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LETTER OF COMMENT NO. 273

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 157-e

Members of the Board:

M&T Bank Corporation appreciates the opportunity to respond to the proposed FASB Staff Position FAS 157-e (“FSP 157-e”), that amends Statement No. 157, *Fair Value Measurements* (“Statement 157”) and FSP FAS 157-3, *Determining the Fair Value of a Financial Asset When the Market for That Asset is Not Active* (“FSP 157-3”).

We are supportive of the objective to provide additional guidance on determining whether a market for a financial asset is not active and a transaction is not distressed for fair value measurements under Statement 157 and applaud FASB Chairman Robert Herz’s statements to the House of Representatives Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises Hearing including:

“...the Standard tells you not to look to distressed sales or forced liquidations. It asks you to get a lot of data. If in many cases, in these kind of conditions, what you ought to be doing is doing cash flow projections... Yet somehow the way it’s being implemented is kind of on a last trade basis, and that’s not the intent.”

With Chairman Herz’s intentions in mind, we believe that there are inconsistencies between the proposed language of FSP 157-e and the proposed amended language of Statement 157, which should be clarified to avoid practitioners from again referencing distressed sales in their valuations.

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

Question 1: Is the proposed effective date of interim and annual periods ending after March 15, 2009, operational?

March 31, 2009

Page 2

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

Question 2: Will this proposed FSP meet the project's objective to improve financial reporting by addressing fair value measurement application issues identified by constituents related to determining whether a market is not active and a transaction is not distressed? Do you believe the amendments to Statement 157 in this proposed FSP are necessary, or do you believe the current requirements in Statement 157 should be retained?

We believe amendments to Statement 157 and FSP 157-3 are necessary. We are concerned, however, that the amendments to Statement 157 and FSP 157-3, as written, will not be effective in addressing the concerns of Chairman Herz and others that fair value measurements are being linked to distressed transactions. Specifically, we believe that the language in the Appendix is not consistent with the language in paragraph 15. When quoted prices are determined to be associated with distressed transactions, the reporting entity must use a different valuation technique instead of the quoted price of the distressed transaction or a price that is based on a distressed transaction. Specifically, the inputs to the valuation technique used should reflect those that would be present in an orderly transaction between willing market participants at the measurement date. The quoted price of a distressed transaction provides no reliable basis to understand an orderly transaction between willing market participants. As such, we are concerned that the amendments to Statement 157 and FSP 157-3 again refer to making adjustments to quoted market prices for distressed transactions. By definition, if a transaction in an inactive market is deemed to be distressed, it in no way reflects a transaction that would occur in an orderly market between a willing buyer and a willing seller and therefore has no relevance as a valuation input. Indeed, practice that has evolved and the criteria in paragraph 13 of the proposed FSP largely ignore the value ascribed to an asset by a willing seller and rely almost exclusively on potential buyers and/or broker opinions of price. The fact that usual marketing activities (such as those described in paragraph 13) have been followed does not mean that the seller was any less distressed. We believe that language such as that proposed will again add confusion to the process of determining fair value and as previously mentioned, appears inconsistent with Chairman Herz's testimony. The following examples are provided to highlight the inconsistencies. We strongly believe that if left as written, preparers will again be referencing last trade data and/or potential buyer opinions of price when it is inappropriate to do so.

Amendment to Paragraph 29A of Statement 157

The amendment to paragraph 29A begins:

“When evaluating whether it is necessary to make a significant adjustment to quoted prices for identical or similar assets or liabilities in markets that

March 31, 2009

Page 3

are not active, the reporting entity shall apply the following two-step approach (significant judgment is required).”

This language indicates that the quoted price of a distressed transaction within an inactive market should be used as a starting point to determine fair value, which is contrary to paragraph 15, which states, “...the reporting entity must use a valuation technique other than one that uses that quoted price without significant adjustment.”

Furthermore, later within the paragraph 29A amendment, FASB states:

“If the reporting entity does not have evidence that both factors are present for a given quoted price (including because there is insufficient information on which to base a conclusion), then the reporting entity shall consider the quoted price to be associated with a distressed transaction and shall use a valuation technique other than one that uses the quoted price without significant adjustment (that is, a significant adjustment is required, resulting in a Level 3 measurement). For example, the reporting entity could use an income approach (that is, a present value technique) to estimate fair value. However, the fair value resulting from the present value technique shall not be derived solely from inputs based on the quoted price associated with a distressed transaction.”

