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Via Electronic Mail

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket No. 1438/RIN: 7100 AD 86

Re: Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies Under Sections 165 and 166 of the Dodd-Frank Act

Ladies and Gentlemen:

General Electric Company ("GE") and General Electric Capital Corporation ("GECC") appreciate the opportunity to comment on the proposed rule (the "Proposed Rule") included in the notice of proposed rulemaking issued on January 5, 2012, by the Board of Governors of the Federal Reserve System (the "Federal Reserve"), in order to implement Sections 165 ("Section 165") and 166 ("Section 166") of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank").[1] Section 165 requires enhanced prudential standards for certain companies, and Section 166 establishes early remediation requirements.

Section 165 of Dodd-Frank authorizes the Federal Reserve, in implementing its requirements, to differentiate among companies on an individual basis or by category, taking a variety of factors into account, including capital structure, riskiness, complexity, financial activities and size.[2] The preamble to the Proposed Rule (the "Preamble") also indicates that the Federal Reserve has the flexibility to tailor the application of the enhanced prudential standards to specific companies or categories of companies.[3] We believe that it is essential that the Federal Reserve take into account the differences among the companies covered by Section 165 and that the implementing regulations provide the flexibility necessary to accommodate these differences. We are concerned, however, that the Proposed Rule appears to have been written with a focus on extending

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1 Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies, 77 Fed. Reg. 594 (proposed Jan. 5, 2012) (to be codified at 12 C.F.R. pt. 252) [hereinafter Proposed Rule].

2 12 U.S.C. § 5365.

3 Proposed Rule, *supra* note 1, at 596-97.

existing regulations applicable to bank holding companies ("BHCs") without adequate consideration of the implications of how such a rule would affect nonbank covered companies,[4] including GECC, should they become subject to it.

GECC and GE each is a grandfathered unitary SLHC that historically was supervised by the Office of Thrift Supervision. On July 21, 2011, prudential supervision of all SLHCs, including GE and GECC, shifted to the Federal Reserve. The standards in the Proposed Rule are, in a large part, enhancements to the standards that the Federal Reserve traditionally has applied to BHCs. However, because GECC has not previously been subject to the same set of standards that have applied to complex BHCs, many of the "enhancements" in the Proposed Rule (*e.g.*, capital and liquidity and reporting requirements) simply are new requirements for GECC.

We acknowledge that it is difficult to draft one rule that adequately accounts for the many different business models, capital structures, risk profiles, complexities, financial activities and sizes of the various companies that could be covered by Sections 165 and 166. Indeed, the Federal Reserve essentially acknowledged this issue when it excluded foreign banking organizations ("FBOs") from the scope of the Proposed Rule.

FBOs with U.S. operations traditionally have been subject to the Bank Holding Company Act of 1956 (the "BHC Act"). Nonetheless, the Federal Reserve deferred to a separate proposal rulemaking concerning the application of Sections 165 and 166 to FBOs.[5] GECC, on the other hand, has never been subject to the BHC Act, making us much less like BHCs than FBOs. Thus, we believe that the same logic that supports deferring rulemaking for FBOs applies to NBFIs, including GECC. Accordingly, because we believe that the Proposed Rule in many cases simply does not contemplate the unique business activities of SLHCs like GECC, we suggest that that the Federal Reserve exclude NBFIs entirely from this round of rulemaking and instead propose a supplemental 165 and 166 rule for NBFIs, as it intends to do for FBOs.

If the Federal Reserve adopts the Proposed Rule for NBFIs, in keeping with the statutory authority granted to the Federal Reserve, as well as its own stated intent, the Federal Reserve should be mindful that all NBFIs that were not historically subject to Federal Reserve supervision, including GECC, may need specific relief in the final rule. Thus, alternatively, the Federal Reserve should provide specific exemptions from or express relief specific to the substantive requirements of the Proposed Rule for NBFIs. In addition, in a number of cases it will be necessary to provide NBFIs, like GECC, with more time than BHCs to comply with the Proposed Rule's requirements.

