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October 22, 2012

Office of the Comptroller of the Currency
250 E Street, S.W.
Mail Stop 2-3
Washington, D.C. 20219
Docket IDs OCC-2012-0008, OCC-2012-0009, OCC-2012-0010
RIN 1557-AD46

Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington D.C. 20429
Attention: Comments/Legal ESS
RIN 3064-AD95, 3064-AD96, 3064-D97
Attention: Robert E. Feldman, Executive Secretary

Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, N.W.
Washington, D.C. 20551
Attention: Jennifer J. Johnson, Secretary
Docket No. R-1442
RIN 7100-AD87

Re: *Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III – Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action; Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements; Advanced Approaches Risk-based Capital Rule, Market Risk Capital Rule*

Ladies and Gentlemen:

General Electric Capital Corporation ("*GE Capital*")[1] appreciates the opportunity to comment on the three joint notices of proposed rulemaking (the "*NPRs*") issued on June 7, 2012

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[1] GE Capital is a subsidiary of General Electric Company ("*GE*"), a diversified holding company that employs approximately 320,000 people and operates in approximately 160 countries worldwide. GE's businesses include energy, technology infrastructure, media and consumer products, as well as financial services. GE Capital provides a broad range of financial services, with a focus on providing credit and banking products to consumers and small- to medium-sized businesses.

by the Board of Governors of the Federal Reserve System (the "*Federal Reserve*"), the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation (the "*FDIC*", and, collectively, the "*Agencies*") and published in the Federal Register on August 30, 2012[2] addressing their regulatory capital rules. The NPRs would implement aspects of Basel III[3] and the Basel II[4] standardized approach in a manner intended to be consistent with Section 939A and Section 171 (the "*Collins Amendment*") of the Dodd Frank Wall Street Reform and Consumer Protection Act ("*Dodd-Frank*") and make related changes to the Agencies' prompt corrective action regulations.

We recognize that capital is a key component of institutional stability, and that a reassessment of regulatory capital requirements was appropriate in light of the financial crisis. In broad terms, we support the move to strengthen regulatory capital standards and are supportive of many of the approaches taken by the Agencies in the NPRs. However, we have concerns with certain aspects of the NPRs. In particular, the NPRs are unclear, in our view, regarding when formal capital requirements will begin to apply to savings and loan holding companies ("*SLHCs*"). We urge the Agencies to clarify in the final rule that formal capital requirements will not apply to SLHCs prior to the proposed effective date of the standardized approach on January 1, 2015. As discussed below, an application of formal capital requirements to SLHCs prior to January 1, 2015 would be both difficult to implement in a timely fashion and inconsistent with Congressional intent. We are also concerned with the timing of the advanced approach rules to SLHCs and want to ensure that SLHCs that become subject to advanced

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2 Agencies, *Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III - Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action*, 77 F.R. 52792 (Aug. 30, 2012) (the "*Basel III NPR*"); Agencies, *Regulatory Capital Rules – Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements*, 77 F.R. 52888 (Aug. 30, 2012) (the "*Standardized Approach NPR*"); Agencies, *Regulatory Capital Rule: Advanced Approaches Risk-Based Capital Rules; Market Risk Capital Rule*, 77 F.R. 52978 (Aug. 30, 2012) (the "*Advanced Approaches NPR*"). The NPRs would revise the Agencies' capital rules to create an integrated set of rules. References in this letter to the "*Proposed Rules*", or to particular sections of the Proposed Rules, are to that integrated set of rules and related sections.

3 "*Basel III*", as used in this letter, refers to the publications of the Basel Committee on Banking Supervision (the "*Basel Committee*") titled *Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems* and *Basel III: International Framework for Liquidity Risk Measurement, Standards and Monitoring* (Dec. 2010, revised June 2011).

4 "*Basel II*", as used in this letter, refers to the Basel Committee's comprehensive accord titled *International Convergence of Capital Measurement and Capital Standards – A Revised Framework* (June 2006, as subsequently revised).

approach rules are afforded the necessary time to implement and test the associated capital monitoring infrastructure.

