



FINANCIAL
SERVICES
ROUNDTABLE

Via E-Mail

February 2, 2015

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**

Dear Mr. Frierson:

The Financial Services Roundtable (“FSR”)¹ welcomes the opportunity to provide the Board of Governors of the Federal Reserve System (“the Board”) with comments on the proposed order (the “Proposed Order”) that would apply enhanced prudential standards to General Electric Capital Corporation (“GECC”) pursuant to Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”).²

FSR members include a wide range of financial institutions, such as insurance companies, banks, asset managers and nonbank lenders, making us especially well-positioned to comment on the Proposed Order and, more generally, the application of enhanced prudential standards to nonbank financial companies (“NFCs”) designated by the Financial Stability Oversight Council (the “FSOC”) under Title I of the Dodd-Frank Act. FSR has commented previously on behalf of its diverse membership on regulatory developments relating to the designation of and application of prudential standards to

¹ *As advocates for a strong financial future*TM, FSR represents the largest integrated financial services companies providing banking, insurance, payment and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. FSR member companies provide fuel for America’s economic engine, accounting directly for \$92.7 trillion in managed assets, \$1.2 trillion in revenue, and 2.3 million jobs.

² Application of Enhanced Prudential Standards and Reporting Requirements to General Electric Capital Corporation, 79 Fed. Reg. 71768 (Dec. 3, 2014).

NFCs, and to that end, we are pleased to provide the Board with our comments on the Proposed Order.³

Executive Summary

Our comments on the Proposed Order can be summarized as follows:

- The process by which the Proposed Order was issued for public comment may not be appropriate in all instances. Instead of issuing for public comment a proposal to apply enhanced prudential standards to an individual NFC, the Board should undertake notice-and-comment rulemaking laying out the process by which it would apply enhanced prudential standards to all designated NFCs. Any application of enhanced prudential standards by the Board to an NFC on an individual basis should be preceded by an extensive dialogue between the Board and the company, be implemented by order, and include an opportunity only for the firm itself to comment.
- The Proposed Order does not appear to be adequately tailored to the capital structure, riskiness, complexity, activities and size of GECC, as required by Section 165 of the Dodd-Frank Act. In particular, the Proposed Order appears to inappropriately apply certain enhanced prudential standards designed for U.S. banking organizations deemed to be global systemically important banks (“G-SIBs”) to GECC.
- The Board should provide GECC with more time to comply with the Proposed Order. Specifically, the Board should provide GECC with at least as long a time period as it gave large bank holding companies (“BHCs”) to comply with similar regulatory and capital changes.

Our detailed comments are below. First, we discuss the process for applying enhanced prudent standards to designated NFCs. Then, we discuss tailoring in the Proposed Order’s application of standards to GECC. Finally, we discuss the Proposed Order’s compliance timeline.

I. Process for Applying Enhanced Prudential Standards to Designated NFCs

To begin with, we wish to address the process by which the Board applies enhanced prudential standards to designated NFCs. FSR believes that it may not always be appropriate to issue proposed enhanced prudential standards for an individual designated NFC for public comment, and that alternative processes may be more useful.

³ See, e.g., Letter from FSR and the Securities Industry and Financial Markets Association (“SIFMA”) to the Board (Apr. 30, 2012), *available at* <http://fsroundtable.org/letter-re-non-banks-and-dodd%e2%80%90frank-section-165-166-4-30-12/>; Letter from FSR to the Board (Apr. 30, 2013); Letter from FSR, SIFMA, the Association of Institutional Investors, the Asset Management Group, the American Financial Services Association and the American Council of Life Insurers to the FSOC (Aug. 19, 2014), *available at* <http://fsroundtable.org/rulemaking-petition-fsoc/>.

FSR believes that public comment may be appropriate and warranted when the Board is proposing to apply enhanced prudential standards to more than one NFC, as such a proposal would by definition be more susceptible to analyses under broad principles and policies, call for input from a broad range of experts and stakeholders and have the potential to affect a greater number of persons.⁴ By contrast, the application of enhanced prudential standards to an individual NFC is inherently an individual exercise based on the unique attributes and characteristics of the firm in question. Indeed, because the proposed application of enhanced prudential standards to an individual NFC will likely involve significant amounts of confidential supervisory information, an adequate and appropriate response to any such proposal may require particular knowledge and expertise that does not exist in the public domain.

