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January 25, 2022

## **REQUEST FOR CONFIDENTIAL TREATMENT**

Ivan Hurwitz, Senior Vice President  
Federal Reserve Bank of New York  
33 Liberty Street  
New York, NY 10045

Dear Mr. Hurwitz:

On behalf of our client, M&T Bank Corporation (“M&T” or the “Applicant”), enclosed please find a response (the “Response”) to the letter, dated January 18, 2022, from Eileen Banko of the Federal Reserve Bank of New York (“FRBNY”) requesting additional information with respect to the application submitted on March 22, 2021 to the Board of Governors of the Federal Reserve System (the “Board”) pursuant to (i) Sections 3(a)(3) and 3(a)(5) of the Bank Holding Company Act of 1956, as amended, and Sections 225.11 and 225.15 of the Board’s Regulation Y promulgated thereunder; (ii) the Bank Merger Act, 12 U.S.C. § 1828(c) and implementing regulations; and (iii) Section 9 of the Federal Reserve Act of 1913, as amended (“the Application”).

The Response provides the requested updates to information previously provided to the FRBNY and the Board in our responses to requests for information of April 12, 2021, May 7, 2021, May 28, 2021, July 14, 2021, August 6, 2021, and August 25, 2021 in connection with the Application, as well as in previous supervisory submissions.

The Response consists of the following:

- A public version of the Response;
- A confidential version of the Response;
- Public exhibits to the Response; and

- Confidential exhibits to the Response (together with the confidential version of the Response, the “Confidential Materials”).

The Confidential Materials have been marked “Confidential Treatment Requested.”

### **Confidential Treatment Request**

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the regulations of the Board, 12 C.F.R. Part 261, the Applicant hereby respectfully requests that the Confidential Materials be treated confidentially and not be made available for inspection or copying.

The Confidential Materials include nonpublic commercial or financial information that is privileged or confidential within the meaning of Section 261.15(a)(4) of the Board’s regulations or information that is otherwise exempt from disclosure under Section 261.15(a) of the Board’s regulations.<sup>1</sup> At this time, the Confidential Materials will not be publicly disclosed and are not required to be publicly disclosed. The information has been actually and customarily kept confidential by the Applicant and, where relevant, People’s United Financial, Inc. (“People’s United”), and their subsidiaries, and this information is being provided to the Board under an expectation and implied assurance of privacy.<sup>2</sup> Disclosure of this information would reveal to competitors the internal strategies, transactions and competitive position of the Applicant and, where relevant, People’s United and their subsidiaries and would place the Applicant, People’s United and their subsidiaries at a competitive disadvantage with respect to competitors who do not publicly reveal such information.<sup>3</sup> For these reasons,

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<sup>1</sup> Under 5 U.S.C. § 552(b)(4), information that a private party has provided to a government agency is exempt from disclosure if it consists of information that is “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” *Accord* 12 C.F.R. § 261.15(a)(4). The United States Supreme Court recently clarified that commercial information submitted to the federal government qualifies as “confidential” under 5 U.S.C. § 552(b)(4) when, at a minimum, it is “actually” and “customarily” “kept private” and the federal government provides assurances to the submitter that the information will be maintained in confidence. *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2363 and 2366 (2019).

<sup>2</sup> *See* 85 Fed. Reg. 57,616, 57,620 (submitters of confidential information may rely on “express or implied” assurances of confidentiality when submitting commercial or financial information to an agency); U.S. Department of Justice, Office of Information Policy, *Step-by-Step Guide for Determining if Commercial or Financial Information Obtained From a Person is Confidential Under Exemption 4 of the FOIA*, <https://www.justice.gov/oip/step-step-guide-determining-if-commercial-or-financial-information-obtained-person-confidential> (last updated Oct. 7, 2019).

<sup>3</sup> “A submitter’s request for confidentiality in reliance upon [the nonpublic commercial or financial information exemption] generally expires 10 years after the date of submission unless the

the Applicant believes that the Confidential Materials are privileged or confidential within the meaning of 12 C.F.R. § 261.15(a)(4). The Confidential Materials also contain information that may be exempt from disclosure pursuant to 12 C.F.R. § 261.15(a)(8).

In addition, we request, pursuant to the Freedom of Information Act and the applicable Board regulations and for reasons including those set forth above, that any memoranda, notes or other writings of any kind whatsoever made by an employee, agent or any person under the control of the Board or the FRBNY (or any other Federal Reserve Bank or governmental agency) that incorporate, include or relate to any of the matters referred to in the Confidential Materials (1) furnished by the Applicant or its employees or agents to the Board or the FRBNY (or any other Federal Reserve Bank or governmental agency) or (2) referred to in any conference, meeting, telephone conversation or interview between (a) employees, former employees, representatives, agents or counsel of the Applicant and (b) employees, agents or any persons under the control of the Board or the FRBNY (or any other Federal Reserve Bank or governmental agency), be maintained in confidence, not be made part of any public record and not be disclosed to any person.

We also request that, if the Board or the FRBNY should make a preliminary determination not to comply with the foregoing requests for confidential treatment, the Applicant be given notice thereof in ample time to permit it to make an appropriate submission as to why such information should be preserved in confidence. If the Confidential Materials or any of such memoranda, notes or writings are the subject of a Freedom of Information Act request or a request or demand for disclosure by any governmental agency, Congressional office or committee, court or grand jury, we request, pursuant to the Board's regulations, that you notify the Applicant prior to making such disclosure. We further ask that the Applicant be furnished with a copy of all written materials pertaining to such request (including but not limited to the request itself and any determination with respect to such request) and that the Applicant be given sufficient advance notice of any intended release so that they may, if deemed necessary or appropriate, pursue any available remedies.

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submitter requests and provides justification for a longer designation period.” 12 C.F.R. § 261.17(b). The Company, on behalf of itself and its affiliates, requests that the Confidential Materials be accorded confidential treatment beyond 10 years after the date of submission of such Confidential Materials because the Confidential Materials relate to internal governance and business strategies of the Company and its affiliates and disclosure of this information, whether now or in the future, would place the Company and its affiliates at a competitive disadvantage with respect to competitors who do not publicly reveal this information.

Ivan Hurwitz, Senior Vice President

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If you have any questions with respect to any of the matters discussed in this letter or the enclosures, please contact me at (202) 956-7015 or tokheima@sullcrom.com.

Sincerely,



Andrea R. Tokheim

(Enclosures)

cc: Eileen Banko  
Brian Steffey  
John Akal  
(Federal Reserve Bank of New York)

Patricia Soriano  
Alyssa O'Connor  
Peggy Naulty  
(Board of Governors of the Federal Reserve)

Laura O'Hara  
Joseph Bielawa  
(M&T Bank)

H. Rodgin Cohen  
Mark J. Menting  
(Sullivan & Cromwell LLP)