In addition to the timing considerations, there are several other aspects of the NPRs that concern us, including, in particular, the treatment of retail exposures relative to their treatment under international capital standards, the U.S.-centric definition of category 1 residential mortgages, the unfavorable definition of High Volatility Commercial Real Estate Exposures ("*HVCRE*") and the removal of the Accumulated Other Comprehensive Income ("*AOCI*") filter.

I. The Agencies should clarify that savings and loan holding companies ("SLHCs") will not be subject to formal capital requirements until January 1, 2015.

Under the NPRs, as currently written, most non-SLHC banking organizations[5] will have until January 1, 2015 to adjust to the new regime that will become applicable to them on that date – *i.e.*, to transition from the general risk-based capital requirements that currently apply to them to the NPRs' proposed standardized approach. During this transition period, the non-SLHC banking organizations will essentially continue to apply their current capital standards but with increased capital ratios. Then, in 2015, non-SLHC banking organizations would transition to the new capital requirements under the standardized approach. We assume that the Agencies proposed this transition period, rather than an immediate adoption of the new rules, because they recognized that it is very difficult for a banking organization to immediately begin to comply with a new capital framework.

We urge the Agencies to confirm that a similar transition period will apply to SLHCs that, as a result of the rule, will for the first time be subject to formal quantitative capital requirements. For SLHCs, this transition is not from one set of rules to another but, instead, from no formal quantitative risk-based capital requirements to formal requirements. In the absence of any express discussion in the preamble to the NPRs, particularly against the backdrop of the Collins Amendment's assumption that formal capital rules would not apply to SLHCs until 2015 (discussed further below), we are uncertain as to the Agencies' intent. Accordingly, we urge the Agencies to clarify that formal quantitative capital requirements will not be imposed on SLHCs prior to the date on which the proposed standardized approach is scheduled to be effective (*i.e.*, January 1, 2015). We believe that requiring SLHCs to begin complying with the general risk-based capital requirements on an earlier time schedule (for example, commencing January 1, 2013) would be inappropriate, for the reasons we discuss below.

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5 We are using the terms "*bank*" and "*banking organization*" in this letter to mean both holding companies and depository institutions that are, or are proposed to become, subject to the Agencies' capital rules.

First, although Dodd-Frank authorizes the Federal Reserve to prescribe capital regulations for SLHCs,[6] it does not require the Federal Reserve to do so before January 1, 2015. Dodd-Frank implicitly reflects an understanding that SLHCs should be given the five-year period provided for in the Collins Amendment to come into conformance. In particular, the Collins Amendment provides that depository institution holding companies not previously supervised by the Federal Reserve as of May 19, 2010 (which includes SLHCs) would, subject to exceptions for certain debt or equity instruments, not be subject to the requirements of the Collins Amendment until five years after the enactment of Dodd-Frank (*i.e.*, on July 21, 2015).[7] Subjecting SLHCs to formal capital requirements well before that date, appears to be inconsistent with Congressional intent.[8]

Second, application of capital rules in 2013 would not allow SLHCs the time necessary to build the appropriate capital management systems, data infrastructure and related processes to support the new regulatory capital regime. The NPRs were initially issued on June 20, 2012 but were not officially published in the Federal Register until August 30, 2012. As a result, the comment period for NPRs does not expire until October 22, 2012. This means that, at the earliest, the capital rules will not be finalized before late in the fourth quarter of 2012. The application of quantitative capital rules to SLHCs, for the first time, will require SLHCs to build a significant capital measurement and monitoring framework. If the rules were to apply to SLHCs in 2013, it is difficult to see how this framework can be built when the final rules will not even be available until shortly before the rule application date.

Third, if formal capital requirements were applied to SLHCs before January 1, 2015, SLHCs will either be forced to develop systems to comply with the current Basel I-based risk weights approach or to develop systems designed to comply with the proposed standardized approach two years before other institutions. If an SLHC implements the current Basel I-based risk weights approach, the SLHC will have to invest the time and expense of developing a system which will be discarded in 2015. On the other hand, if an SLHC skips the Basel I-based

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6 Dodd-Frank, § 616(b).

