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January 24, 2012

**VIA FEDERAL EXPRESS AND E-MAIL**

Nadya Roytblat, Esq.  
Division of Investment Management  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-0506

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

Dear Ms. Roytblatt:

We submit this letter on behalf of our client, GE Funding Capital Market Services, Inc. ("GE Funding CMS"), in connection with the settlement of the above-captioned proceeding by the Securities and Exchange Commission (the "Commission"). The settlement resulted in the entry of a final judgment against GE Funding CMS in an action filed by the Commission in the United States District Court for New Jersey (the "District Court"), as described below (the "Final Judgment").

GE Funding CMS seeks the assurance of the staff of the Division of Investment Management (the "Staff") that it will not recommend any enforcement action to the Commission under Section 206(4) of the Investment Advisers Act of 1940 (the "Advisers Act") and Rule 206(4)-3 thereunder (the "Rule"), if any investment adviser that is required to be registered pursuant to Section 203 of the Advisers Act pays to GE Funding CMS or any of its associated persons as defined in Section 202(a)(17) of the Advisers Act or to any other company which may become an associated person of GE Funding CMS in the future a cash solicitation fee, directly or indirectly, for the solicitation of advisory clients in accordance with the Rule, notwithstanding the existence of the Final Judgment that otherwise could preclude such a payment by an investment adviser.

GE Funding CMS is not a person associated with an investment adviser as defined by Section 202(a)(17) of the Advisers Act. GE Funding CMS is associated, however, with three

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entities that engage in solicitation activities on behalf of investment advisers: General Electric Company (“GE”) and General Electric Capital Services, Inc. (“GECS”) engage in solicitation activities on behalf of GE Asset Management Incorporated (“GEAM”), and General Electric Capital Corporation (“GECC”) and GEAM engage in solicitation activities on behalf of GE Capital Debt Advisers LLC (“GECDA”).<sup>1</sup> GE, GECS and GECC are indirect parent companies of GE Funding CMS, and accordingly are considered persons associated with GE Funding CMS.

While the Final Judgment does not operate to prohibit or suspend GE Funding CMS or any of its associated persons from being associated with or (except as provided in Section 9(a) of the Investment Company Act of 1940, from which Section relief is being separately requested as described in footnote 1) acting as an investment adviser and does not relate to solicitation activities on behalf of any investment adviser, it may affect the ability of GE Funding CMS and its associated persons to receive such payments.<sup>2</sup> In particular, to the extent GE, GECS, and GECC could be considered “subject to” the Final Judgment because of their association with GE

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<sup>1</sup> GEAM is not an associated person, as defined in section 202(a)(17) of the Investment Advisers Act, of GE Funding CMS.

<sup>2</sup> Under Section 9(a) of the Investment Company Act, GE Funding CMS and its affiliated persons will, as a result of the Judgment, be prohibited from serving or acting as, among other things, an investment adviser or depositor of any registered investment company or principal underwriter for any registered open-end investment company or registered unit investment trust. The affiliated persons of GE Funding CMS who act in the capacities set forth in Section 9(a) of the Investment Company Act will file an application under Section 9(c) of the Investment Company Act requesting the Commission to issue both temporary and permanent orders exempting them, and GE Funding CMS’s future affiliated persons should any of them serve or act in any of the capacities set forth in Section 9(a) in the future, from the restrictions of Section 9(a). The applicants believe that they meet the standards for exemptive relief under Section 9(c), and they expect that the Commission will issue a temporary order prior to or simultaneous with the Judgment, and a permanent order in due course thereafter. In no event will GE Funding CMS or any of its affiliated persons act in any capacity enumerated in Section 9(a) unless and until the Commission issues an order pursuant to Section 9(c) of the Investment Company Act exempting them from the prohibitions of Section 9(a) of the Investment Company Act resulting from the Judgment. On January 24, 2012, the Commission issued an order granting GE Funding CMS and certain affiliated persons a temporary exemption from Section 9(a) of the Investment Company Act pursuant to Section 9(c) of the Investment Company Act, with respect to the Judgment, until the date the Commission takes final action on the application for a permanent order. *In re GE Asset Management Incorporated, et al*; SEC Rel. No. IC-29926; File No. 812-13994 (Jan. 24, 2012). Therefore, GE Funding CMS and such affiliated persons are not currently barred or suspended from acting in any capacity specified in Section 9(a) of the Investment Company Act as a result of the Judgment.

