M&T Bank

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Office of the Director,
Division of Resolutions and Receiverships,
Federal Deposit Insurance Corporation,
550 17th Street NW,
Washington, DC 20429-0002

Re: RIN 3064-AF04 - FDIC Notice of Proposed Rulemaking to Part 330

Ladies and Gentlemen:

M&T Bank ("**M&T**") appreciates this opportunity to comment on the Federal Deposit Insurance Corporation's ("**FDIC**") Notice of Proposed Rulemaking to amend 12 C.F.R. §330 to modify the signature-card requirement for an account to be separately insured as a joint account (the **"NPR"**).

M&T applauds the FDIC's efforts to modernize the signature-card requirement of 12 C.F.R. §330.9 to facilitate the prompt payment of deposit insurance in the event of the failure of an insured depository institution ("**IDI**") and to reduce regulatory burden by permitting the use of new and innovative technologies and processes. M&T strongly supports the explicit recognition of electronic signatures in proposed §330.9(c)(1)(ii) and the addition of alternative methods to satisfy signature-card requirement ("**alternative methods**") set forth in the proposed §330.9(c)(4). As explained more fully below, M&T further recommends that the FDIC adopt the approach it outlined in the NPR in the Alternatives Considered section entitled "*Alternative 3: Eliminate Signature Card Requirement for Qualifying Joint Accounts*."

In addition to these general comments and recommendations, M&T also offers the following responses to the specific questions posed by the FDIC in the NPR:

a. **Can IDIs obtain information on account usage or access by the co-owners of an account?**

Yes, in many cases IDIs can obtain information on account usage and access by co-owners. Systems/services, whether internally managed or provided by third-party vendors can often identify the co-owner's usage or access to an account. For example, co-owner use or access may be evidenced by information showing use of a particular debit or ATM card, use of particular passcodes, presentation of identification in a branch setting, or signature on checks, letters, disclosures, or other documentation. The systems and procedures used by IDIs in these situations are typically relied upon for a wide array of important business and regulatory purposes. For example, some of these systems and procedures are required to support BSA/AML/KYC requirements, while others are used to prevent fraud and potential losses. As a result, these systems and procedures generally have strong controls to ensure the information produced is accurate. They are also subject to audit and outside examination by regulatory authorities to validate their integrity. As a result, these types of systems and procedures have a high degree of reliability.

b. Would the proposed rule sufficiently address satisfaction of the signature-card requirement through electronic methods, given the variety of account opening procedures used by IDIs? If not, what clarifications or changes are necessary?

As noted above, M&T strongly supports the explicit recognition of electronic signatures as a valid means to evidence that a co-owner has acknowledged an ownership interest in an account. However, we urge the FDIC to memorialize its prior guidance in the final rule and specify that a signature, including an electronic signature, could be applied on an account agreement or other document indicating that the customer is an owner of the account, as well as on a "signature-card." This could be accomplished by slightly amending §330.9(c)(1)(ii) to read: "Each co-owner has personally signed, which may include signing electronically, a deposit account signature card, *account agreement, or other document indicating ownership of the account or agreement to account terms*; and…."

As the FDIC notes in its discussion of the NPR, neither the FDI Act nor its implementing regulations define "signature-card." However, in common practice a "signature-card" typically refers to a document that contains a sample representation of the customer's name rendered by such customer. Under the E-Sign Act, a signature may be a digital representation of the customer's name but may also be represented by clicking a box or similar electronic means. In situations in which a customer is opening an account electronically (whether on the customer's computer or device or a bank-owned device), the customer may assent to the terms of the account by checking a box or taking other electronic actions. In these situations, the IDI may not obtain any document (paper or electronic) that contains a physical representation of the customer's name. Accordingly, for clarity we urge the FDIC to specify that an electronic signature of any kind acknowledging ownership of an account (e.g., acceptance of the terms of the account) is acceptable to meet the requirements of the regulation even if there is no document (paper or electronic) containing a physical representation of the customer's name.

