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VIA ELECTRONIC SUBMISSION

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th St. NW
Washington, DC 20429

Re: Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy

Dear Mr. Feldman:

General Electric Capital Corporation ("GECC") welcomes the opportunity to comment on the notice ("Notice") from the Federal Deposit Insurance Corporation ("FDIC") describing the Single Point of Entry ("SPOE") strategy that the FDIC proposes to use in exercising its orderly liquidation authority under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[1] Title II provides authority to resolve a financial company through an FDIC-administered receivership process if no viable private-sector alternative is available to prevent the default of the institution, and if resolution under the U.S. Bankruptcy Code would have serious adverse effects on U.S. financial stability.[2]

In this letter, we focus our comments on why the SPOE approach may not be the appropriate resolution strategy for systemically important financial institutions ("SIFIs") that are not banking

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[1] *See* FDIC, Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy, 78 Fed. Reg. 76,614 (Dec. 18, 2013).

[2] *See* Dodd-Frank Act, § 203(b).

organizations ("nonbank SIFIs").[3] In particular, for the reasons set forth below, GECC believes that nonbank SIFIs' diverse business models and varied corporate structures may require alternative resolution strategies. As a result, we believe the FDIC should expressly preserve its flexibility to use such alternative strategies where such an approach would better achieve the policy goals of Title II. Our comment also addresses the Notice's question regarding subsidiarization as a potential solution to the challenges of international regulatory cooperation. Finally, we respond to the Notice's request for comment on the securities-for-claims exchange strategy and describe a limitation that may affect certain creditors' ability to participate in the exchange.

SPOE and Nonbank SIFIs

GECC firmly believes that, particularly with appropriate resolution planning, GECC and other large financial companies can be resolved in an orderly manner under the U.S. Bankruptcy Code.[4] We recognize, however, that extreme circumstances of systemic risk could make it infeasible to resolve one or more large financial companies under the Bankruptcy Code and that the special powers of Title II could become necessary to achieve orderly resolution. In that context, the FDIC cites three policy goals in the Notice that the Dodd-Frank Act "clearly establishes" for Title II resolutions:

(1) Owners and managers must be held responsible for the failure;

(2) The stability of the U.S. financial system must be maintained; and

(3) Creditors and shareholders must bear losses of the financial company in accordance with statutory priorities and without imposing a cost on U.S. taxpayers.[5]

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[3] This letter provides comment on the SPOE strategy as it applies to nonbank SIFIs. We are not commenting on the questions in the Notice pertaining to the long-term unsecured debt and other loss-absorbing resources needed at holding companies to facilitate the SPOE strategy because the Federal Reserve is expected to issue a proposed rulemaking in the near term that would establish a minimum amount of long-term unsecured debt and other loss-absorbing resources to support the FDIC's SPOE strategy. We plan to comment on these specific aspects that relate to the SPOE strategy after reviewing the Federal Reserve's proposed rulemaking.

[4] Section 165(d) of the Dodd-Frank Act requires a SIFI to prepare and submit to the Federal Reserve and FDIC a plan for the institution's rapid and orderly resolution in the event of material financial distress or failure. The resolution plan describes how the institution could be resolved under relevant insolvency regimes such as the U.S. Bankruptcy Code.

[5] 78 Fed. Reg. at 76615.

In the Notice, the FDIC embraces the SPOE approach as an effective means to achieve these policy goals. GECC believes that the SPOE strategy may indeed prove an effective approach for resolving many financial companies under Title II, especially SIFIs that are predominantly banking organizations ("bank SIFIs"). The SPOE strategy is expressly designed to prevent the failure of a bank SIFI's material operating subsidiaries, which typically include a large depository institution subsidiary and/or a large broker-dealer subsidiary that are funded primarily with short-term unsecured liabilities that may be prone to runs. The failure of these types of operating subsidiaries may result in liquidity shortages to the institution and "fire sales" of their assets on a large scale, thereby magnifying and transmitting systemic risk. In addition, these types of subsidiaries often engage in complex derivatives dealer activities that present unique challenges in the event of failure.

Bank SIFIs also may be suited for SPOE because they tend to be organized with a single non-operating holding company as the top-tier parent company.[6] This structure facilitates the SPOE strategy because the top-tier parent company can absorb all the losses of its subsidiaries to recapitalize them, at which point the holding company can be restructured and reorganized. The recapitalization of the operating subsidiaries prevents their failure, and that in turn is intended to avoid runs, fire sales of assets, and the complexity associated with resolving a failed subsidiary that engages in substantial derivatives activities. The continued operation of these material operating subsidiaries would also minimize disruptions to customers and counterparties.

In the context of resolving nonbank SIFIs, however, the policy goals of Title II may often be better achieved through alternatives to a strict SPOE strategy. In particular, a nonbank SIFI may have a corporate structure and operations that are so different from most bank SIFIs as to warrant a differently tailored approach. For example, a nonbank SIFI may not have the same vulnerability to runs and fire-sales of assets, as would appear to be the case with insurance companies that are nonbank SIFIs and typically fund themselves with long-term liabilities. In addition, a nonbank SIFI might not engage in derivative dealer activities. Such a firm also could have a holding company that simultaneously functions as an operating company, but that nevertheless has large amounts of long-term unsecured debt that can be restructured in the resolution context without disrupting core operations or customers. And it could have operating subsidiaries that are funded almost entirely with inter-company debt, making recapitalization far easier than would otherwise be the case. As a result, a nonbank SIFI may not have the characteristics that make SPOE the best resolution strategy; indeed, an alternative resolution strategy that involves multiple points of entry, or a limited number of points of entry, might very well work better for a nonbank SIFI to achieve the core Title II policy goals.