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[4] A nonbank covered company means "any company ... that the [FSOC] has determined under Section 113 of [Dodd-Frank] shall be supervised by the [Federal Reserve] and for which such determination is still in effect." Proposed Rule, *supra* note 1, at 645, § 252.12(f). A savings and loan holding company ("SLHC") could be designated as such under Section 113. We refer to SLHCs and other nonbank covered companies in this letter as "NBFIs".

[5] Proposed Rule, *supra* note 1, at 597-98.

One of our greatest concerns are the single counterparty credit limits ("SCCL") included in the Proposed Rule that are contrary to Congressional intent and potentially curtail liquidity in the market. We provide more detail below.

I. Risk-Based Capital Requirements and Leverage Limits

The Preamble notes that the Federal Reserve is in the process of developing separate capital rules for SLHCs. In deciding to develop a separate set of capital rules for SLHCs, the Federal Reserve acknowledges that a separate set of rules for companies engaged in non-financial activities is necessary, and that it is not yet ready to propose such rules. However, the Federal Reserve takes a contrary approach in the Proposed Rule and instead applies BHC capital treatment under its Regulation Y to all covered companies, including SLHCs and other NBFIs. [6]

We support the Federal Reserve's view that enhanced capital requirements for NBFIs, including capital plans and stress tests, are necessary and believe they will help promote safety and soundness. We do not, however, agree that a blanket application of the capital standards developed for BHCs should be applied to NBFIs regardless of their existing charter. As a grandfathered SLHC, GECC is allowed to conduct a more diverse set of activities than a BHC. Congress recognized this important distinction in Dodd-Frank when it required the Federal Reserve to take into account the differences among NBFIs and BHCs, including the non-financial activities of the company, when prescribing enhanced prudential standards. We believe that the Proposed Rule fails adequately to take this requirement into account by applying blanket Regulation Y capital requirements to all NBFIs regardless of their charter or existing business activities. Instead, the Federal Reserve should, as part of a separate rulemaking, tailor its application of the capital and leverage requirements to the specific structure, activity mix, and predominant line of business of the particular NBFI.

Section 252.11 of the Proposed Rule provides that nonbank companies will be required to comply with the risk-based capital requirements and leverage limits beginning 180 days after designation by the FSOC.[7] This timeline is too short for NBFIs that will be implementing risk-based capital requirements for the first time. We believe that the requirements for NBFIs should be phased in over a longer period of time than for BHCs, and that, at a minimum, NBFIs should have at least eight quarters from the date of designation to comply with the Proposed Rule's capital requirements.

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[6] Section 252.13(b) of the Proposed Rule requires nonbank covered companies to (1) calculate minimum risk-based and leverage capital requirements as if they were BHCs; (2) hold capital sufficient to meet certain minimum tier 1 risk-based and total risk-based capital and leverage ratios; and (3) comply with Federal Reserve regulations applicable to BHCs with respect to capital plans and stress tests. Section 252.14 of the Proposed Rule requires reporting of these measurements by NBFIs to the Federal Reserve.

[7] Proposed Rule, *supra* note 1, at 644-45.

II. Liquidity Requirements

We support the Federal Reserve's efforts to improve the management and measurement of liquidity risk. We also support the Federal Reserve's incremental, two-stage approach to regulating liquidity risk, which provides both regulators and the industry with time to assess liquidity risk profiles that may vary among institutions and the impact of applying specific quantitative standards to specific institutions.[8] In our view, however, the Federal Reserve should extend this approach to liquidity regulation further by (A) harmonizing certain requirements related to the quantitative aspects of the Proposed Rule with those of the Basel III Liquidity Standards[9] and (B) fostering an approach that centers on qualitative aspects of the proposed liquidity regulations, such as the governance and monitoring requirements.