Hence, we suggest that, instead of issuing for public comment a proposal to apply enhanced prudential standards to an NFC on an individual basis, the Board engage in notice-and-comment rulemaking that establishes with particularity the *process* by which the Board would apply enhanced prudential standards to NFCs generally. This process-oriented rulemaking would provide clarity to NFCs and the markets, allow the Board to demonstrate that it will engage in tailoring for NFCs consistent with Congressional intent clearly reflected in the requirements of Section 165, and allow the public to provide meaningful input on that process. In addition, this rulemaking process should provide high-level information about the potential enhanced prudential standards being considered for NFCs, or particular categories of NFCs, generally.

Only after this rulemaking process has been completed would it be appropriate to apply enhanced prudential standards to an individual NFC. Of course, any such application of standards on an individual basis would need to be preceded by extensive and robust consultation between the Board and NFC on a supervisory basis, which would involve extensive discussions and exchange of information between Board staff and the firm. After this consultation process is complete, the Board could seek to apply prudential standards to the individual NFC by order on a confidential basis, and provide the company (and only the company) the opportunity to comment on the order in its proposed form.

Consistent with this suggested approach, we believe the Board should consider (i) withdrawing the Proposed Order; (ii) issuing for public comment a proposed rule laying out a clearly defined process for applying enhanced prudential standards to NFCs; and (iii) after this rulemaking process is complete, re-issuing on a confidential basis a proposed order to apply enhanced prudential standards to GECC.

⁴ See generally, McNollgast, *The Political Origins of the Administrative Procedure Act*, *Journal of Law, Economics & Organization*, Vol. 15. (1999) (describing the individual rights, public interest and property interests the Administrative Procedure Act was designed to protect).

II. Tailoring in the Proposed Order

The Proposed Order would apply various prudential standards and reporting requirements to GECC, including (i) risk-based and leverage capital requirements; (ii) capital planning requirements; (iii) stress-testing requirements; (iv) liquidity requirements; (v) risk-management standards, including risk-management and risk-committee requirements; (vi) qualitative limits on transactions between General Electric Company and GECC; (vii) an independence requirements at the level of GECC's board of directors; and (viii) reporting requirements, including requirements to file Board reporting forms such as the FR Y-6, FR Y-10 and FR Y-9C. The Board states in the preamble to the Proposed Order that it assessed GECC's "business model, capital structure, risk profile and systemic footprint" to determine how to apply and tailor the proposed standards to the company.⁵

As a threshold matter, because FSR is an outside party without knowledge of GECC's confidential supervisory and examination relationship with the Board, it is difficult for us to assess whether the Proposed Order is appropriately tailored to GECC. More generally, it is difficult for any outside party without knowledge of the Board's supervisory relationship with GECC to comment on whether the level of tailoring in the Proposed Order is appropriate. That said, as described above, the Proposed Order would apply an extensive set of bank-centric standards to GECC, certain of which are designed for G-SIBs, making them particularly inappropriate for GECC's business model, capital structure, risk profile and systemic footprint. Stated plainly, the Proposed Order's application of bank-centric G-SIB standards suggests that the Board has failed to appropriately tailor the Proposed Order as required by Section 165 of the Dodd-Frank Act.

As we have discussed at length in previous comments to the Board, Section 165(b)(3) of the Dodd-Frank Act requires that the Board, in prescribing enhanced prudential standards for NFCs, take into account differences among NFCs supervised by the Board and BHCs and adapt the standards as appropriate in light of the predominant line of business of the subject NFC.⁶ The Board appears to have recognized the need for tailoring in its proposed and final rule applying enhanced prudential standards to banking organizations, stating that FSOC-designated NFCs "may have a range of businesses, structures and activities" such that "the types of risks to financial stability" these firms pose "will likely vary" and that "enhanced prudential standards applicable to [BHCs] and to foreign banking organizations may not be appropriate, in whole or in part, for all" NFCs.⁷

⁵ 79 Fed. Reg. 71768.

⁶ For a detailed discussion of these issues, see our letter to the Board dated Apr. 30, 2012, *supra* note 3.

