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LETTER OF COMMENT NO. 230

March 31, 2009

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

File Reference: Proposed FSP FAS 115-a, FAS 124-a, and EITF 99-20-b

Members of the Board:

M&T Bank Corporation appreciates the opportunity to respond to the proposed FASB Staff Position (FSP), FSP FAS 115-a, FAS 124-a, and EITF 99-20-b, that amends FASB Statement No. 115, Accounting for Certain Investments in Debt and Equity Securities, FASB Statement No. 124, Accounting for Certain Investments Held by Not-for-Profit Organizations, FSP FAS 115-1 and FAS 124-1, The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments, and EITF Issue No. 99-20, Recognition of Interest Income and Impairment on Purchased Beneficial Interests and Beneficial Interests That Continue to Be Held by a Transferor in Securitized Financial Assets.

We are supportive of the idea of improving other-than-temporary impairment guidance. Below are our responses to the specific questions posed by the FASB relating to the proposed FSP.

Question 1: This proposed FSP would require entities to separate (and present separately on the statement of earnings or "performance indicator") an other-thantemporary impairment of a debt security into two components when there are credit losses associated with an impaired debt security for which management asserts that it does not have the intent to sell the security and it is more likely than not that it will not have to sell the security before recovery of its cost basis. The two components would be (a) the credit component and (b) the noncredit component (residual related to other factors). Does this separate presentation provide decisionuseful information?

We believe that a debt security that an entity does not have the intent to sell should be considered other-than-temporarily impaired only if it is probable that the investor will be

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unable to collect all contractual amounts due. The entire amount of the other-thantemporary impairment should be credit-related losses and recognized in earnings. For available-for-sale securities, impairments not related to credit losses (which by definition would be "temporary") should be recognized in other comprehensive income only, while for held-to-maturity securities such impairments should not be recognized in either other comprehensive income or earnings. The accounting guidance and financial statement presentation suggested by the FASB that require presentation of offsetting balances in the income statement is confusing, at best, and particularly with regard to held-to-maturity securities requires recognition of impairment for amounts that are expected to be fully collected.

Question 2: This proposed FSP would require that the credit component of the other-than-temporary impairment of a debt security be determined by the reporting entity using its best estimate of the amount of the impairment that relates to an increase in the credit risk associated with the specific instrument. One way of estimating that amount would be to consider the measurement methodology described in paragraphs 12–16 of FASB Statement No. 114, Accounting by Creditors for Impairment of a Loan. For debt securities that are beneficial interests in securitized financial assets within the scope of Issue 99-20, the amount of the total impairment related to credit losses would be determined considering the guidance in paragraph 12(b) of Issue 99-20. Do you believe this guidance is clear and operational? Do you agree with the requirement to recognize the credit component of an other-than-temporary impairment in income and the remaining portion in other comprehensive income? Under what circumstances should the remaining portion be recognized in earnings?

Most banking institutions manage the net cash flows of their assets and liabilities. As a result, the current fair value of an investment security is only relevant to the extent that there are embedded credit losses inherent in the valuation (i.e. there is an actual reduction in anticipated cash flows). The concept of only recognizing the credit portion (i.e. the expected reduction in cash flows) of the impairment in earnings will allow investors to view a banking entity's results more consistently with how many companies manage their business.

We believe that the FASB should continue to move towards a principles-based accounting approach and not prescribe a specific methodology to estimate the credit component of impairment. Accordingly, we believe that providing examples of acceptable methodologies would be appropriate but also believe the FASB should continue to allow for each reporting entity to determine its own method of estimating the credit component (even if different from the examples). Strong consideration should be given to eliminating the impairment approach described in EITF 99-20, which is extremely rules-based and

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oftentimes produces results that are counter-intuitive or the result of insignificant cash flow differences. Additionally, credit-related impairments should be based on cash flows that are not expected to be realized and should not be based on value measurements that may be observed in distressed or generally inactive markets.

