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MICHAEL R. SPYCHALA SENIOR VICE PRESIDENT AND CONTROLLER



LETTER OF COMMENT NO. 204

August 8, 2008

Technical Director Financial Accounting Standards Board 401 Merritt 7 PO Box 5116 Norwalk, CT 06856-5116

File Reference No. 1600-100

M&T Bank Corporation appreciates the opportunity to respond to the proposed amendment of FASB Statement No. 5 and 141(R) – "Disclosure of Certain Loss Contingencies".

We believe that the proposed amendment to force additional loss contingency disclosures does not move our accounting structure towards a principles-based approach, which has been a major focus of standard-setters. We also believe that Statement No. 5 is a principles-based standard, which would become rules-based with the proposed amendments. We also question the assertion of a purported "need" of the "majority" of financial statement users for additional disclosures surrounding loss contingencies. We believe that the proposed disclosures provide little incremental value to financial statement users and have great potential to harm current investors. Some financial statement users may believe they would see a more complete picture with the proposed disclosures, but the true result would merely be a large quantity of inaccurate and misleading guesses and information that will continue to change throughout the duration of litigation or other contingencies. The proposed disclosures would also result in additional costs to the disclosing entity and investors of the entity, with little to no value added to the financial statement users. We believe the current principles-based requirements of Statement No. 5 are appropriate and adequate for loss contingency disclosures.

Below are our responses to the specific questions posed by the FASB relating to the proposed amendment.

Question 1: Will the proposed Statement meet the project's objective of providing enhanced disclosures about loss contingencies so that the benefits of those disclosures justify the incremental costs? Why or why not? What costs do you expect to incur if the Board were to issue this proposed Statement in its current form as a final Statement? How could the Board further reduce the costs of applying these requirements without significantly reducing the benefits?

We generally do not support the proposed increased disclosures pertaining to maximum exposure, current status, anticipated timing of resolution, and factors likely to affect the ultimate outcome of the contingency. The proposed disclosures of the maximum exposure to the entity would not

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provide financial statement users with a reliable forecast of an entity's operations or cash flows as they frequently cannot be determined with any degree of precision. Additionally, we believe requiring such disclosure would likely have an adverse impact on specific contingencies, especially given the narrowly defined prejudicial exemption, which the FASB expects to be used rarely. Proposed disclosures would lead to the creation of a pathway to oversized settlements/damages, such that plaintiff attorneys would likely argue that the maximum exposure identified is the entity's acknowledgement of what could or should be paid. Given the litigious nature of our society, such disclosures could also expose an entity to additional lawsuits relating to similar alleged contingencies, be they frivolous or otherwise. These additional exposures not only lead to additional costs and possible losses for the disclosing entity, but their shareholders as well, whose very interests are ultimately the ones the FASB is attempting to protect. There would also be the obvious significant incremental costs associated with the preparation and analysis of proposed disclosures, including both legal and auditing costs.

Given the guess-work needed to provide many of the disclosures contemplated by the proposed statement, we do not believe that there are any incremental benefits that will outweigh the significant incremental costs of providing those proposed additional disclosures.

Question 2: Do you agree with the Board's decision to include within the scope of this proposed Statement obligations that may result from withdrawal from a multiemployer plan for a portion of its unfunded benefit obligations, which are currently subject to the provisions of Statement 5? Why or why not?

No comment.

Question 3: Should an entity be required to provide disclosures about loss contingencies, regardless of likelihood of loss, if the resolution of the contingencies is expected to occur within one year of the date of the financial statements and the loss contingencies could have a severe impact upon the operations of the entity? Why or why not?

We do not believe that likelihood of occurrence should be disregarded in the loss contingency disclosure. If a loss is not otherwise likely, disclosures should not be required. In addition, the timing of the resolution of contingencies is extremely unpredictable, which would make an assessment of an expectation of resolution a "best guess". Furthermore, by the FASB's admission, this proposed requirement results in additional divergence from International Financial Reporting Standards as IAS 37 does not require disclosures for remote loss contingencies regardless of the expected timing of resolution or potential severity of the contingency.

Question 4: Paragraph 10 of Statement 5 requires entities to "give an estimate of the possible loss or range of loss or state that such an estimate cannot be made." One of financial statement users' most significant concerns about disclosures under Statement 5's requirements is that the disclosures rarely include quantitative information. Rather, entities often state that the possible loss cannot be estimated. The Board decided to require entities to disclose the amount of the claim or assessment against the entity, or, if there is no claim or assessment amount, the entity's best estimate of the maximum possible exposure to loss. Additionally, entities would be permitted, but not required, to disclose the possible loss or range of loss if they believe the amount of the claim or assessment is not representative of the entity's actual exposure.

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- a. Do you believe that this change would result in an improvement in the reporting of quantitative information about loss contingencies? Why or why not?
- b. Do you believe that disclosing the possible loss or range of loss should be required, rather than optional, if an entity believes the amount of the claim or assessment or its best estimate of the maximum possible exposure to loss is not representative of the entity's actual exposure? Why or why not?
- c. If you disagree with the proposed requirements, what quantitative disclosures do you believe would best fulfill users' needs for quantitative information and at the same time not reveal significant information that may be prejudicial to an entity's position in a dispute?

Question 5: If a loss contingency does not have a specific claim amount, will an entity be able to provide a reliable estimate of the maximum exposure to loss (as required by paragraph 7(a)) that is meaningful to users? Why or why not?

