Decision of the

Assessment Appeals Committee

<u>Case No. 2012-01</u>

The Bank filed an appeal with the FDIC's Assessment Appeals Committee ("AAC") challenging its assessment rate - as determined by the Division of Insurance and Research (the "Division," or "DIR") - under the FDIC's *Assessment Rate Adjustment Guidelines for Large and Highly Complex Institutions* (the "*Adjustment Guidelines*"). The *Adjustment Guidelines* were promulgated in 2011, when the FDIC Board of Directors established by rule a new methodology for determining assessment rates for large and highly complex insured depository institutions ("IDIs"). The rule created the Large Bank Pricing Scorecard (the "Scorecard") by which the FDIC determines the deposit insurance assessment for each large IDI. The Scorecard combines CAMELS ratings and other forward-looking ratios and calculates a total score for each institution. The total score is converted to the IDI's initial base assessment rate, which ultimately results in the IDI's total base assessment rate. Under the *Adjustment Guidelines*, the FDIC can adjust an IDI's total score, up or down, based on risk factors not captured in the Scorecard. In establishing the *Adjustment Guidelines*, the FDIC stated its expectation that the adjustment process would be needed for only a relatively small number of institutions.

In this case, the Bank sought the maximum possible downward adjustment of 15 points, arguing that certain loans in its portfolio were erroneously identified as higher-risk assets and that its deposit insurance assessment rate was high in relation to other large institutions. The Bank argued that the information it submitted established its entitlement to the maximum total score reduction. The Division responded that the Bank's downward adjustment request should be rejected, noting that it had carefully considered the Bank's arguments but found that the data and analysis did not support the Bank's claim.

After considering the matter at length, the Committee concluded that the Bank's appeal should be denied and made the following findings:

(1) The Bank did not establish good cause to waive paragraph G of the *Guidelines for Appeals of Deposit Insurance Assessment Determinations* ("*AAC Guidelines*"), which states that nothing in the AAC process creates discovery rights. Accordingly, the AAC denied the Bank's request to review and respond to any FDIC staff submissions made to the AAC.

(2) The Bank did not establish that certain loans that were fair-valued had been "de-risked," and therefore did not establish that the loans should be excluded from the Scorecard's higher-risk assets ratio or the underperforming assets ratio.

(3) The Bank did not establish that its asserted low loss rates resulted from its underwriting quality.

(4) The Bank did not establish that its underwriting and low loss rates warranted the exclusion of certain loans from the higher-risk assets ratio in the Scorecard.

(5) The Bank did not establish that certain nontraditional mortgages should be excluded from the Scorecard's higher-risk assets ratio.

(6) The Bank did not establish that its historical loss rates warranted a reduction to the standardized asset loss-rate assumptions included in the Scorecard's loss severity measure, which estimates potential asset recovery values to the DIF at an institution's failure.

(7) The Bank did not establish that its CAMELS Asset quality component rating for the relevant assessment periods was inappropriately considered by DIR in the adjustment process.

(8) The Bank did not establish that its CAMELS Capital component rating for the relevant assessment periods, and other factors, outweighed the numerical capital ratios in the Scorecard.

(9) The Bank did not establish that its proffered market indicators warranted a downward adjustment to the Bank's total score.

The AAC found that the Bank sought to downplay numerous risk measures that were included in the Scorecard and, instead, focus on other measures not relied on in the Scorecard that would show the Bank in a more favorable light. However, the AAC declined to depart from the Scorecard measures, stating that the analytics used to construct the Scorecard were twice published for public notice and comment and were changed in response to comments received.

In accordance with the *AAC Guidelines*, the Committee reviewed all submissions concerning the appeal, reviewed the final determination being appealed, and considered any other matters it deemed in its discretion to be appropriate. Under the *AAC Guidelines*, the burden of proof on all matters at issue rests with the institution. The Committee determined that the Bank had failed to meet its burden, that a reduction to the Bank's total score was not warranted, and therefore denied the Bank's appeal.