A. Alignment with the Basel III Liquidity Standards

While we appreciate the Federal Reserve modeling the quantitative aspect of its proposed liquidity requirements along the lines of Basel III's "rigorous" Liquidity Standards, we encourage more alignment on additional elements:

- First, the Federal Reserve should clarify that, consistent with the Basel III Liquidity Coverage Ratio ("LCR") calculation, projected funding needs may be determined by including contractual cash inflows from receivables that are expected to perform under stress (subject to certain adjustments for credit and market risk) for the purposes of the 30-day stress test in Section 252.56(b)(4).[10] This clarification would result in consistency with the requirements in Section 252.57 that the liquidity buffer be sufficient to meet projected *net* cash outflows. Similarly, other highly liquid instruments with contractual tenors within the 30-day window (*e.g.*, certificates of deposit and other time deposits with highly-rated institutions) should also be explicitly included.

- Second, the set of highly liquid assets as defined in Section 252.51 that is eligible for inclusion in the liquidity buffer should include assets that would be acceptable under the Basel III LCR calculation. In addition to those listed in Proposed Rule Sections 252.51(g)(1) and (2), assets that can be demonstrated to be of low credit and market risk, actively traded in observable liquid markets in large volumes and have exhibited stable performance historically in times of market distress should be explicitly included in Proposed Rule Section 252.51(g). These include (A) non-U.S. sovereign securities issued in domestic currencies by the sovereign or central bank in the country in which the liquidity risk is being taken or in the

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8 Proposed Rule, *supra* note 1, at 604.

9 Basel Committee on Banking Supervision, *Basel III: International Framework for Liquidity Risk Measurement, Standards and Monitoring* (December 2010) *available at* http://www.bis.org/publ/bcbs188.htm.

10 Basel Committee on Banking Supervision, *supra* note 9, at 12.

> covered company's home country, (B) domestic sovereign or central bank debt securities issued in foreign currencies, to the extent that holding these matches the currency needs of the covered company's operations in that jurisdiction, and (C) securities of supranational organizations, such as obligations of the Bank for International Settlements, the International Monetary Fund, the European Commission or multilateral development banks.[11]

These additional categories of qualifying assets would enable further diversification of credit exposure across counterparties, geographic markets and instrument types, a feature of particular importance in light of the possible imposition of counterparty concentration credit limits under Subpart D, including exposures to non-U.S. sovereign states. A narrow pool of assets that would qualify as highly liquid for the liquidity buffer could result in much higher concentrations of exposure to particular counterparties, especially in times of market stress. Highly prescriptive requirements that constrain the composition of the liquidity buffer may well exacerbate the systemic effects of stress by rendering each covered company vulnerable to the same market shocks.

In addition, GECC would discourage the Federal Reserve from adopting a short-term debt limit via regulation instead of relying on prudential supervision. In light of the other prudential measures that the Proposed Rule would implement—including short-term reporting and analytics, stress tests at various intervals, and counterparty credit concentration limits—such short-term debt limits would serve no useful purpose.

B. Qualitative approaches to liquidity regulation

The qualitative approach for liquidity risk management in the Proposed Rule is the right one. In particular, permitting "management's reasoned assumptions" in determining cash flows sensibly draws upon the experience of management and will lead to more effective regulation. We are concerned that some aspects of the Proposed Rule appear to infringe on management's role, subject to oversight.

In addition, Section 252.56(c)(3) of the Proposed Rule would require covered companies to maintain management information systems ("MIS") and data processes that will enable them to collect data useful for various liquidity risk management purposes. Entities like us have not previously been required to submit liquidity reports to the Federal Reserve so this will require MIS changes and new infrastructure. Therefore, suitable transition times are important. NBFIs, such as GECC, should be given at least eight fiscal quarters to develop the necessary infrastructure, and regulators should have sufficient latitude to extend this baseline in response to a company's specific liquidity risks. Subsequently, supervisors and management should be provided discretion to determine an appropriate phased-in approach to systems compliance in the event that eight fiscal quarters are not a sufficient amount of time.