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Funding CMS, they could be subject to disqualification under the Rule, and therefore should be entitled to the relief requested. To the extent that any other subsidiaries of GE, GECS or GECC engage in solicitation activities and would be considered persons associated with GE Funding CMS, we ask that the relief requested extend to such subsidiaries. The staff of the Division of Enforcement has informed us that it does not object to the grant of the requested no-action relief.

### **BACKGROUND**

The staff of the Division of Enforcement engaged in settlement discussions with GE Funding CMS in connection with the above-captioned civil proceeding. The Commission filed a complaint against it (the "Complaint") in the District Court. The Complaint alleged 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 alleged that GE Funding CMS made misrepresentations in connection with bidding for certain investments, violating Section 17(a) of the Securities Act. Simultaneous with the filing of the Complaint, GE Funding CMS consented to the entry of a final judgment by the District Court (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 permanently enjoins GE Funding CMS from violating Section 17(a) of the Securities Act and requires GE Funding CMS to pay disgorgement in the amount of \$10,625,775, prejudgment interest in the amount of \$3,775,987, and a civil monetary penalty of \$10,500,000.

### **DISCUSSION**

The Rule prohibits an investment adviser that is required to be registered under the Advisers Act from paying a cash fee to any solicitor that is "subject to" a temporary or permanent injunction by an order, judgment or decree of a court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security pursuant to Section 203(e)(4) of the Advisers Act. GE, GECS and GECC are associated with investments advisers. GE Funding CMS is associated with the soliciting entities as their indirect subsidiary. To the extent that their association with GE Funding CMS could make GE, GECS and GECC "subject to" the Final Judgment, entry of the Final Judgment could cause GE Funding CMS and its associated persons to be disqualified under the Rule. Accordingly, absent no-action relief, GE Funding CMS, which is subject to the Final Judgment, and its associated persons may

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be unable to receive cash payments from advisers required to be registered for the solicitation of advisory clients.

In the release adopting the Rule, the Commission stated that it “would entertain, and be prepared to grant in appropriate circumstances, requests for permission to engage as a solicitor a person subject to a statutory bar.”<sup>3</sup> We respectfully submit that the circumstances present in this case are precisely the sort that warrant a grant of no-action relief.

The Rule’s proposing and adopting releases explain the Commission’s purpose in including the disqualification provisions in the Rule. The purpose was to prevent an investment adviser from hiring as a solicitor a person whom the adviser was not permitted to hire as an employee, thus doing indirectly what the adviser could not do directly. In the proposing release, the Commission stated that:

[b]ecause it would be inappropriate for an investment adviser to be permitted to employ indirectly, as a solicitor, someone whom it might not be able to hire as an employee, the Rule prohibits payment of a referral fee to someone who . . . has engaged in any of the conduct set forth in Section 203(e) of the [Advisers] Act . . . and therefore could be the subject of a Commission order barring or suspending the right of such person to be associated with an investment adviser.<sup>4</sup>

The Final Judgment does not bar, suspend, or limit GE Funding CMS or any person currently associated with GE Funding CMS from acting in any capacity under the federal securities laws (except as provided in Section 9(a) of the Investment Company Act).<sup>5</sup> GE Funding CMS has not been sanctioned for conduct in connection with the solicitation of advisory clients for investment advisers. The Judgment does not pertain to advisory activities, nor does it involve any GE entity engaged in advisory activities. Accordingly, consistent with the Commission’s reasoning, there does not appear to be any reason to prohibit any investment adviser from paying GE Funding CMS or its associated persons for engaging in solicitation activities under the Rule.

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<sup>3</sup> See Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Inv. Adv. Act ReI. No. 688 (July 12, 1979), 17 S.E.C. Docket (CCH) 1293, 1295.

<sup>4</sup> See Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Inv. Adv. Act ReI. No. 615 (Feb. 2, 1978), 14 S.E.C. Docket (CCH) 89, 91.

<sup>5</sup> See *supra* note 1.