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[6] *See* 78 Fed. Reg. at 76615 ("U.S. SIFIs generally are organized under a holding company structure with a top-tier parent and operating subsidiaries that comprise hundreds, or even thousands, of interconnected entities that span legal and regulatory jurisdictions across international borders and share funding and support services.").

GECC's fundamental point is this: however the FDIC decides to develop its Title II resolution strategy for bank SIFIs, the FDIC should expressly preserve its discretion to use an alternative strategy for a nonbank SIFI if necessary to address the institution's very different corporate structure and operations if the alternative strategy better achieves the policy goals of Title II.[7] The authority to tailor requirements differently for nonbank SIFIs is well established in the Dodd-Frank Act. Section 165(a)(1) of the Dodd-Frank Act requires the Federal Reserve to prescribe enhanced prudential standards for SIFIs, and in doing so, the agency is *required* to take into account differences between bank SIFIs and nonbank SIFIs.[8] In addition, as part of that rulemaking process, the Federal Reserve is expressly authorized to differentiate among SIFIs on an "individual basis or by category" and to take into consideration their "capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the [Federal Reserve] deems appropriate."[9] The Federal Reserve, in recently issuing prudential standards for bank SIFIs, declined to apply the same standards wholesale to nonbank SIFIs and opted to instead take the approach of tailoring application of prudential standards to each individual nonbank SIFI based on the institution's business model, capital structure, and risk profile.[10] That same rationale for differentiation applies equally strongly in the context of Title II resolution strategies.

In summary, the FDIC should not adopt a "one size fits all" SPOE strategy that automatically applies to nonbank SIFIs as well as bank SIFIs. GECC believes that the FDIC should make clear in the final Notice that the FDIC is preserving flexibility with respect to the resolution of nonbank SIFIs and reserving judgment regarding the appropriate resolution strategy that should be used for a particular nonbank SIFI. Moreover, this flexibility should be reflected in any future regulatory requirements and pronouncements relating to the SPOE strategy, which should not apply automatically to nonbank SIFIs. Finally, GECC recommends that the FDIC use the resolution planning process applicable to a nonbank SIFI under section 165(d) of the Dodd-

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[7] The FDIC also should preserve flexibility for resolving any bank SIFI for which the SPOE strategy is not as effective as some alternative strategy in satisfying the Title II objectives.

[8] *See* Dodd-Frank Act, § 165(b)(3) (requiring the Federal Reserve to "take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies [with over $50 billion in assets], based on—(i) the [statutory factors required to be considered by the Financial Stability Oversight Council in designating a nonbank financial company as a SIFI]; (ii) whether the company owns an insured depository institution; (iii) nonfinancial activities and affiliations of the company; and (iv) any other risk-related factors that the Board of Governors determines appropriate....").

[9] *See* Dodd-Frank Act, § 165(a)(1).

[10] *See* Federal Reserve, Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations, RIN 7100-AD-86, p. 21 (Feb. 21, 2014) (Draft Federal Register Notice).

Frank Act as the foundation for developing appropriate Title II resolution strategies, on a case-by-case basis, for that institution.

Subsidiarization

The Notice requests comment regarding the extent to which the "subsidiarization" of a SIFI's foreign operations would facilitate an orderly resolution of the institution.[11] GECC believes that it would be challenging to prescribe a subsidiarization framework for all SIFIs because of the wide variety of their corporate structures, business models, and foreign regulatory requirements. Instead, SIFIs should be allowed to maintain the discretion to organize their foreign operations in ways that best meet their business needs while also permitting resolution in accordance with Title II's policy goals.

The precise impact of a subsidiarization requirement also would depend on how the requirement is implemented. If "subsidiarization" is interpreted to mean that operations must be conducted in locally incorporated entities, perhaps with pre-positioned forgivable intra-company debt available to recapitalize a troubled subsidiary, then GECC believes that a subsidiarization requirement could be manageable and achieve the core Title II policy goals. But if subsidiarization is instead interpreted to mean that all local operations must be operated in the equivalent of a regulated bank holding company or some other prescribed corporate structure, GECC believes that such a requirement would not be feasible, desirable or necessary to achieve Title II's policy goals.[12]

Securities-for-Claims Exchange

The Notice also asks whether there are particular creditors or groups of creditors for whom the securities-for-claims exchange – the process for recapitalizing the new holding company emerging from resolution with equity and debt exchanged for claims in the top-tier holding company resolved by the FDIC – would present particular difficulties or be unreasonably burdensome. Many capital markets investors may be restricted by their charters or other governance documents from holding equity securities, or debt securities that may be converted to equity securities, above certain limits. For example, certain pension programs created by legislation may be restricted from holding such convertible securities. In establishing requirements for the features of the securities that would be subject to the exchanges, as well as

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[11] *See* 78 Fed. Reg. 76623 (Dec. 18, 2013).

[12] *See* SPOE Comment Letter from The Clearing House, Securities Industry and Financial Markets Association, American Bankers Association, Financial Services Roundtable, and Global Financial Markets Association to the Federal Deposit Insurance Corporation, p. 32-33, (Feb. 18, 2014).

the securities that would result from the exchange, regulators should take all necessary steps to avoid precluding groups of investors from being able to hold such securities.

We appreciate the FDIC considering our comments and would be pleased to discuss them in more detail.

Sincerely,

Alex Dimitrief