

M&T BANK CORP  
Form 10-K  
February 23, 2012  
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# UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

## Form 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2011

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Commission file number 1-9861

# M&T BANK CORPORATION

*(Exact name of registrant as specified in its charter)*

New York <i>(State of incorporation)</i>	16-0968385 <i>(I.R.S. Employer IdentificationNo.)</i>
One M&T Plaza, Buffalo, New York <i>(Address of principal executive offices)</i>	14203 <i>(Zip Code)</i>
Registrant's telephone number, including area code:	

716-842-5445

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of Each Class</u>	<u>Name of Each Exchange on Which Registered</u>
Common Stock, \$.50 par value	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:

8.234% Capital Securities of M&T Capital Trust I

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(and the Guarantee of M&T Bank Corporation with respect thereto)

*(Title of class)*

8.234% Junior Subordinated Debentures of

M&T Bank Corporation

*(Title of class)*

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months, and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer, and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes  No

Aggregate market value of the Common Stock, \$0.50 par value, held by non-affiliates of the registrant, computed by reference to the closing price as of the close of business on June 30, 2011: \$9,926,718,437.

Number of shares of the Common Stock, \$0.50 par value, outstanding as of the close of business on February 10, 2012: 126,406,098 shares.

## Documents Incorporated By Reference:

(1) Portions of the Proxy Statement for the 2012 Annual Meeting of Shareholders of M&T Bank Corporation in Parts II and III.

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Form 10-K for the year ended December 31, 2011

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**Table of Contents****PART I****Item 1. Business.**

M&T Bank Corporation ( Registrant or M&T ) is a New York business corporation which is registered as a financial holding company under the Bank Holding Company Act of 1956, as amended ( BHCA ) and as a bank holding company under Article III-A of the New York Banking Law ( Banking Law ). The principal executive offices of the Registrant are located at One M&T Plaza, Buffalo, New York 14203. The Registrant was incorporated in November 1969. The Registrant and its direct and indirect subsidiaries are collectively referred to herein as the Company. As of December 31, 2011 the Company had consolidated total assets of \$77.9 billion, deposits of \$59.4 billion and shareholders' equity of \$9.3 billion. The Company had 14,235 full-time and 1,431 part-time employees as of December 31, 2011.

At December 31, 2011, the Registrant had two wholly owned bank subsidiaries: M&T Bank and Wilmington Trust, National Association ( Wilmington Trust, N.A. ). The banks collectively offer a wide range of retail and commercial banking, trust, wealth management and investment services to their customers. At December 31, 2011, M&T Bank represented 99% of consolidated assets of the Company.

The Company from time to time considers acquiring banks, thrift institutions, branch offices of banks or thrift institutions, or other businesses within markets currently served by the Company or in other locations that would complement the Company's business or its geographic reach. The Company has pursued acquisition opportunities in the past, continues to review different opportunities, including the possibility of major acquisitions, and intends to continue this practice.

**Subsidiaries**

M&T Bank is a banking corporation that is incorporated under the laws of the State of New York. M&T Bank is a member of the Federal Reserve System and the Federal Home Loan Bank System, and its deposits are insured by the Federal Deposit Insurance Corporation ( FDIC ) up to applicable limits. M&T acquired all of the issued and outstanding shares of the capital stock of M&T Bank in December 1969. The stock of M&T Bank represents a major asset of M&T. M&T Bank operates under a charter granted by the State of New York in 1892, and the continuity of its banking business is traced to the organization of the Manufacturers and Traders Bank in 1856. The principal executive offices of M&T Bank are located at One M&T Plaza, Buffalo, New York 14203. As of December 31, 2011, M&T Bank had 774 domestic banking offices located throughout New York State, Pennsylvania, Maryland, Delaware, Virginia, West Virginia, and the District of Columbia, a full-service commercial banking office in Ontario, Canada, and an office in George Town, Cayman Islands. As of December 31, 2011, M&T Bank had consolidated total assets of \$76.9 billion, deposits of \$60.1 billion and shareholder's equity of \$9.7 billion. The deposit liabilities of M&T Bank are insured by the FDIC through its Deposit Insurance Fund ( DIF ). As a commercial bank, M&T Bank offers a broad range of financial services to a diverse base of consumers, businesses, professional clients, governmental entities and financial institutions located in its markets. Lending is largely focused on consumers residing in New York State, Pennsylvania, Maryland, Delaware, northern Virginia and Washington, D.C., and on small and medium-size businesses based in those areas, although loans are originated through lending offices in other states. In addition, the Company conducts lending activities in various states through other subsidiaries. M&T Bank and certain of its subsidiaries also offer commercial mortgage loans secured by income producing properties or properties used by borrowers in a trade or business. Additional financial services are provided through other operating subsidiaries of the Company.