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The Staff previously has granted numerous requests for no-action relief from the disqualification provisions of the Rule to individuals and entities found by the Commission to have violated a wide range of federal securities laws and rules thereunder or permanently enjoined by courts of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security.<sup>6</sup>

### UNDERTAKINGS

In connection with this request, GE Funding CMS undertakes:

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<sup>6</sup> See, e.g., J.P. Morgan Securities LLC, SEC No-Action Letter (pub. avail. June 29, 2011); UBS Financial Services Inc., SEC No-Action Letter (pub. avail. May 9, 2011); Citigroup Inc., SEC No-Action Letter (pub. avail. Oct. 22, 2010); Banc of America Investment Services, Inc., SEC No-Action Letter (pub. avail. June 10, 2009); Barclays Bank PLC, SEC No-Action Letter (pub. avail. June 6, 2007); Morgan Stanley & Co. Incorporated, SEC No-Action Letter (pub. avail. May 15, 2006); American International Group, Inc., SEC No-Action Letter (pub. avail. Feb 21, 2006); Goldman, Sachs & Co., SEC No-Action Letter (pub. avail. Feb. 23, 2005); Morgan Stanley & Co. Incorporated, SEC No-Action Letter (pub. avail. Feb. 4, 2005); Prime Advisors, Inc.; SEC No-Action Letter (pub. avail. Nov. 8, 2001); Legg Mason Wood Walker, Inc., SEC No-Action Letter (pub. avail. June 11, 2001); Dreyfus Corp., SEC No-Action Letter (pub. avail. March 9, 2001); UBS Securities Inc., SEC No-Action Letter (pub. avail. Feb. 7, 2001); Tucker Anthony Inc., SEC No-Action Letter (pub. avail. Dec. 21, 2000); J.B. Hanauer & Co., SEC No-Action Letter (pub. avail. Dec. 12, 2000); Founders Asset Management LLC, SEC No-Action Letter (pub. avail. Nov. 8, 2000); Credit Suisse First Boston Corp., SEC No-Action Letter (pub. avail. Aug. 24, 2000); Janney Montgomery Scott LLC, SEC No-Action Letter (pub. avail. July 18, 2000); Aeltus Investment Management, Inc., SEC No-Action Letter (pub. avail. July 17, 2000); William R. Hough & Co., SEC No-Action Letter (pub. avail. Apr. 13, 2000); In the Matter of Certain Municipal Bond Refundings, SEC No-Action Letter (pub. avail. Apr. 13, 2000); In the Matter of Certain Market Making Activities on Nasdaq, SEC No-Action Letter (pub. avail. Jan. 11, 1999); Paine Webber, Inc., SEC No-Action Letter (pub. avail. Dec. 22, 1998); NationsBanc Investments, Inc., SEC No-Action Letter (pub. avail. May 6, 1998); Morgan Keegan & Co., Inc., SEC No-Action Letter (pub. avail. Jan. 9, 1998); Merrill Lynch, Pierce, Fenner & Smith, Inc., SEC No-Action Letter (pub. avail. Aug. 7, 1997); Gruntal & Co., SEC No-Action Letter (pub. avail. July 17, 1996); Salomon Brothers Inc.; SEC No-Action Letter (pub. avail. Jan. 26, 1994); BT Securities Corporation, SEC No-Action Letter (pub. avail. Mar. 30, 1992); Kidder Peabody & Co. Inc., SEC No-Action Letter (Oct. 11, 1990); First City Capital Corp., SEC No-Action Letter (pub. avail. Feb. 9, 1990); RNC Capital Management Co., SEC No-Action Letter (pub. avail. Feb. 7, 1989); and Stein Roe & Farnham Inc., SEC No-Action Letter (pub. avail. Aug. 25, 1988).

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1. To conduct any cash solicitation arrangement entered into by GE Funding CMS or any person associated with it with any investment adviser registered or required to be registered under Section 203 of the Advisers Act in compliance with the terms of Rule 206(4)-3 except for the investment adviser's payment of cash solicitation fees, directly or indirectly, to GE Funding CMS which is subject to the Final Judgment;
2. To comply with the terms of the Final Judgment, including, but not limited to, payment of disgorgement, prejudgment interest and the civil penalty; and
3. That, for ten (10) years from the date of the entry of the Judgment, GE Funding CMS and any person associated with it or any investment adviser with which it or any person associated with it has a solicitation arrangement subject to Rule 206(4)-3 will disclose the Final Judgment in a written document that is delivered to each person whom GE Funding CMS or any person associated with it solicits before or at the time the person enters into a written or oral investment advisory contract with the investment adviser.

#### CONCLUSION

We respectfully request the Staff to advise us that it will not recommend enforcement action to the Commission if an investment adviser that is required to be registered with the Commission pays GE Funding CMS or persons associated with GE Funding CMS a cash payment for the solicitation of advisory clients, notwithstanding the Judgment.

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

Sincerely,



John A. Freedman