



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

January 24, 2012

Mr. Craig A. Stewart
Arnold & Porter LLP
399 Park Avenue
New York, NY 10022

Re: In the Matter of Certain GIC Brokers (P-01118)
**General Electric Capital Corporation, Inc. – Waiver Request of Ineligible Issuer Status
under Rule 405 of the Securities Act**

Dear Mr. Stewart:

This is in response to your letter dated January 17, 2012, written on behalf of General Electric Capital Corporation, Inc. (GE Capital), parent company of GE Funding Capital Market Services (GE Funding CMS) and constituting an application for relief from GE Capital being considered an “ineligible issuer” under Rule 405(1)(vi) of the Securities Act of 1933 (Securities Act). On December 23, 2011, the Commission filed a civil injunctive complaint (Complaint), in the United States District Court for New Jersey, against GE Funding CMS. The complaint alleges that GE Funding CMS violated Section 17(a) of the Securities Act. GE Funding CMS filed a consent in which it agreed, without admitting or denying the allegations of the Complaint, to the entry of a Final Judgment against it. Among other things, the Final Judgment, as entered on January 23, 2012, provides for a permanent injunction from committing future violations of Section 17(a) of the Securities Act.

Based on the facts and representations in your letter, and assuming GE Capital and GE Funding CMS comply with the Final Judgment, the Commission, pursuant to delegated authority, has determined that GE Capital has made a showing of good cause under Rule 405(2) and GE Capital will not be considered an ineligible issuer by reason of the entry of the Final Judgment. Accordingly, the relief described above from GE Capital being an ineligible issuer under Rule 405 of the Securities Act is hereby granted, and the effectiveness of such relief is as of the date of the entry of the Final Judgment. Any different facts from those represented or non-compliance with the Final Judgment might require us to reach a different conclusion.

Sincerely,

/s/

Mary Kosterlitz
Chief, Office of Enforcement Liaison
Division of Corporation Finance

January 17, 2012

VIA FEDERAL EXPRESS AND E-MAIL

Mary J. Kosterlitz, Esq.
Chief, Office of Enforcement Liaison
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Securities and Exchange Commission v. GE Funding Capital Market
Services, Inc., Case No. 2:11-cv-07465-WJM-MF

Dear Ms. Kosterlitz:

This letter is submitted on behalf of our client, General Electric Capital Corporation (“GE Capital”), indirect parent company of GE Funding Capital Market Services (“GE Funding CMS”), in connection with the anticipated settlement of the above-captioned proceeding by the Securities and Exchange Commission (the “Commission”). The settlement would result in the entry of a final judgment against GE Funding CMS in an action to be filed by the Commission in the United States District Court for New Jersey (the “District Court”), as described below (the “Final Judgment”). GE Capital is not a party to the above-captioned proceedings.

Pursuant to Rule 405 promulgated under the Securities Act of 1933 (the “Securities Act”), GE Capital hereby requests that the Commission determine that for good cause shown it is not necessary under the circumstances that GE Capital be considered an “ineligible issuer” under Rule 405. GE Capital requests that this determination be effective upon the entry of the Final Judgment. The staff of the Division of Enforcement has informed us that it does not object to the grant of the requested waiver.

BACKGROUND

On December 23, 2011 the Commission filed a complaint against GE Funding CMS (the “Complaint”) in the District Court. The Complaint alleges that GE Funding CMS engaged in misrepresentations in connection with bidding on certain temporary investment of proceeds from the sale of certain tax-exempt municipal securities by state and local governmental entities in the United States. The Complaint also alleges that GE Funding CMS made misrepresentations in connection with bidding for certain investments, violating Section 17(a) of the Securities Act.

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Simultaneous with the filing of the Complaint, GE Funding CMS consented to the entry of the Final Judgment, neither admitting nor denying the allegations in the Complaint (other than those relating to the jurisdiction of the District Court over it and the subject matter of the action). The Final Judgment will, upon entry, permanently enjoin GE Funding CMS from violating Section 17(a) of the Securities Act and requires GE Funding CMS to pay disgorgement in the amount of \$10,625,799.64, prejudgment interest in the amount of \$3,775,989, and a civil monetary penalty of \$10,500,000.