Quantitative disclosures are only meaningful to the extent they are reliable. The reason many filers state that the possible loss cannot be estimated is because it cannot reliably be estimated. Disclosure about ranges of possible loss or amounts accrued for possible settlement would ultimately be beneficial only to the other party involved in the contingency. Estimating maximum exposures for unasserted claims will be equally unreliable and more counter-productive in our view. While extremely useful to class action lawyers or other parties who may wish to seek damages for alleged harms, the disclosures contemplated by the proposed statement would not necessarily be useful in assisting investors in understanding the impact to the future cash flows and operating results of an entity. We believe that the current accounting and disclosure requirements under Statement No. 5 are both appropriate and sufficient.

Question 6: Financial statement users suggested that the Board require disclosure of settlement offers made between counterparties in a dispute. The Board decided not to require that disclosure because often those offers expire quickly and may not reflect the status of negotiations only a short time later. Should disclosure of the amount of settlement offers made by either party be required? Why or why not?

We agree with the Board's decision to not require disclosure of settlement offers, as it does not reflect the true status of negotiations or loss contingencies.

Question 7: Will the tabular reconciliation of recognized loss contingencies, provided on an aggregated basis, provide useful information about loss contingencies for assessing future cash flows and understanding changes in the amounts recognized in the financial statements? Why or why not?

We do not support the tabular disclosure of recognized loss contingencies with the accompanying qualitative descriptions, as we believe the likely costs to the disclosing entity (including costs associated with settlement value) will far outweigh the benefits of any such disclosure. Disclosures currently required by Statement No. 5 provide sufficient information about significant contingencies. The proposed requirement will lead to the disclosure of items that are not significant and will have an adverse impact as discussed in our response to Question 1. As a result, the proposed disclosure will not benefit investors.

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Question 8: This proposed Statement includes a limited exemption from disclosing prejudicial information. Do you agree that such an exemption should be provided? Why or why not?

We believe that the overall nature of the proposed disclosures is "prejudicial" and as such we find the prejudicial limitation too restrictive.

Question 9: If you agree with providing a prejudicial exemption, do you agree with the two-step approach in paragraph 11? Why or why not? If not, what approach would you recommend and why?

Consistent with our response to Question 8, we believe that the exemption would need to be applied more frequently as opposed to rarely. We believe the exemption is too narrow, as it does not exempt prejudicial information such as the amount of the claim or assessment against the entity, description of the loss contingency, including how it arose, its legal or contractual basis, its current status, the anticipated timing of its resolution, and a description of the factors that are likely to affect the ultimate outcome of the contingency along with the potential impact on the outcome. Consistent with our response to Question 11, the abovementioned items would meet the definition of "prejudicial information." If an entity has only a few contingencies, which is likely the case for many companies, aggregation of contingencies for disclosure is not at all beneficial.

Question 10: The International Accounting Standards Board (IASB) continues to deliberate changes to IAS 37, Provisions, Contingent Liabilities and Contingent Assets, but has not yet reconsidered the disclosure requirements. The existing disclosure requirements of IAS 37 include a prejudicial exemption with language indicating that the circumstances under which that exemption may be exercised are expected to be extremely rare. This proposed Statement includes language indicating that the circumstances under which the prejudicial exemption may be exercised are expected to be rare (instead of extremely rare). Do you agree with the Board's decision and, if so, why? If not, what do you recommend as an alternative and why?

Consistent with our previous comments, we do not believe that the exemption would only need to be applied rarely.

Question 11: Do you agree with the description of prejudicial information as information whose "disclosure...could affect, to the entity's detriment, the outcome of the contingency itself"? If not, how would you describe or define prejudicial information and why?

We believe that the description of "prejudicial information" should be expanded beyond being able to affect, to the entity's detriment, the outcome of only the contingency itself. As mentioned in our response to Question 1, the proposed additional qualitative and quantitative disclosures could lead to oversized settlements/damages and additional lawsuits or claims thereby exposing an entity and investors to additional costs and losses.

Question 12: Do you believe it is operational for entities to disclose all of the proposed requirements for interim and annual reporting periods? Should the tabular reconciliation be required only annually? Why or why not?

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We believe that requiring the proposed disclosures for both interim and annual periods simply adds to the volume of disclosures while providing little clarity or benefit to financial-statement users. Furthermore, higher frequency of disclosure would be extremely difficult given the incremental amount of evaluation that would be necessary, additional consultation with internal and external legal counsel, and incremental auditor requirements, including incremental audit correspondence with attorneys. Given the slow-moving nature of the resolution of most contingencies, quarterly disclosure would be unreasonably costly in terms of time and money, with little benefit to financial statement users, and with great potential harm to investors. As such, if the proposed disclosures of the exposure draft become a requirement, we believe the less frequent annual disclosure is more appropriate.

Question 13: Do you believe other information about loss contingencies should be disclosed that would not be required by this proposed Statement? If so, what other information would you require?

We believe that disclosures required by Statement No. 5 are sufficient.

Question 14: Do you believe it is operational for entities to implement the proposed Statement in fiscal years ending after December 15, 2008? Why or why not?

We do not believe such early implementation would be operational given reasons listed in our response to Question 12. Furthermore, issues relating to infringement upon attorney-client privilege would need to be addressed given the additional proposed disclosures and related auditor inquiries of an entity's legal counsel.

We appreciate the opportunity to comment on this exposure draft.

Very truly yours,

Michael R. Spychala Senior Vice President and Controller