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[11] Basel Committee on Banking Supervision, *supra* note 9, at 8-10 (definition of liquid assets); Basel Committee on Banking Supervision, *Basel III Framework for Liquidity – Frequently Asked Questions,* 8-9 (July 2011), *available at* http://www.bis.org/publ/bcbs199.pdf.

Moreover, the burdens of implementing very short-term supervisory reporting requirements in the Proposed Rule—such as updating short-term cash flow projections daily under Section 252.55, the overnight stress tests in Section 252.56(b)(1) and the intraday monitoring requirements of Section 252.60(a)—outweigh the benefits of these provisions. GECC is not engaged in significant payment, settlement, and clearing activities on behalf of customers in the marketplace that warrant enterprise-wide intraday monitoring, as discussed in Section 252.60(c). We do not engage in activities typically considered as proprietary trading or securities market-making, and our business activities result in significantly more predictable funding needs than a BHC with significant capital markets activity. In addition, GECC typically manages characteristics of its debt to match the assets it funds (*i.e.*, term, interest rate and foreign exchange risk), minimizing short-term fluctuations that might otherwise warrant very short-term supervisory reporting. Under such circumstances, supervisors should have discretion to provide appropriate exemptions to GECC and similarly situated companies.

III. Single Counterparty Credit Limits

Concentration limits are an important part of the effort to reduce risk in the financial system and the interconnectedness of large financial institutions throughout the world. The single counterparty credit limits ("SCCLs") in the Proposed Rule, however, do not sufficiently take into account the differences among various covered companies, their counterparties, and the types of transactions in which they engage. The Proposed Rule's approach is particularly strict with respect to NBFIs. Changes to the substantive requirements of the Proposed Rule are necessary to avoid the unintended consequence of reducing liquidity in the financial system, and additional time should be provided for NBFIs to comply with its requirements.

First, we encourage the Federal Reserve to abandon the heightened SCCL of 10% for major covered companies that is described in Section 252.93(b) of the Proposed Rule. Section 165(e) of Dodd-Frank requires the Federal Reserve to impose only a 25% SCCL. It authorizes the Federal Reserve to require a lower limit only if the Federal Reserve determines that the lower limit is necessary to mitigate risks to the financial stability of the United States. The justification for the adoption of a 10% SCCL is not articulated or clear.

If, however, the Federal Reserve nevertheless decides to adopt a heightened SCCL between major covered companies, it should then adopt a consistent method for determining which companies will be subject to this heightened SCCL. The definition of "major covered company" in Section 252.92(aa) of the Proposed Rule currently includes all NBFIs. This is the case even though the definition includes only those BHCs that have at least $500 billion in consolidated assets. As a result, the 10% limitation set forth in Section 252.93 would apply to all NBFIs notwithstanding the differences among such companies and the fact that such companies do not necessarily pose as much risk as BHCs with at least $500 billion in consolidated assets. The Preamble does not explain the reason for treating NBFIs differently for purposes of the heightened SCCL and it is

not clear to us why it is justified. At the very least, a comparable threshold of $500 billion should apply to NBFIs, as it does to BHCs.

Moreover, the Federal Reserve should measure any $500 billion threshold applicable to NBFIs based on risk-weighted consolidated assets. The SCCLs are intended to limit high concentrations of risk. In numerous other provisions in this subpart of the Proposed Rule, adjustments are made to the valuation or measurement of various positions in order to account for risk.[12] The threshold for determining which limit applies should also adopt a risk-adjusted approach. Within that framework, cash and cash equivalents should have a zero risk weight because they involve less risk. Covered companies should not be penalized by being designated as "major covered companies" merely because they hold a sufficient amount of cash to address the mandatory liquidity standards in another subpart of the Proposed Rule.

