors and management to engage in sound risk management for GECC is hampered.

It should be noted that GE has already established a risk committee. However, the governance changes as outlined in the proposal are tailored for a BHC, not a financing arm or an industrial/consumer products/services firm. It also appears that the Federal Reserve has not consulted with the SEC or the appropriate state governmental entities that oversee the incorporation of GECC and its corporate parent. We are concerned that the Federal Reserve is operating in an area outside of its expertise. Similarly, the proposal may make it more difficult for the Board of Directors to manage GECC, thereby exacerbating risk.

The proposal also lacks any discussion or examination of the governance structures mandate by the Sarbanes-Oxley Act of 2002 ("SOX"), the by-laws of GECC or the configurations required by the relevant state incorporation laws. The Federal Reserve has therefore failed to demonstrate why changes in governance are needed, how to resolve competing legal requirements and how its proposed changes will improve the governance of GECC and GE.

V. The proposal will impose bank style capital and liquidity requirements causing a mismatch with the GECC business model.

The proposal, in treating GECC as a large BHC, imposes bank capital and liquidity standards upon GECC. We believe the Federal Reserve is wrong to do so. As discussed earlier, GECC is a financing arm of a non-financial company and does not fit the BHC model.

As a financing arm, the activities—capital, liquidity and risk tolerances of GECC—are inherently different from a BHC. As a non-bank financial company that is not a large depository institution, it is illogical to impose capital and liquidity standards for banks that are large depository institutions.

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The failure to tailor the section 165 rules to meet the needs of the business model will be compounded by imposing capital and liquidity standards that do not fit GECC. The Federal Reserve and Congress recognized the perils of such a mismatch if bank standards were imposed upon insurance companies and we believe it is incumbent on the Federal Reserve to take similar prudent measures to tailor capital and liquidity standards to meet the needs and risks of an industrial and consumer product financing arm.

Conclusion

Thank you again for the opportunity to comment on the proposal. The CCMC believes that the proposal in its current form is flawed because it is not appropriately tailored to fit the business model of GECC. These flaws are centered on the failure of the Federal Reserve to perform an economic analysis as required under the Riegle Act to identify impacts on the economic and potentially harmful consequences of the proposal and fails to take into account the impacts of the proposal upon Main Street businesses and the customers of GE who use GECC as a financing arm. Furthermore, the Federal Reserve does not make the case for governance changes or attempt to reconcile legal conflicts between the proposal and existing corporate governance mandates. Finally, the proposal imposes bank capital and liquidity standards that are a mismatch for the GECC model.

Accordingly, the CCMC believes that these are serious problems that must be resolved before the proposal can progress any further. We are happy to discuss these issues in greater detail at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'TK' with a flourish extending to the right.

Tom Quadman