7 Dodd-Frank, § 171(b)(4)(D).

8 The Collins Amendment provides, as to both SLHCs and intermediate U.S. bank holding companies owned by foreign banking organizations, that application of capital rules to them "be effective 5 years after the date of enactment of this act" (*i.e.*, on July 21, 2015). Dodd-Frank, §§ 171(b)(4)(D), 171(b)(4)(E). We note that the Federal Reserve has not to date chosen to accelerate the application of capital rules to intermediate holding companies owned by foreign banking organizations, and we believe that, if anything, there is less reason to accelerate their application to SLHCs. Although SLHCs have not historically been subject to formal quantitative capital rules, their capital adequacy has been supervised and regulated by the applicable banking agency.

risk weights approach and elects to early adopt the standardized approach, the SLHC will be effectively deprived of the two-year phase-in and testing period that is afforded to other banking organizations. Applying capital requirements to SLHCs beginning on January 1, 2015 would avoid forcing SLHCs to make this difficult decision regarding early adoption.

Simply put, delaying the application of capital requirements to SLHCs until January 1, 2015 is consistent with Congressional intent and would alleviate the significant and unique challenges that SLHCs will face in coming into compliance with capital requirements at an earlier date. Between the adoption of the final capital rules and January 1, 2015 the Federal Reserve should continue to apply the same quantitative and qualitative standards it has used to monitor SLHC capital levels since it assumed supervision of SLHCs on July 21, 2011.[9]

II. The Agencies should allow SLHCs, and designated non-bank financial institutions, which do not have previous experience with Basel II, more time to develop and test advanced approach systems

The application of formal capital requirements to SLHCs before January 1, 2015 would pose particularly significant challenges for SLHCs that, because of the level of their total consolidated assets or foreign exposures, will be subject to the advanced approaches rule ("*advanced approaches SLHCs*").[10] The advanced approaches rules generally require banking organizations to submit an implementation plan that provides a start date no later than 36 months after the relevant banking organization meets at least one of the applicability criteria.[11] For SLHCs subject to capital regulation for the first time, developing the historical data (which in some cases must cover at least a seven-year period)[12] necessary to apply the advanced approaches rules before the first floor period start date may not be possible. In addition, in light of the complexity of the advanced approaches rules, SLHCs will likely need more than three years to develop and test the systems necessary to comply with the advanced approaches rules. Applying formal capital requirements to SLHCs commencing January 1, 2015, and not beginning the phase-in of requirements under the advanced approaches rule until the following year end for advanced approaches SLHCs, would help to alleviate the unique timing challenges

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9 SR 11-11 Attachment C describes in detail the method that the Federal Reserve should use to monitor capital at SLHCs until risk-based capital requirements for SLHCs are adopted. This review includes a qualitative assessment of a SLHCs capital planning process to determine if it is sufficient for the SLHC's size, complexity and risk profile.

10 *See*, e.g., 12 C.F.R. 225, Appendix G (Federal Reserve).

11 12 C.F.R. 225, Appendix G ,§ 21(a)(1).

12 12 C.F.R. 225, Appendix G ,§ 22(c)(6).

these SLHCs will face. Further, given the time that advanced approaches banking organizations have taken to conform to Basel II [13], and that no advanced approaches banking organization has exited its parallel run, it would be, in our view, extremely difficult for SLHCs to begin formulating implementation plans under the advanced approaches rules potentially as early as the first quarter of 2013. We therefore urge the Agencies to clarify in the final rule that the 36-month phase-in period under the advanced approaches rules does not apply to advanced approaches SLHCs prior to the end of the year in which these SLHCs become subject to the standardized risk-based capital requirements (*i.e.*, December 31, 2015).