We also note that electronic signature and customer verification has evolved into a highly sophisticated process and is in use in many aspects of the financial industry. Account opening processes at IDIs must comply with regulatory requirements and typically have strict controls that are subject to review internally by audit and externally by regulatory examination. The NPR changes to the signature-card requirement will allow IDIs to apply the electronic signature methods used at their depository bank with more confidence than the current signature-card process.

c. **Is any data available concerning the cost or effort that might be required for IDIs to obtain deposit account signature-cards for co-owners where a signature-card is currently not available in the deposit account records of the IDI?**

As discussed in section (e) below, the cost or effort required is not limited to obtaining signature-cards, but also the analysis of existing signature-card records for the IDI to determine if joint account signature-cards are not available or are missing one or more signatures. Cost estimates will vary from IDI to IDI and even within the same IDI depending on the nature of the deposit and signature-cards, meaning some deposits are more costly to analyze and remediate than others depending on whether the accounts were obtained through acquisition, when the accounts were opened, the bank systems in place at the time the accounts were opened, the relationship the IDI has with the customer (which may require a more personal touch to remediate) and other factors that impact the difficulty in analyzing the signature-cards and remediating signature deficiencies. The cost that was applied by the FDIC in the NPR appears adequate to cover most analysis and remediation scenarios. However, because IDIs that are not subject to Part §370 have a similar deposit structure and are not asked to perform any analysis or remediation, the cost to remediate the full population puts the Part 370 IDIs at a competitive disadvantage with respect to joint accounts that will require remediation of missing or incomplete signature-cards to comply with Part 370. As such, consideration should be given for application of Part §370 to focus only on those accounts over the standard maximum deposit insurance amount ("**SMDIA**") on the effective date of Part 370 and new joint accounts that are opened after the effective date of Part 370.

d. **How should the FDIC approach ensuring that a depositor does not use another person's personally identifiable information to establish a deposit account without the other person's knowledge simply to increase deposit insurance coverage?**

Whether an account is opened in an in-person setting or remotely through electronic channels, IDIs seek to verify the identity of the parties opening the account. While convincing, but fraudulent, forms of identification can be created and certain parties may learn sufficient information about another person to represent that person online, IDIs strive to ensure that they "know" all of their account owners. In addition, as described in section (e) below, there are significant risks and consequences that stem from naming another person as a joint owner (e.g., that person has authority to withdraw funds and survivor rights, that person's creditors can attach funds in the account). These risks and consequences serve as a significant deterrent to naming a joint account owner solely for the purpose of gaining additional FDIC insurance.

In addition, the FDIC rules offer many ways for an individual to secure FDIC insurance beyond that afforded in the single ownership capacity other than fraudulently adding a joint account owner. For example, a customer could establish POD/Totten trust beneficiaries or formal trusts. In addition, unlike when FDIC regulations were first enacted, customers today can very easily open accounts at multiple banks and monitor account balances to stay below

SMDIA at each institution. The prevalence and ease of electronic account opening and electronic account access, coupled with ease and speed of electronic interbank transactions, makes this a far more desirable approach to managing FDIC insurance than it would be to name joint owners solely to gain additional insurance.

Based on these factors, even in small communities with few physical bank options, customers have access to online account opening and banking and are not limited to banking at a single IDI. It is important to note that, based on our review of our records and our discussions with peer banks, it appears that a relatively small percentage of joint accounts exceed SMDIA in any case. This is consistent with published economic data that indicates that most Americans have very little in savings. As a result of these facts, the instances of FDIC fraud should be significantly lower than in the past.