Section 252.96 of the Proposed Rule would require covered companies to monitor daily compliance with the credit limits and submit a monthly report demonstrating daily compliance. The Federal Reserve also should recognize that the existing practice of measuring credit exposure at NBFIs, such as GECC, differs significantly from practices at BHCs, and should provide NBFIs with additional time to develop the necessary monitoring and reporting systems.

In many cases, GECC's exposure, together with its consolidated subsidiaries, to a particular unaffiliated counterparty may not even approach the relevant limit. In order to reduce undue burdens associated with monitoring and reporting, the daily aggregation requirements in Section 252.96 should apply to NBFIs only for those counterparties that exceed a certain threshold below the relevant limit as determined at the end of each fiscal quarter.

Section 252.95 of the Proposed Rule permits or requires a covered company to reduce its aggregate credit exposure to a counterparty when it has eligible collateral or a guarantee from an eligible protection provider. However, this results in an inaccurate measure of the real exposure resulting from the credit transaction by failing to take into account the reduced likelihood that the covered company will experience a loss because *both* the counterparty and the issuer of the collateral or the credit protection provider would have to default. The final rule therefore should eliminate this offset requirement and instead allow a NBFI the discretion to make adjustments for collateral and credit protection as it deems appropriate consistent with safety and soundness when calculating credit exposure.

Relatedly, the Proposed Rule would convert a covered company's gross credit exposure to a counterparty to net credit exposure by taking into account "eligible collateral." "Eligible collateral" would be defined narrowly to include (i) cash on deposit with the covered company; (ii) debt securities (other than mortgage- or asset-backed securities) that are bank-eligible investments; (iii) equity securities that are publicly

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[12] *See, e.g.*, Proposed Rule, *supra* note 1, at §§ 252.92(a), 252.94(a)(4).

traded; and (iv) convertible bonds that are publicly traded. This definition is excessively restrictive, particularly as applied to GECC, and other similarly-situated NBFIs, which are more likely to have additional types of collateral, including hard assets. An overly restrictive definition of permissible types of collateral could limit the ability of covered companies to lend on a secured basis, particularly when covered companies are trying to meet the liquidity requirements of subpart C of the Proposed Rule. Eligible collateral should include any asset eligible for use as collateral under Section 23A of the Federal Reserve Act and the Federal Reserve's Regulation W, including (but not limited to) loans, receivables and real or personal property. Appropriate haircuts to the value of such collateral could be applied consistent with common market practice to address any concerns about increased risk resulting from an expanded pool of types of eligible collateral.

Although we appreciate the modification of the definition of "control" in the Proposed Rule from that followed generally under BHC Act, we do not believe that the modification goes far enough. The definition still finds control (and thus a subsidiary relationship) to exist when one company owns 25% or more of the voting or non-voting equity of another company. As a result, a covered company must aggregate credit exposures by companies in which it has made such minority investments, and it must aggregate exposures not only to a counterparty and its consolidated subsidiaries, but also to entities in which the counterparty has made such minority investments. Covered companies would not be in a position to gather all necessary information because they may not be able to impose the required systems on the non-consolidated "subsidiary", which could be controlled *primarily* by a third party.[13] We believe that the Federal Reserve should further limit the definition of "control" for purposes of implementing Sections 165 and 166 to a definition that includes only companies that are consolidated under GAAP.