III. Consistent with international standards, retail exposures should be assigned a risk weighting of 75%.

The Standardized Approach NPR effectively assigns a 100% risk weight to retail exposures as an asset "not specifically assigned a different risk weight under this subpart."[14] Basel II's standardized approach[15] and CRD IV[16] for members of the European Union[17] apply a 75% risk weight to retail exposures satisfying generally comparable criteria.[18] We urge the

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13 The Basel Committee first proposed Basel II on January 16, 2001. Large bank holding companies, including U.S. bank holding companies subject to the advanced approaches participated in five quantitative impact studies (QIS) prior to the finalization of the Basel Committee's work, gaining an understanding of the substantive and reporting requirements of the Capital Accord. The U.S. agencies solicited comment on numerous proposals before finalizing the U.S. implementing rule on December 7, 2007. These QIS exercise and solicitations of comment provided non-SLHCs covered banking organizations several years to develop the framework sufficient to implement the advanced approaches.

14 Proposed Rules, § __.32(l)(5).

15 Basel II, ¶¶ 69-71.

16 "*CRD IV*" as used in this letter refers to the "Proposal for a Directive of the European Parliament and of the Council" promulgated by the European Commission (2011/0203 (COD)), together with its proposed implementing regulations.

17 CRD IV, Part I, Article 118.

18 Under CRD IV, these criteria are generally (i) the exposure risk is to an individual person or persons, or to a small or medium-sized business, (ii) the exposures are one of a significant number of exposures with similar characteristics such that the risks associated with such lending are substantially reduced; and (iii) the exposure to any one counterparty does not exceed €1 million, excluding certain claims secured by residential property. The criteria in clauses (i) through (iii) generally correspond to the orientation, granularity and low value of individual exposures criteria in Basel II, respectively. Basel II, ¶ 70.

Agencies to follow this approach and assign a 75% risk weight to retail exposures satisfying equivalent criteria in the United States (using a maximum exposure cap stated in an equivalent number of U.S. dollars to €1 million). Subjecting U.S. banking organizations' retail exposures to a higher risk-weighting than banking organizations in other jurisdictions creates an unwarranted competitive disparity for U.S. banking organizations relative to their international competitors.

IV. Non-U.S. residential mortgages should be assigned risk weights based on the risk weights for such exposures in the country in which the mortgage was originated, provided the loan is issued in a country that is a member of the Organization for Economic Co-operation and Development (an "*OECD country*").

Under the Standardized Approach NPR, a banking organization would divide residential mortgage exposures that are not guaranteed by the U.S. government or one of its agencies into "category 1" and "category 2" residential mortgages. Category 1 residential mortgages must meet a variety of criteria that the Agencies associate with residential mortgage exposures "that do not have product features associated with higher credit risk" (*e.g.*, the duration of the exposure may not exceed 30 years). As proposed, these mortgages would receive a risk weight of between 35 and 100 percent based on their LTV ratios.[19] Residential mortgage exposures not satisfying these criteria would be assigned to "category 2" and receive an increased risk weight of between 100 and 200 percent, also based on their LTV ratios.

While we appreciate the NPR's attempt to align increased risk weights with riskier mortgage products, the application of the rule, as proposed, fails to account for different mortgage products being customary in foreign mortgage markets. As a result, under the Proposed Rules internationally-active banking organizations would be subject to higher capital requirements for non-U.S. residential mortgage exposures solely because mortgage markets and products in foreign countries differ from those in the United States, rather than because of any inherent additional risk in those exposures.

To better align the risk weighting of foreign mortgage exposures more closely with their actual risk, we urge the Agencies, in the final rule, to assign risk weights to a foreign residential mortgage loan based on the risk weight assigned to it under the general risk-based capital standards of the country in which the loan was issued (provided the loan is issued in an OECD country). Risk weighting foreign residential mortgage loans in this way would alleviate the punitive treatment of foreign under the existing rules, thereby reducing the negative competitive consequences of the proposed treatment. Further, because the capital requirements in the OECD country in which a foreign loan is originated will presumably better reflect the unique characteristics and underwriting practices of residential loans originated in that country, this

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[19] Proposed Rules, § _.32, table 6.

approach may also better align the risk weighting of non-U.S. residential mortgages loans with their actual risk.

