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By email: emir@centralbank.ie

Re: **Consultation on the Supervision of Non-Financial Counterparties under EMIR - Consultation Paper 90**

To whom it may concern:

General Electric Company (**GE**) welcomes the opportunity to comment on the Central Bank of Ireland's (the **Central Bank** or **CBI**) Consultation on the Supervision of Non-Financial Counterparties under EMIR (the **Consultation**).

GE is one of the largest and most diversified infrastructure and financial services corporations in the world. With products and services ranging from aircraft engines, power generation, oil and gas production equipment, and household appliances to medical imaging, business and consumer financing and industrial products, GE serves customers in more than 100 countries and employs over 300,000 people worldwide.

GE has had a presence in Ireland for over three decades and today serves some 200,000 customers worldwide from Ireland. GE employs approximately 1100 people in Ireland across a number of GE businesses, including Energy Management, Healthcare, Capital (including GECAS), Oil & Gas and Power & Water.

GE and its wholly-owned financial services subsidiary General Electric Capital Corporation (**GE Capital**) use derivatives to mitigate or eliminate certain financial and market risks

because we conduct business in diverse markets around the world and local funding is not always efficient. In addition, we use derivatives to adjust the debt we are issuing to match the fixed or floating nature of the assets we are originating. We apply strict policies to manage each of these risks, including prohibitions on speculative activities.

GE's centralised global treasury group (**GE Corporate Treasury**) is primarily responsible for managing the execution of derivatives for GE group companies, including GE Capital. The vast majority of hedging transactions for the GE group are executed by GE Corporate Treasury's centralised hedging units established in Ireland. Accordingly, all developments in the area of regulation of end-users of derivatives are of particular importance to GE.

GE supports both the objective of EMIR to reduce the risks associated with the derivatives market and the majority of the proposals set out in S.I. No. 443 of 2014 (the **Statutory Instrument**). These instruments reflect the intention – strongly supported by GE – that regulatory reform of the derivatives market can result in a more resilient and transparent market while not adversely affecting the ability of end-users to mitigate commercial risks by means of derivatives. We furthermore support the CBI's objectives to understand and monitor the derivatives activities in Ireland in order to monitor and manage any systemic risk that these activities may cause. We also agree with the Central Bank's conclusion that, given the scope of the limited obligations imposed by EMIR on NFCs below the clearing threshold (each, an **NFC**), a direct supervision model, which is typically reserved for credit institutions, investment firms and other financial counterparties (**FCs**), is unnecessary to monitor NFC- transaction reporting and limited risk mitigation requirements.¹

Despite this intention, however, certain elements of the proposed treatment of NFC-s in the Consultation raise the possibility of unduly burdening derivatives end-users. Certain clarifications and amendments to the Consultation Paper's proposals may efficiently achieve regulatory ends without excessively burdening end-users. In particular, some resources and mechanisms are currently available to the Central Bank to review compliance with EMIR by NFC-s.²

Accordingly, we urge the Central Bank to adopt an EMIR supervisory model for NFC-s that only imposes additional compliance obligations, such as the filing of a simplified return, or requests for additional information upon suspected non-compliance.

- (a) *EMIR Regulatory Returns (ERRs) are both inappropriate in the circumstances and costly for NFC-s*

The Statutory Instrument gives the Central Bank the power to require ERRs for the proper and effective supervision of persons subject to EMIR and the Statutory Instrument. In deciding to exercise that power, the Central Bank must have regard to the following factors: (a) whether any other powers available to the Central Bank would be more appropriate in the

¹ We understand from roundtable discussions that the Central Bank intends to treat NFC-s who remain below the clearing threshold as a result of their hedging activities as "Medium Sized NFCs." This would appear in keeping with the approach in EMIR to decrease the regulatory burden on entities that use derivatives for hedging. In the event this interpretation is incorrect, we would request the Central Bank provide an explanation of such a departure from EMIR.

² For instance, a list of adherents to the ISDA 2013 Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol is publicly available at www2.isda.org. The CBI should have a degree of assurance that those Irish entities listed are compliant with their Portfolio Reconciliation and Dispute Resolution obligations.

circumstances; and (b) the cost implications for the relevant counterparty. This makes it clear that any exercise by the Central Bank of these powers must be proportionate.

In determining whether the proposals as set out in the Consultation are proportionate, we would encourage the CBI to consider the extraordinary nature of the request to submit an annual ERR. Other than in the case of annual returns under company law, there is generally no requirement for unregulated Irish companies to confirm compliance with legislation on an annual basis. Moreover, there is generally no requirement for unregulated entities to engage a third party to confirm compliance with legislation.³ Most importantly, EMIR itself imposes minimal obligations on NFC-s in recognition of the relatively smaller contribution to systemic risk resulting from, and non-complex nature of, their derivatives activities.⁴ All of these factors suggest that the Central Bank of Ireland should not require a formal, frequent reporting structure of NFC-s.