We appreciate that the Federal Reserve has included a grace period for temporary noncompliance in certain circumstances, as mentioned in Section 252.96 of the Proposed Rule. We believe, however, that the grace period should be automatic instead of dependent on prior Federal Reserve approval, as it may not be possible to predict market events or transactions that could give rise to temporary instances of noncompliance with the applicable limits. In addition, we believe that the temporary grace period should

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[13] Moreover, under the Proposed Rule an entity can be "controlled" by more than one company, which creates presumably unintended results whereby the same exposure is counted several times, and the exposure of a covered company to its own subsidiary would be aggregated with an exposure to an unaffiliated counterparty. For example, consider a joint venture in which a covered company and an unaffiliated counterparty each own half of the equity interests. Section 252.93 limits the covered company's exposure to the joint venture counterparty, but the definition of "counterparty" in Section 252.92(k) includes the subsidiaries of the counterparty, which would in this case include the joint venture itself. Thus, the Proposed Rule could be interpreted to require covered companies to aggregate exposure to their own subsidiaries with the exposures to certain counterparties. If there were three or four owners of a joint venture, each with at least 25% of the equity, then the Proposed Rule would require the covered company to count the exposure to the joint venture two or three times, respectively.

(1) apply during times of market stress when covered companies may need to rebalance exposures to respond to market events, and (2) include market fluctuations beyond the control of the covered company that result in unexpected temporary noncompliance with the credit limits.

Finally, we believe that NBFIs should have additional time to comply with the limitations on exposure in Section 252.93 of the Proposed Rule and the daily compliance provisions of Section 252.96(a) of the Proposed Rule. As discussed above, NBFIs may need additional time to develop the systems and infrastructure to track exposures on a daily basis, including with respect to tracking and aggregating credit exposures in the methods specified in Sections 252.94 and 95 of the Proposed Rule. In order to provide relief for covered companies that will need to develop new systems to comply with these requirements, we believe that the limitations on exposure in Section 252.93 of the Proposed Rule and the daily compliance provisions of Section 252.96 of the Proposed Rule should be phased in gradually. NBFIs should be allowed to phase in these standards in over time.

IV. Risk Management

The role of the board of directors and its committees in the governance of a company is critically important, but it is fundamentally different than management's role. The final rule should allow covered companies more discretion to establish, structure and maintain a risk committee than the Proposed Rule permits. In GE's case, for example, an enterprise-wide risk committee of the GE board of directors is responsible for the oversight of risk management at GE's wholly owned subsidiary, GECC. We would hope that the Proposed Rule would not require us to change our current approach and suggest that the Federal Reserve expressly permit reliance on a risk committee of the top-level holding company; even if that entity is not itself a nonbank covered company. Such an approach would allow companies the flexibility to design risk management structures that best fit their business mix and overall corporate governance structures while providing strong risk management oversight.

We also are concerned with certain requirements in the Proposed Rule regarding the composition of the risk committee. We believe that the requirement in Section 252.126 of the Proposed Rule to have a member with risk management expertise commensurate with the company's capital structure, risk profile, complexity, activities, size and other related factors is highly prescriptive and significantly limits the pool of capable directors, especially because the chief risk officer also is required to be so qualified. We also believe it is unrealistic to require a risk expert to have experience in the "monitoring and testing" of risk controls. The practices related to the monitoring and testing of risk controls are still evolving, and the pool of individuals who have direct experience with such practices is very limited. Instead, we suggest that the Federal Reserve replace the definition of risk management expertise in the Proposed Rule with a definition patterned after the Securities and Exchange Commission's definition of an "audit committee financial expert" in 17 C.F.R. § 229.407(d)(5). This would require the risk management expert to have an understanding of risk management, an ability to apply

the principles of risk management, and experience in applying those principles. That approach also would acknowledge that such attributes could have been acquired through experience as a risk officer, experience supervising a risk officer, or experience overseeing the performance of a company with respect to risk management, including as a member of the risk committee of a company's board of directors.

Finally, the role of directors on the risk committee should be limited to establishing overall risk management policy and overseeing management's implementation of that policy, including considering and approving the steps proposed by management. We believe that the Proposed Rule, as drafted, may interfere with both the purpose of the board of directors and the role of management. The Federal Reserve should respect the distinction between management and oversight by clarifying that the components of the risk management framework described in Section 252.126(c) of the Proposed Rule will only need to be reviewed and approved by the risk committee, not developed or documented by it.