Wilmington Trust, N.A. (formerly named M&T Bank, National Association), a national banking association and a member of the Federal Reserve System and the FDIC, commenced operations on October 2, 1995. The deposit liabilities of Wilmington Trust, N.A. are insured by the FDIC through the DIF. The main office of Wilmington Trust, N.A. is located at 1100 North Market Street, Wilmington, Delaware 19890. A second office is located in Oakfield, New York. Historically, Wilmington Trust, N.A. offered selected deposit and loan products on a nationwide basis, through direct mail, telephone marketing techniques and the Internet. Presently, Wilmington Trust, N.A. also offers various trust and wealth management services. As of December 31, 2011, Wilmington Trust, N.A. had total assets of \$1.1 billion, deposits of \$410 million and shareholder's equity of \$389 million.

Wilmington Trust Company, a wholly owned subsidiary of M&T Bank, was incorporated as a Delaware bank and trust company in March 1901 and amended its charter in July 2011 to become a non-depository trust company. Wilmington Trust Company provides a variety of Delaware based trust, fiduciary and custodial services to its clients. As of December 31, 2011, Wilmington Trust Company had total assets of

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\$910 million and shareholder's equity of \$533 million. The headquarters of Wilmington Trust Company are located at 1100 North Market Street, Wilmington, Delaware 19890.

M&T Life Insurance Company ( M&T Life Insurance ), a wholly owned subsidiary of M&T, was incorporated as an Arizona business corporation in January 1984. M&T Life Insurance is a credit reinsurer which reinsures credit life and accident and health insurance purchased by the Company's consumer loan customers. As of December 31, 2011, M&T Life Insurance had assets of \$17 million and shareholder's equity of \$16 million. M&T Life Insurance recorded revenues of \$1 million during 2011. Headquarters of M&T Life Insurance are located at 101 North First Avenue, Phoenix, Arizona 85003.

M&T Insurance Agency, Inc. ( M&T Insurance Agency ), a wholly owned insurance agency subsidiary of M&T Bank, was incorporated as a New York corporation in March 1955. M&T Insurance Agency provides insurance agency services principally to the commercial market. As of December 31, 2011, M&T Insurance Agency had assets of \$48 million and shareholder's equity of \$32 million. M&T Insurance Agency recorded revenues of \$24 million during 2011. The headquarters of M&T Insurance Agency are located at 285 Delaware Avenue, Buffalo, New York 14202.

M&T Mortgage Reinsurance Company, Inc. ( M&T Reinsurance ), a wholly owned subsidiary of M&T Bank, was incorporated as a Vermont business corporation in July 1999. M&T Reinsurance enters into reinsurance contracts with insurance companies who insure against the risk of a mortgage borrower's payment default in connection with M&T Bank-related mortgage loans. M&T Reinsurance receives a share of the premium for those policies in exchange for accepting a portion of the insurer's risk of borrower default. As of December 31, 2011, M&T Reinsurance had assets of \$31 million and shareholder's equity of \$19 million. M&T Reinsurance recorded approximately \$3 million of revenue during 2011. M&T Reinsurance's principal and registered office is at 148 College Street, Burlington, Vermont 05401.

M&T Real Estate Trust ( M&T Real Estate ) is a Maryland Real Estate Investment Trust that was formed through the merger of two separate subsidiaries, but traces its origin to the incorporation of M&T Real Estate, Inc. in July 1995. M&T Real Estate engages in commercial real estate lending and provides loan servicing to M&T Bank. As of December 31, 2011, M&T Real Estate had assets of \$16.3 billion, common shareholder's equity of \$15.5 billion, and preferred shareholders' equity, consisting of 9% fixed-rate preferred stock (par value \$1,000), of \$1 million. All of the outstanding common stock and 89% of the preferred stock of M&T Real Estate is owned by M&T Bank. The remaining 11% of M&T Real Estate's outstanding preferred stock is owned by officers or former officers of the Company. M&T Real Estate recorded \$763 million of revenue in 2011. The headquarters of M&T Real Estate are located at M&T Center, One Fountain Plaza, Buffalo, New York 14203.