Equally significant to the CBI's proportionality analysis, the proposed submission of ERRs certified by third party assessors will impose significant cost and administrative burdens on NFC-s. These additional costs will result from (1) costs related to operationalising and submitting the Central Bank's proposed data requests (which require additional details than those already required under EMIR); (2) costs related to regular third-party verification of the proposed ERR; and (3) potentially, fees paid to the Central Bank arising either from regular ERR submissions or regular, direct engagement with the Bank.⁵

In light of (1) these significant costs and administrative burdens that would be placed on NFC-s; (2) the limited compliance obligations of NFC-s under EMIR; and (3) low risk and non-complex nature of derivative activities of NFC-s, it does not appear to be necessary or proportionate to the supervisory benefit to be gained by the CBI for the annual submission by NFC-s of ERRs certified by a third party to be an annual requirement.

In addition, we understand that the UK, France, Germany, Italy and Spain, among others, do not have a similar audited annual filing requirement for NFC- companies. In this regard, we believe that it is important to note that directly effective EU regulations (such as EMIR) are intended to promote consistency and harmonisation across Europe. Among other effects, a lack of consistency at individual Member State level can lead to unintended consequences. For example, if the compliance costs for NFC-s are higher in Ireland, this could disincentivise the entry into derivatives for risk mitigation purposes or push the derivatives activity of NFC-s to jurisdictions where the costs and administrative burdens associated with transacting derivatives are less onerous.

³ Compliance certification by third parties is relatively common for regulated financial services providers.

⁴ More particularly, EMIR places only the following six obligations on NFC-s: (i) to determine their status as a NFC+ or NFC-; (ii) to report details of their derivative transactions as required under EMIR; (iii) to confirm OTC derivatives transactions within two business days; (iv) to reconcile their portfolios by counterparty either quarterly or annually; (v) to compress their portfolios bi-annually if they have 500 or more outstanding contracts with a single counterparty; and (vi) to have pre-agreed dispute resolution procedures and processes in-place.

⁵ The proposed ERR framework may raise compliance costs as a result of the operational demands imposed by its preparation and submission. We understand that the Irish Association of Corporate Treasurers has identified some of these in its response to the Consultation.

(b) *More efficient solutions are available*

Instead of requiring inappropriate and costly ERRs, we would encourage the Central Bank to adopt a more efficient, proportionate and flexible approach. First, we would encourage the CBI to make full use of the data that derivatives users are required to report in the EU. EMIR imposes extensive, dual-sided reporting on counterparties with responsibility in the event of non-compliance. End users have invested significant time and resources to develop systems to report and reconcile the various data flows involved. Instead of requiring additional checks on such data, we would encourage the CBI to use such data as its primary means of verifying compliance with an NFC-s' obligations under EMIR.

To the extent that the data, upon scrutiny, suggested potential non-compliance, GE would suggest that the CBI then request of an NFC- additional information targeted to the reporting requirement. This would then (1) encourage comprehensive and correct reporting; and (2) target the operational burden of compliance checks on entities where a breach or suspected breach of EMIR obligations has already occurred. Costs could then also be efficiently allocated to counterparties for whom error rates in reporting were too high or where suspected regulatory lapses had occurred.

(c) *Disclosure by Third Party Assessors*

Whether the CBI chooses to request annual reporting or to require NFC-s to respond to requests in the event of suspected non-compliance, as it deems appropriate, we would encourage it to work with market stakeholders to establish whether a Third Party Assessor (TPA) is necessary and, if so, to determine a TPA's essential roles and responsibilities. In particular, it is important that TPAs should not be required to second-guess the work of a firm's auditors by, for example, verifying the use and nature of every derivative entered into by an NFC-. Rather, it would appear far more efficient for TPAs to collaborate with internal compliance staff and external auditors in order to ensure that the data ultimately reported to trade repositories and to regulators were complete, accurate, and timely. We would encourage the CBI to initiate an appropriate discussion regarding the development of this role prior to instituting any new filing requirements on end users.

We would welcome the opportunity to engage further with the Central Bank on the topics raised in this response or to provide any further information or clarifications that you require. Additionally, we encourage further consultation by the Central Bank prior to any supervisory framework for NFC-s being brought into force.

Please contact Edward Gallagher at 01 489 4284 if you wish to discuss any aspect of this response.

Respectfully submitted,



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