V. The Agencies should clarify that HVCRE does not include commercial loans in respect of income-producing real estate.

The Standardized Approach NPR generally defines HVCRE as a credit facility that "finances or has financed the acquisition, development, or construction . . . of real property" and assigns such exposures a risk weight of 150%.[20] This definition could be interpreted to include acquisition, development or construction ("*ADC*") loans through the entire life of those loans (including after development of the property has been completed and tenants occupy the building). We understand, however, that the Agencies may not have intended the definition of HVCRE to be interpreted so broadly.[21]

Because of the potentially broad scope of the proposed definition of HVCRE, we urge the Agencies to clarify that HVCRE does not include completed, income-earning loans. We believe that this more limited definition of HVCRE is better aligned with the actual risk profile of the ADC of real property. ADC loan exposures present unique risks during the development and construction stages. However, these risks decrease once development of the underlying property has been completed and the property is ready for tenant use (ADC loans at such time, "*income-earning ADC loans*"). At that point, expenditures shift from construction costs to tenant improvements and building operations, and risk substantially decreases as the principal risk is cash flow risk rather than development risk. Therefore, in view of the lower risks posed by income-earning ADC loans as compared to ADC loans in the development and construction stages, we urge the Agencies to permit banking organization to treat income-earning ADC loans

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[20] *Id.* § _.32(j).

[21] Documents from the FDIC discuss HVCRE in a narrower context and appear to exclude income-producing real estate from the 150% risk weight requirement, in contrast to the definition of HVCRE in the Standardized Approach NPR, if read literally. In materials prepared by staff of the FDIC for a community bank information session regarding the NPRs, HVCRE was described as representing a "[s]mall [s]ubset of the [i]ndustry's CRE [p]ortfolio." *See FDIC,* Notices of Proposed Rulemaking: Regulatory Capital: Community Bank Informational Session, *at 27,* available at *http://www.ibat.org/files/PDFs/FDIC%20Basel%20III%20Prsentation.pdf*. Subsequent examples in this document assign a 100% risk weight to "Owner-Occupied Office Building(s)", "Non Owner-Occupied Office Building(s)", and "Manufacturing/Industrial Building (s)" instead of the higher 150% risk weight associated with HVCRE in the Standardized Approach NPR. This appears to allow for a specific IPRE segment, which would receive 100% risk weight, but this document lacks a complete definition of either IPRE or HVCRE.

as general corporate exposures, like other CRE loans, rather than as higher risk-weighted HVCRE exposures.

VI. Securities whose changes in fair value are predominately attributable to fluctuations in a benchmark interest rate should continue to be filtered out of regulatory capital.

Historically, changes in unrealized fair value gains and losses that do not flow through to earnings are generally not included in regulatory capital calculations. For such fair value instruments, the unrealized gains and losses flow through AOCI rather than earnings. The Banking Agencies have long recognized that including all unrealized fair value gains and losses in regulatory capital would have significant adverse consequences for both banks and the macro-economy.

The current regulatory capital rules attempt to balance a number of factors in assessing how best to deal with accounting-based fair value changes. As noted above, fair value changes that flow through earnings – such as gains and losses in trading portfolios – are included in regulatory capital. For fair value changes that do not flow through earnings, the regulatory capital impact is based generally on whether the change in value is temporary or more permanent. For changes in value that are more permanent in nature, the Agencies recognize impairment in value of financial instruments that are deemed Other Than Temporary Impairment ("*OTTI*"). Since write-downs for OTTI are taken through earnings, these changes in value flow through to regulatory capital. We believe extending the recognition of changes in fair value to include certain temporary changes in value in non-trading assets – including gains and losses on Available for Sale debt securities -- is inappropriate and would introduce significant additional volatility in regulatory capital ratios. [22]

Changing current practice to include all fair value changes in regulatory capital ratios would have several adverse consequences, including:

- forcing the recognition in capital ratios of unrealized gains and losses that are temporary in nature and unlikely ever to be realized;
- forcing banking organizations to shorten the maturities of debt instruments in their securities portfolios to reduce the impact on regulatory capital of unrealized

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[22] As Comptroller Curry noted in a speech before the American Bankers Association on October 15, 2012 discussing these NPRs, "the extra volatility that such an AOCI pass though would cause would be expensive and difficult to manage – a source of significant regulatory burden."

gains and losses (both positive and negative) resulting from changes in interest rates;

- introducing substantial volatility into CET1 and Tier 1 capital as measures of capital,[23] thereby forcing banking organizations to maintain capital ratios above minimum levels;

- introducing significant additional procyclical elements into the regulatory capital regime that are inconsistent with other public policy objectives;

- encouraging banking organizations to hold securities as held to maturity instead of available for sale where possible, limiting the usefulness of these securities for liquidity risk management purposes; and

- discouraging banking organizations from utilizing an important asset-liability management tool.[24]

Reflecting in regulatory capital increases or decreases in AOCI resulting from unrealized "gains" or "losses" also weakens the effectiveness of regulatory capital ratios as a realistic and appropriate measure of financial strength, effectively either understating or overstating the ratios. This is a concern not only for banking organizations and the Agencies as their regulators, but also for analysts and investors that consider regulatory capital ratios.

As contemplated by Question 16 of the Basel III NPR, we believe that the proper test for establishing a category of securities for which the AOCI Filter will be retained is securities whose changes in fair value are predominately attributable to fluctuations in a benchmark interest rate as opposed to credit risk. Securities satisfying this standard would include U.S. government and agency debt obligations and debt obligations of government sponsored entities ("*GSEs*").[25]

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23 The potential impact on banking organizations of removing the AOCI Filter is exacerbated by new liquidity regulations, which will generally cause banking organizations to increase the size of banking organization's available for sale portfolios.

24 High-quality fixed rate securities (largely U.S. Treasury securities and debt obligations of U.S. agencies and GSEs) are often held in available for sale portfolios to hedge interest rate risk rising out of fixed-rate liabilities (including deposits).

25 We are using the terms U.S. government agency and GSE with the meanings used in the existing capital rules, consistent with how we assume the Agencies were in Question 16. We realize that the U.S. government's support of Fannie Mae and Freddie Mac under current arrangements

The low likelihood that most losses on these securities will be realized supports the retention of the AOCI Filter for these securities. Banking organizations will need to hold substantial amounts of these securities to comply with new liquidity requirements, making it very unlikely that they will transfer these securities and crystallize losses as values change with interest rates. Given the nature of the securities, no evaluation of credit risk is relevant to the decision-making. Further, if a banking organization has a need for additional funding, its first approach customarily would not be to sell these types of securities, thereby realizing the gain or loss, but instead would be to use the securities as collateral to obtain secured financing.

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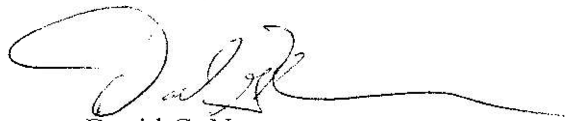
We appreciate the opportunity to provide our comments and hope that the Agencies will find them constructive.

Very truly yours,



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applicable to their conservatorships may change and, accordingly, although it is currently appropriate to treat Fannie Mae and Freddie Mac as GSEs for purposes of continued application of AOCI Filter, the Agencies may re-visit that decision if the status of Fannie Mae and Freddie Mac changes. U.S. Treasury securities are the benchmark securities for fixed income markets because they are perceived to have no comparative credit risk. Trading prices for debt obligations of U.S. government agencies are equivalent to trading prices of U.S. Treasury securities with comparable maturities. Similarly, trading prices for GSE debt securities are highly correlated with trading prices for U.S. treasury securities and trade at consistent and very narrow spreads to U.S. Treasury securities having comparable maturities. The changes in fair value of these securities are therefore predominately attributable to fluctuations in a benchmark interest rate as opposed to credit risk.