This language also indicates that the quoted price of a distressed transaction within an inactive market should be used as a starting point in determining fair value, which is contrary to paragraph 15 of FSP 157-e and Chairman Herz’s testimony. To avoid confusion, we believe that the FASB should explicitly state within the Statement 157 amended language that the quoted price relating to a distressed transaction should not be used as an input to determine fair value and instead a different valuation technique reflecting an orderly transaction between a willing buyer and willing seller should be employed. At a minimum, the word “solely” should be removed from the last underscored phrase in the preceding paragraph.

Amendment to Paragraph A32E of Statement 157

The proposed amended language for paragraph A32E of Statement 157 indicates that information used to determine the discount rate applied to cash flows in order to arrive at a fair value measurement would include credit spreads for “current issuances for similarly rated securities” and “reasonable assumptions regarding liquidity and nonperformance risks that willing buyers and willing sellers would consider in pricing the asset in an orderly transaction based on current market conditions.” “Current” credit spreads and “current” market conditions would again imply the use of distressed transaction information, which we believe is contrary to the objective of FSP 157-e. It is our understanding that it is not the FASB’s intention to include distressed transaction information in determining fair value measurements, as this would provide no

March 31, 2009

Page 4

clarification to the current practice and standards. To avoid confusion, we suggest that the language should not refer to “current” conditions, but rather should refer to assumptions or information relating to risks that willing buyers and willing sellers would consider in pricing the asset in an orderly, nondistressed transaction in a normal and active market. Specifically, emphasis should be made that strong consideration needs to be given to the value ascribed to a security by a “willing seller.” Practice that has evolved in today’s distressed market conditions relies almost exclusively on value inputs provided by “opportunistic buyers” and “distressed sellers.”

Amendment to Paragraph A32F of Statement 157

The proposed amended language for paragraph A32F implies that the midpoint or simple average between the rate of return for a collateralized debt obligation in an active market and the rate of return for a distressed transaction in an inactive market would be used as the discount rate to determine the fair value measurement. Again, we find the price for a distressed transaction in an inactive market to be irrelevant in determining a price that would be achieved between a willing buyer and a willing seller in an orderly transaction as is required by Statement 157. We again reference Chairman Herz’s testimony:

“...the fair value measurement approach has within it a ability to do cash flow modeling, rather than just take prices in the market that might have been fire-sales, that you don’t really know. We have told people repeatedly, it is not a last trade model, in particularly in these kinds of markets, yet for some reason we’re told that that keeps on happening.”

“I will tell people here on public television that the rules, the Standard, allows for the exercise of appropriate judgment. I am going to say that and I am going to say it again. It cannot, with illiquid markets and complex securities, be a mechanical exercise.”

Given the irrelevance of the distressed transaction, we do not believe that using the midpoint or average rate would result in determining the fair value of the asset in an orderly, nondistressed transaction at the measurement date. Again we strongly suggest modifying the example to exclude the input of the distressed transaction to avoid further confusion with respect to last trades as is Chairman Herz’s stated intention. The valuation inputs should reflect what would happen in an orderly transaction between a “willing buyer” and a “willing seller.” Those inputs should in no way reflect the views of “opportunistic buyers” and “distressed sellers.”

March 31, 2009

Page 5

Amendment to note within the Appendix of Statement 157

Example 11 (A32A-A32F) employs a discounted cash flow approach that begins with estimated cash flows expected to be collected to determine fair value. The note at the beginning of Example 11 states, "Other approaches to determining fair value may be appropriate." The methodology described in the example is only one possible way of estimating value and, accordingly, we concur with this statement and believe that it should not only be retained but also emphasized in the final FSP. We believe that the FASB should continue down the path of moving towards principles-based accounting rules which do not prescribe or over-emphasize a particular technique to arrive at estimated fair value measurements.

Question 3: Do you believe the proposed two-step model for determining whether a market is not active and a transaction is not distressed is understandable and operational? If not, please suggest alternative ways of identifying inactive markets and distressed transactions.

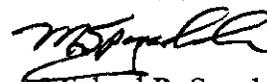
Our response is provided following Question 4.

Question 4: Are the factors listed in paragraph 11 of the FSP that indicate that a market is not active appropriate? Please provide any other factors that indicate that a market is not active.

The factors listed for step 1 in paragraph 11 are appropriate, although some of those factors are more easily identified and analyzed than others. The FASB should clearly indicate that all factors need not be identified as present and that the presence of even one or two of the indicated factors (or other factors) may indicate that a market is inactive. With regard to step 2, the criteria described in paragraph 13 are likely to be present even in distressed transactions. As noted previously, the FASB's guidance continues to ignore value ascribed by a "willing seller" and places extreme over reliance on prices suggested by "opportunistic buyers" and "distressed sellers."

We appreciate the opportunity to comment on this proposed FSP.

Very truly yours,



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