As indicated previously, with respect to a noncredit component for available-for-sale securities, it is already recognized in other comprehensive income. (While we may have a fundamental disagreement with the basis used to impose that requirement, such disagreement is beyond the scope of this letter.) For held-to-maturity securities, we do not believe that the noncredit component should be recognized at all (in earnings or other comprehensive income), as it represents amounts that a reporting entity expects to collect, assuming the reporting entity can assert that it does not have the intent or expectation of selling the security. Given that the noncredit component is expected to be fully collectible and the reporting entity's stated intention is to hold the security, we see no logical rationale to support a reduction of equity for the noncredit component and believe this requirement should be dropped.

Additional impairment should be recognized in earnings only when it is probable that the reporting entity's expectation of realizing cash flows diminishes, such as when probable credit losses increase above the amount recognized at the time of an earlier other-than-temporary impairment or the security is held for sale prior to its maturity.

We do not believe it was the FASB's intention to require newly impaired debt securities to be reassessed for scope inclusion in EITF 99-20. However, language of paragraph 14 may lead to misinterpretation with respect to this intention if not clarified.

"In periods after the recognition of an other-than-temporary impairment loss for debt securities, an investor shall account for the other-than-temporarily impaired debt security as if the debt security had been purchased on the measurement date of the other-than-temporary impairment at a cost equal to the previous basis less the impairment recognized in earnings."

We believe that subsequent to impairing a debt security, the remaining discount or reduced premium should be accreted or amortized to income to the extent that cash flows are expected to be collected, using the level yield method. A reporting entity's EITF 99-20 scope assessment, however, should remain unchanged and should not be reassessed after a debt security is determined to be other-than-temporarily impaired under FASB Statement Nos. 115 and 124. Please clarify in the FSP and amendments that it is not the FASB's intent to scope other-than-temporarily impaired debt securities, which were not previously within scope, into EITF 99-20. Please also clarify that subsequent accretion or amortization of the remaining discount or reduced premium should only be recognized

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to the extent that cash flows associated with the credit-impaired security are expected to be collected.

Question 3: This proposed FSP modifies the current indicator that, to avoid considering an impairment to be other than temporary, management must assert that it has both the intent and the ability to hold an impaired security for a period of time sufficient to allow for any anticipated recovery in fair value. The Board believes that, compared to current requirements, it is more operational for management to assert that (a) it does not have the intent to sell the security and (b) it is more likely than not that it will not have to sell the security before its recovery. Does this modification make this aspect of the other-than-temporary impairment assessment more operational (the remaining factors discussed in FSP FAS 115-1/FAS 124-1, The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments, would remain unchanged)? Should this modification apply to both debt and equity securities? Will this change result in a significant change to the assessment of whether an equity security is other-than-temporarily impaired?

We concur with the proposed change to have management assert that it does not have the intent to sell the security and that it is more likely than not that it will not have to sell the security before its recovery, as it is more operational and practical.

Furthermore, we believe that a regulator's overall divestiture authority to cause a reporting entity to dispose of a security due to safety and soundness concerns does not impair a reporting entity's ability to assert that it does not intend to sell the security or that it is more likely than not that it will not have to sell the security before its recovery, consistent with the concept of a "going concern" and conclusions reached in EITF Topic D-39. Specific acknowledgement of the FASB's concurrence with this conclusion may be helpful and reduce implementation issues.

Lastly, we believe this criteria should be applicable for both debt and equity securities.

Question 4: This proposed FSP would require that the portion of an impairment recognized in other comprehensive income for held-to-maturity securities be amortized (through other comprehensive income) over the remaining life of the debt security in a prospective manner based on the amount and timing of future estimated cash flows by offsetting the recorded value of the asset (that is, an entity would not be permitted to adjust the fair value of a held-to-maturity security for subsequent recoveries in the fair value of the security similar to the accounting for available-for-sale securities). Do you agree with this requirement?

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As stated earlier, we believe that it is not appropriate to recognize noncredit-related impairment for held-to-maturity securities, as this component would represent amounts that are expected to be fully collected. Other-than-temporary impairment recognized for held-to-maturity securities should only represent amounts for which the reporting entity concludes it is probable that such amounts will not be collected.

Question 5: Is the proposed effective date of interim and annual periods after March 15, 2009, operational?

We believe that the timing of the effective date is operational.

We appreciate the opportunity to comment on this proposed FSP.

Very truly yours,

Michael R. Spychala Senior Vice President and Controller