M&T Realty Capital Corporation ( M&T Realty Capital ), a wholly owned subsidiary of M&T Bank, was incorporated as a Maryland corporation in October 1973. M&T Realty Capital engages in multifamily commercial real estate lending and provides loan servicing to purchasers of the loans it originates. As of December 31, 2011, M&T Realty Capital serviced \$9.0 billion of commercial mortgage loans for non-affiliates and had assets of \$339 million and shareholder's equity of \$69 million. M&T Realty Capital recorded revenues of \$69 million in 2011. The headquarters of M&T Realty Capital are located at 25 South Charles Street, Baltimore, Maryland 21202.

M&T Securities, Inc. ( M&T Securities ) is a wholly owned subsidiary of M&T Bank that was incorporated as a New York business corporation in November 1985. M&T Securities is registered as a broker/dealer under the Securities Exchange Act of 1934, as amended, and as an investment advisor under the Investment Advisors Act of 1940, as amended (the Investment Advisors Act ). M&T Securities is licensed as a life insurance agent in each state where M&T Bank operates branch offices and in a number of other states. It provides securities brokerage, investment advisory and insurance services. As of December 31, 2011, M&T Securities had assets of \$50 million and shareholder's equity of \$30 million. M&T Securities recorded \$85 million of revenue during 2011. The headquarters of M&T Securities are located at One M&T Plaza, Buffalo, New York 14203.

Wilmington Trust Investment Advisors, Inc. ( WT Investment Advisors ), a wholly owned subsidiary of M&T Bank and formerly known as MTB Investment Advisors prior to its name change on January 10, 2012, was incorporated as a Maryland corporation on June 30, 1995. WT Investment Advisors, a registered investment advisor under the Investment Advisors Act, serves as investment advisor to the MTB Group of Funds, a family of proprietary mutual funds, and institutional clients. As of December 31, 2011, WT Investment Advisors had assets of \$20 million and shareholder's equity of \$17 million. WT Investment Advisors recorded revenues of \$29 million in 2011. The headquarters of WT Investment Advisors are located at 100 East Pratt Street, Baltimore, Maryland 21202.

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Rodney Square Management Corporation ( Rodney Square Management ), a wholly owned subsidiary of M&T, was incorporated in September 1981 as a Delaware corporation. Rodney Square Management is registered as an investment advisor under the Investment Advisors Act and serves as the investment advisor to the Wilmington Funds, a family of proprietary mutual funds. Rodney Square Management had assets of \$391 thousand and shareholder s equity of \$301 thousand as of December 31, 2011. Rodney Square Management had revenues of \$2 million from May 16 to December 31, 2011. The headquarters of Rodney Square Management are located at 1100 North Market Street, Wilmington, Delaware 19890.

Wilmington Trust Investment Management, LLC ( WTIM ) is a wholly owned subsidiary of M&T and was incorporated in December 2001 as a Georgia limited liability company. WTIM is a registered investment advisor under the Investment Advisors Act and serves as the primary sub-advisor to the Wilmington Funds and provides investment management services to other clients, including certain private funds. WTIM s headquarters is located at Terminus 27th Floor, 3280 Peachtree Road N.E., Atlanta, Georgia 30305. As of December 31, 2011, WTIM had assets of \$21 million and shareholder s equity of \$19 million. WTIM had revenues of \$9 million from May 16 to December 31, 2011.

On February 21, 2012, the shareholders of the Wilmington Funds approved the reorganization of twelve Wilmington Funds into the surviving MTB Group of Funds, which will be renamed as the Wilmington Funds upon the closing of the reorganization on or about March 9, 2012. Following the reorganization, Rodney Square Management will be renamed Wilmington Funds Management Corporation and will continue as the investment advisor to the Wilmington Funds, and WT Investment Advisors will become the primary sub-advisor to the Wilmington Funds. After the reorganization, WTIM will continue to provide investment management services to other clients, including certain private funds.