⁷ Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations, 79 Fed. Reg. 17240, 17244 (March 27, 2014).

Given the very clear statutory requirement for, and the Board's recognition of, the need for tailoring, we are concerned that the Proposed Order makes GECC's designation by FSOC functionally equivalent to a G-SIB designation from a regulatory perspective. At minimum, applying G-SIB standards to a GECC suggests a lack of required tailoring, as there are significant differences in size, complexity and other fundamental characteristics between GECC and these firms. In this regard, we are particularly concerned that the Proposed Order would apply the enhanced supplementary leverage ratio ("eSLR") to GECC, a standard designed specifically for U.S. G-SIBs. The Proposed Order provides scant support for the determination to apply the eSLR to GECC, citing summarily the Board's assessment of GECC's "size, scope of operations, activities and systemic importance" and the FSOC's "determination that material financial distress at GECC could pose a threat to U.S. financial stability," even though GECC has far less than \$700 billion in total consolidated assets or \$10 trillion in assets under custody, the thresholds that trigger the eSLR requirements for BHCs. Indeed, by grounding its proposed application of the eSLR in such a limited rationale and by applying a standard specifically designed for G-SIBs to GECC, the Board may be treating designation by the FSOC as, in effect, equivalent to G-SIB status.

In sum, we believe that the Proposed Order inappropriately equates GECC to a G-SIB, particularly with respect to the proposed application of the eSLR. In doing so, the Board may have failed to adequately tailor the application of enhanced prudential standards to GECC's size, business model, capital structure, risk profile and systemic footprint, as required by Section 165(b)(3) of the Dodd-Frank Act.

III. Compliance Timeline

The Proposed Order provides that GECC would generally be required to comply with enhanced prudential standards beginning on July 1, 2015.⁸ (GECC would have until July 1, 2016 to comply with the capital plan requirement and until July 1, 2017 to comply with the stress-testing requirement).⁹ FSR believes that this compliance timeframe is too abbreviated, and that GECC should be provided with at least one and one-half years from the date any order is finalized to bring itself into compliance with the enhanced standards.

In support of this view, we note that certain of the standards in the Proposed Order are similar to the standards the Basel III final rule's¹⁰ standardized approach and to

⁸ Proposed Order, 79 Fed. Reg. 71782.

⁹ Id. at 71783.

¹⁰ See generally Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule, 78 Fed. Reg. 62018 (Oct. 11, 2013) ("Regulatory Capital Rules") (providing most covered institutions more than a year to comply, from the October 11, 2013 publication in the Federal Register until the January 1, 2015 compliance deadline).

the enhanced prudential standards applicable to foreign banking organizations under the Board's Regulation YY.¹¹ In contrast to the Proposed Order, the final Basel III rules gave U.S. banking organizations more than a year to comply,¹² and the final rule implementing Regulation YY provided covered foreign firms with nearly a year and a half to bring themselves into compliance.¹³ Further, as the Board noted in the Proposed Order, large BHCs are more likely than NFCs, such as GECC, to have the pre-existing resources, expertise and infrastructure necessary to rapidly comply with new regulatory requirements.¹⁴ Similarly, many large BHCs and foreign banking organizations have operated under Board supervision for decades, and thus have structured their normal-course business operations to allow for more rapid compliance.

For these reasons, FSR believes that GECC should have at least as long as domestic BHCs had to comply with the Basel III regulatory capital rules and at least as long as foreign banking organizations had to comply with enhanced prudential standards. To that end, we request that the Board provide GECC with at least a year and a half to begin complying with any new standards, such period beginning when the Board publishes any final order in the Federal Register.

IV. Conclusion

FSR appreciates the opportunity to submit comments on the Proposed Order. If it would be helpful to discuss FSR's comments, please contact me at (202) 589-2424.

Sincerely Yours,



Richard Foster
Senior Vice President & Senior Counsel
for Legal and Regulatory Affairs
Financial Services Roundtable

¹¹ 12 C.F.R. Pt. 252.

¹² Regulatory Capital Rules, 78 Fed. Reg. 62018.

¹³ 12 C.F.R. Pt. 252.152(c)(2).

¹⁴ Proposed Order, 79 Fed. Reg. 71772.