V. Stress Test Requirements

On March 13, 2012, the Federal Reserve announced the results of its CCAR process, which involved stress tests on 19 of the largest BHCs in the United States. Previously, the Federal Reserve had conducted a related Supervisory Capital Assessment Program ("SCAP") on a group of BHCs. CCAR and SCAP have been useful tools for the Federal Reserve and have likely been helpful in capital and liquidity planning for these institutions. It is understandable that the CCAR and SCAP would have played a role in the development of the supervisory stress test and company-run stress test requirements of the Proposed Rule, and in fact the Preamble specifically points out that the Proposed Rule builds on the SCAP and CCAR processes.[14] GECC has not participated in the previous SCAP and CCAR processes. As a result, we do not (and are not expected to) have the same level of experience designing and implementing"top of the house" stress test models.

That said, we recognize the value of the stress tests and believe that general approach would be workable if the Federal Reserve and other involved regulators were willing to commit to providing covered companies with a longer time period to generate and report the required data and to conduct the company-run stress tests. The Preamble indicates that the Federal Reserve expects to release scenarios for stress tests no later than mid-November of each year.[15] We believe this timeframe does not provide sufficient enough time to conduct stress tests by early January. We urge the Federal Reserve to consider releasing proposed scenarios no later than October 15 of each year. We believe it also is necessary for the banking regulators to coordinate their stress scenarios each

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[14] Proposed Rule, *supra* note 1, at 625.

[15] In "Table 2—Process Overview of Annual Supervisory Stress Testing Cycle" and "Table 3—Process Overview of Annual and Additional Company-Run Stress Test Cycles," the Preamble provided some illustrative guidance with respect to timing. Proposed Rule, *supra* note 1, at 627-28; 631.

year in order to minimize this burden on companies like GECC that have subsidiaries regulated by more than one banking regulator and thus have to respond to many more data requests.

VI. Early Remediation Requirements

The early remediation provisions of the Proposed Rule attempt to implement the requirements of Section 166. Other companies and organizations submitting comments on the Proposed Rule have expressed many of the same concerns that GE and GECC have about this portion of the Proposed Rule. Often, the issues raised are not unique to NBFIs; they are also problems for BHCs. Although we share these concerns, we have chosen not to discuss them in our letter.

There is, however, one issue that that remains a concern specifically for NBFIs. The capital and leverage triggers in Sections 252.163(a) and (b) of the Proposed Rule are designed for BHCs and are not appropriate for NBFIs (especially SLHCs) because the Federal Reserve is still in the process of developing applicable capital and leverage standards for them. We request that the Federal Reserve clarify that the capital and leverage triggers for the early remediation regime will not apply to NBFI, including SLHCs, until they are tailored to capital and leverage standards developed specifically for such companies.

Applying the capital and leverage standards applicable to BHCs to NBFIs for the purposes of the early remediation regime would negate any improvements for such companies in the final rule's separate capital and leverage sections. We are particularly concerned because the Preamble does not appear to mention the specific need to tailor the early remediation regime for such companies,[16] even though the Federal Reserve specifically requests comment on whether the capital and leverage standards in Subpart B of the Proposed Rule should apply to NBFIs.[17]

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Sections 165 and 166 are two of the most important provisions of Dodd-Frank. The implementation of these provisions therefore is critically important. In our view, the Proposed Rule must take into account the different business models of NBFIs, especially SLHCs. We think that NBFIs should be the subject of a separate rulemaking process to address these issues. At a minimum, however, the final rules implementing Sections 165 and 166 should provide explicit relief for NBFIs where needed.

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[16] Proposed Rule, *supra* note 1, at 634 *et seq.*

[17] *See, e.g.*, Proposed Rule, *supra* note 1, at 603.

We appreciate the Federal Reserve considering our comments and we would be pleased to discuss them in more detail. If there are any questions, please feel free to contact us.

Respectfully,

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