M&T does not believe that the FDIC should have significant concern that a depositor will establish a joint account without the other person's knowledge simply to increase deposit insurance; in fact, we believe that, typically, joint accounts are opened with *both* parties' knowledge. In general, as described in section (g) below, the typical deposit account owner is not aware of the intricacies of FDIC insurance, thus only expect up to $250,000 of insurance and would not recognize the benefit of adding an additional account owner. The FDIC should rely on IDIs' established processes that already comply with stringent account opening procedures and know your customer ("**KYC**") requirements that require processes to ensure the identity of customers are captured and verified. These processes were not in place when the original signature-card requirement was instituted; however, significant strides have been made with technology, regulatory requirements and onboarding processes. These processes and procedures can be examined as part of the FDIC compliance review process.

e. **Are there any additional factors the FDIC should consider in determining whether the alternatives to the proposed rule described [in the NPR discussion] would better satisfy the agency's policy objectives of reducing regulatory burden and promoting prompt payment of deposit insurance consistent with the FDI Act in the event of an IDI's failure?**

M&T asks the FDIC to reconsider the rejected alternative of amending Section 330.9 to eliminate the signature-card requirement for joint accounts (i.e., adopting "*Alternative 3: Eliminate Signature Card Requirement for Qualifying Joint Accounts*" set forth in the Alternatives Considered section of the NPR). The FDIC has indicated the signature-card requirement is intended to address practices such as the addition of nominal co-owners to a deposit account without their knowledge solely for the purpose of increasing deposit insurance coverage. It is unrealistic to believe in this day-and-age, when customers have numerous deposit account choices (such as traditional banks, credit unions, and online banks), that customers would open joint accounts using another person's personally identifiable information for the fraudulent purpose of gaming the FDIC insurance in the unlikely event that the bank in which they maintain their deposit account fails. In doing so, the risks are substantial, while the rewards are almost non-existent, especially given the fact that the FDIC regulations provide non-fraudulent ways of accomplishing the same goal - each of which will receive maximum deposit insurance (e.g., by opening accounts under different ORCs - including trusts that receive multiple times SMDIA dependent on the number of beneficiaries).

It is universally established under state law governing joint accounts that, unless a contrary intent is manifested by the terms of the agreement, there is a presumption that a joint account is accessible to all owners and, at death, the account is subject to rights of survivorship of the co-owner[1]. In addition, given these presumptions, the joint account is subject to the risk of creditor garnishment. While the presumptions may be rebuttable, the burden of proof will be on the customer establishing the account that joint ownership was not intended. Thus, the risk of anyone establishing a joint account at a bank for the sole purpose of receiving extra FDIC insurance is infinitesimally small. In a day-and-age when business is routinely conducted online without a traditional paper signature and online banking options provide customers with access to multiple depository institutions to maximize FDIC insurance even in small communities without multiple physical banking locations, the "signature-card requirement" has become an antiquated concept that does little, if anything, to promote the FDIC's stated purpose. Instead, the signature-card requirement places an unreasonable burden on select IDIs. The risk to the FDIC deposit insurance funds is also small given that the vast majority of joint accounts at most IDIs have balances that are under SMDIA, thus making this cost to IDIs even more unnecessary. The burdens to the IDIs include: (1) the time and expense of analysis and remediation to meet the outdated signature- card requirement for IDIs that are subject to 12 C.F.R. Part 370 ("**Part 370**") recordkeeping rules ("**Part 370 IDIs**"), (2) the ongoing compliance and monitoring costs to comply with Part 370, and (3) the analysis and remediation costs incurred by a Part 370 IDI upon the acquisition of an IDI that is not subject to Part 370 ("**Non-Part 370 IDIs**"). The Part 370 IDIs, including M&T, have determined that a large number of the joint accounts with missing or incomplete signature-cards are attributable to joint accounts received in acquisitions of other smaller IDIs, including failed IDIs. In future acquisitions of Non-Part 370 IDIs by Part 370 IDIs, costly analysis of the signature-card requirement and appropriate remediation will be required by the acquiring Part 370 IDI.

While the alternative method set forth in the NPR to satisfy the signature-card requirement may lessen the burden, a Part 370 IDI would still need to expend substantial time and expense to ensure compliance with Part 370. In addition, while the signature-card requirement for joint accounts is applicable to all IDIs, given that most Non-Part 370 IDIs are not preparing for Part 370 compliance and are not doing the analysis that has been done by Part 370 IDIs, it is unlikely that these institutions will incur the cost of analyzing and complying with the proposed alternative method prior to failure. This puts the Part 370 IDIs at a competitive disadvantage with respect to joint accounts that will require remediation of missing or incomplete signature-cards to comply with Part 370, even if the population of such accounts is reduced by alternative methods proposed in the NPR, because it will require

[1] See for example New York Banking Law Section 675, N.J.S.A. 17:161-4 and Florida Statutes Section 655.79.

communication to customers who will likely be confused as described in section (g) below. This may cause customers to move their funds to another IDI.