DISCUSSION

In 2005, the Commission revised the registration, communications, and offering processes under the Securities Act.¹ As part of this offering reform, the Commission revised Securities Act Rule 405, creating a new category of issuer, the “well-known seasoned issuer,” (“WKSI”) and a new category of offering communication, the “free writing prospectus.” A WKSI is eligible for important reforms that have changed the way corporate finance transactions for larger issuers are planned and structured. These reforms include the ability to “file-and-go” (i.e., eligibility for automatically effective shelf registration statements) and “pay-as-you-go” (i.e., the ability to pay filing fees as the issuer sells securities off the shelf). These reforms have removed the risk of regulatory delay in connection with capital formation. In addition, WKSIs are provided with the most flexibility in terms of communications, including the ability to use free writing prospectuses in advance of filing a registration statement.

These benefits are unavailable to issuers that are classified as “ineligible issuers” pursuant to Rule 405. The definition of Ineligible Issuer includes any issuer which itself or any of its subsidiaries has had within the past three years been “made the subject of any judicial or administrative decree or order arising out of a government action that . . . [p]rohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws.”² Ineligible issuers are excluded from the definition of WKSI and are ineligible to make communications through free writing prospectuses, except in limited circumstances.³ As a result, an ineligible issuer that would otherwise be a WKSI does not have access to file-and-go or pay-as-you-go, and cannot use most free writing prospectuses. However, Rule 405 authorizes the Commission to determine, “upon a showing of good cause, that it is not

¹ See Securities Offering Reform, Securities Act Release No. 8591, Exchange Act Release No. 52,056, Investment Company Act Release No. 26,993, 70 Fed. Reg. 44,722, 44,790 (Aug. 3, 2005).

² 17 C.F.R. §230.405(1)(v)(i)(A).

³ See Securities Act Rules 164(e), 405 & 433, 17 C.F.R. §§ 230.164(e), 230.405 & 230.433.

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necessary under the circumstances that the issuer be considered an ineligible issuer.”⁴ The Commission has delegated the function of granting or denying such applications to the Director of the Division of Corporation Finance.⁵

We understand that the entry of the Final Judgment would make GE Capital an ineligible issuer under Rule 405. If GE Capital is not an ineligible issuer, it would continue to qualify as a WKSI, and, therefore, have access to file-and-go and other reforms available to well-known seasoned issuers.

GE Capital respectfully requests a determination that, for good cause shown, GE Capital should not be classified as an “ineligible issuer” under Rule 405. Applying the ineligibility provisions to GE Capital would be disproportionately and unduly severe for the following reasons:

1. The conduct addressed in the Complaint does not pertain to activities undertaken by GE Capital or its subsidiaries in connection with their role as an issuer of securities (or any disclosure related thereto) or any of their filings with the Commission.
2. The anticipated Final Judgment will be the result of substantial negotiations between GE Funding CMS and the Commission’s Division of Enforcement. Its terms will have been carefully crafted to meet and balance the competing concerns of all involved. Under the anticipated Final Judgment, GE Funding CMS will pay a substantial penalty and will be subject to an injunctive order. Applying ineligible issuer status to GE Capital would, in effect, unfairly impose an additional punishment beyond the agreed-upon settlement terms negotiated by GE Funding CMS in good faith.
3. The Commission has made similar determinations in comparable situations.⁶

⁴ Securities Act Rule 405, 17 C.F.R. § 230.405.

⁵ 17 C.F.R. § 200.30-1(a)(10).

⁶ *See, e.g.*, JP Morgan Chase & Co. (pub. avail. July 11, 2011); UBS Financial Services (pub. avail. May 6, 2011); Bank of America Corporation (pub. avail. Feb 15, 2011); Bank of America Corporation (pub. avail. Dec. 7, 2010); Deutsche Bank Securities, Inc. (pub. avail. June 16, 2009); Bank of America Corporation (pub. avail. June 11, 2009); RBC Capital Markets Corporation (pub. avail. June 11, 2009); Wachovia Securities, LLC (pub. avail. Feb. 26, 2009); Knight Capital Group, Inc. (pub. avail. July 1, 2008); Morgan Stanley & Co., Inc. (pub. avail. May 11, 2007).

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In light of these considerations, we believe there is good cause to determine that GE Capital should not be considered an ineligible issuer under Rule 405. We respectfully request the Commission to make that determination.

Please do not hesitate to contact me at the above-listed telephone number if you should have any questions regarding this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Stewart', with a long horizontal line extending to the right.

Craig A. Stewart