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To: Interested Foreign Banks

From: Roy C. Andersen

Re: New Fed Assessment Program for Foreign Banks that own a US Bank

It appears that the new assessment program finalized by the Fed last week will affect larger foreign bank that own a US banking subsidiary.

On August 23, 2013, the Fed published its final rule on assessments for banks and foreign banks with over $50 billion in assets. Section 113 of the Dodd-Frank Act required the Fed to collect assessments equal to the expenses the Board estimates are necessary or appropriate to carry out its supervision and regulation of those companies for the supervision of bank holding companies with total consolidated assets of $50 billion or more.

This is part of an ongoing trend where the federal banking agencies are avoiding Congressional oversight on the amounts they spend by either shifting the burden of regulation on the industry or using government funds that are not subject to the normal appropriations procedures to pay for regulatory oversight.

The assessments will be imposed for last year.

For foreign banking organizations, a company subject to an assessment is a top-tier BHC that has total consolidated assets of $50 billion or more as determined based on the average of the foreign banking organization's total consolidated assets reported for the assessment period on the Capital and Asset Report for Foreign Banking Organizations (FR Y–7Q) Submissions. This will not apply to those banks that just have branches or agencies but only to foreign banks with US bank subsidiaries.

There was some criticism of the Fed for applying the rule to foreign banks by using their world-wide assets instead of their US asset base; however, the Fed stated that the Dodd-Frank Act required that the Fed use the world wide asset base to determine if a foreign BHC was covered.

The “assessable assets” of a foreign bank will be the total of its US branches, agencies and banking subsidiaries as well as its US-domiciled nonbanking companies. Foreign banks will be able to exclude certain intercompany balances reported on its FFIEC 002

The expenses of the Fed for supervision will include almost anything they can think of including Federal Reserve Bank expenses, examination expenses, meetings and writing regulations; even staff pension costs will be added. Related program costs such as the Shared National Credit program costs will be included. The Fed’s direct supervision expenses for 2012 were almost $440 million

The Fed is going to use asset size as the basis on which it will calculate the assessments. The Fed is going to calculate an assessment rate that will be applied to a bank’s assessable assets plus $50,000 to reach an assessment amount.

R.C.A.