For the reasons set forth above, M&T requests that the FDIC adopt *Alternative 3* of the Alternatives Considered section of the NPR and remove the signature-card requirement from the joint account rule, making the alternative method unnecessary.

f. Are there other alternatives that the FDIC should consider that would better satisfy those objectives?

While M&T strongly advocates that the FDIC should eliminate the signature-card requirement, it also believes that if the signature-card requirement is not eliminated, the FDIC should be flexible when considering alternative methods to fulfill the signature-card requirement, as all IDIs do not function the same. Cost versus benefit should also be considered when considering whether remediation is necessary for accounts with missing or incomplete signature-cards. In addition to the cost to the IDI, there is potential for customer confusion (as noted in section (g) below) if IDIs must remediate gaps in their signature-cards. The focus should be on accounts opened after the effective date of Part 370 and those with balances at or above SMDIA. If the FDIC retains a signature-card requirement, to minimize this disruption, we recommend that the rule should consider a grandfather provision that would remove the signature-card requirement for all existing accounts on the effective date of Part 370, or at least those that, when aggregated, are below SMDIA.

g. Does the proposed rule minimize the potential for depositor confusion over the requirements for joint accounts?

While any changes to the signature-card requirement that reduces the number of customers required to be remediated by an IDI stands to reduce the number of customers who may be confused about joint account requirements, M&T remains concerned that a significant number of customers who are contacted in any remediation effort will be confused and potentially significantly concerned about (1) their accounts, (2) the stability of the IDI, and (3) the stability of the FDIC insurance fund. Customers tend to be very sensitive and wary of any possible indication that there is a problem with their accounts. In addition, a vast majority of joint-account customers have account balances below SMDIA and do not understand or consider FDIC insurance with respect to their bank account. Customers with account balances below SMDIA may generally understand that as long as the amount deposited in a bank is below $250,000, such deposits are insured by the FDIC. These customers likely don’t understand the nuances of different ORCs that may provide additional FDIC insurance.

M&T is concerned that many customers may be confused and worried if they receive communications attempting to explain that their joint accounts might not qualify for the maximum amount of FDIC insurance because of the way the accounts are currently documented. This confusion and worry may well increase if the IDI also explains that the account would likely still qualify as a joint account for state law purposes. This confusion and concern could rise to the level that customers may even close their accounts.

As described above, most depositors do not pay close attention to the nuances of FDIC insurance and M&T is concerned that any remediation effort is likely to generate concern and confusion among depositors that will outweigh any possible benefit to these depositors or the FDIC.

Conclusion

In conclusion, M&T strongly advocates that the signature-card requirement be eliminated completely. M&T acknowledges and appreciates the substantial increase in flexibility with the proposed revisions to Section 330.9 set forth in the NPR and believes that these revisions more accurately reflect the processes available to IDIs to confirm joint depositor relationships. That said, if the signature-card requirement is not eliminated, as described above, M&T encourages the FDIC to revise the language contained in §330.9(c)(1)(ii) to acknowledge that the required signature may be on other documents in addition to a "signature-card." In addition, if the signature-card requirement is not eliminated, M&T requests that the FDIC consider a grandfather provision that would remove the signature-card requirement for all existing accounts on the effective date of Part 370, or at least those that, when aggregated, are below SMDIA. Further, M&T believes that the FDIC should be flexible regarding accepting current bank processes and those developed in the future to both minimize burden of compliance relative to the benefit achieved and the potential disruptive impact any remediation efforts may have on depositors.

We appreciate your consideration of these comments and would be pleased to discuss the topic further with members of the FDIC.

Very truly yours,

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