The Registrant and its banking subsidiaries have a number of other special-purpose or inactive subsidiaries. These other subsidiaries did not represent, individually and collectively, a significant portion of the Company s consolidated assets, net income and shareholders equity at December 31, 2011.

### **Segment Information, Principal Products/Services and Foreign Operations**

Information about the Registrant s business segments is included in note 22 of Notes to Financial Statements filed herewith in Part II, Item 8, Financial Statements and Supplementary Data and is further discussed in

Part II, Item 7, Management s Discussion and Analysis of Financial Condition and Results of Operations. The Registrant s reportable segments have been determined based upon its internal profitability reporting system, which is organized by strategic business unit. Certain strategic business units have been combined for

segment information reporting purposes where the nature of the products and services, the type of customer and the distribution of those products and services are similar. The reportable segments are Business Banking, Commercial Banking, Commercial Real Estate, Discretionary Portfolio, Residential Mortgage Banking and Retail Banking. The Company s international activities are discussed in note 17 of Notes to Financial Statements filed herewith in Part II, Item 8, Financial Statements and Supplementary Data.

The only activities that, as a class, contributed 10% or more of the sum of consolidated interest income and other income in any of the last three years were interest on loans and investment securities and fees for providing deposit account services. The amount of income from such sources during those years is set forth on the Company s Consolidated Statement of Income filed herewith in Part II, Item 8, Financial Statements and Supplementary Data.

### **Supervision and Regulation of the Company**

M&T and its subsidiaries are subject to the extensive regulatory framework applicable to bank and financial holding companies and their subsidiaries. Regulation of financial institutions such as M&T and its subsidiaries is intended primarily for the protection of depositors, the FDIC s DIF and the banking system as a whole, and generally is not intended for the protection of stockholders, creditors or other investors. Described below are the material elements of selected laws and regulations applicable to M&T and its subsidiaries. The descriptions are not intended to be complete and are qualified in their entirety by reference to the full text of the statutes and regulations described. Changes in applicable law or regulation, and in their application by regulatory agencies, cannot be predicted, but they may have a material effect on the business and results of M&T and its subsidiaries.

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### **Overview**

M&T is registered with the Board of Governors of the Federal Reserve Board System (the Federal Reserve Board) as a bank holding company under the BHCA. As such, M&T and its subsidiaries are subject to the supervision, examination and reporting requirements of the BHCA and the regulations of the Federal Reserve Board.

In general, the BHCA limits the business of a bank holding company (BHC) to banking, managing or controlling banks and other activities that the Federal Reserve Board has determined to be so closely related to banking as to be a proper incident thereto. In addition, bank holding companies that qualify and elect to be financial holding companies may engage in any activity, or acquire and retain the shares of a company engaged in any activity, that is either (i) financial in nature or incidental to such financial activity (as determined by the Federal Reserve Board in consultation with the Secretary of the Treasury) or (ii) complementary to a financial activity and does not pose a substantial risk to the safety and soundness of depository institutions or the financial system generally (as solely determined by the Federal Reserve Board), without prior approval of the Federal Reserve Board. Activities that are financial in nature include securities underwriting and dealing, insurance underwriting and making merchant banking investments.

To maintain financial holding company status, a financial holding company and all of its depository institution subsidiaries must be well capitalized and well managed. M&T became a financial holding company on March 1, 2011. If a financial holding company fails to continue to meet any of the prerequisites for financial holding company status after engaging in activities not permissible for bank holding companies that have not elected to be treated as financial holding companies, the company must enter into an agreement with the Federal Reserve Board to comply with all applicable capital and management requirements. If the company does not return to compliance within 180 days, the Federal Reserve Board may order the company to divest its subsidiary banks or the company may discontinue or divest investments in companies engaged in activities permissible only for a bank holding company electing to be treated as a financial holding company. In order for a financial holding company to commence any new activity permitted by the BHCA or to acquire a company engaged in any new activity permitted by the BHCA, each insured depository institution subsidiary of the financial holding company must have at least a satisfactory rating under the Community Reinvestment Act of 1977 (the CRA). See the section captioned Community Reinvestment Act included elsewhere in this item.

Current federal law also establishes a system of functional regulation under which the federal banking agencies will regulate the banking activities of financial holding companies and banks' financial subsidiaries, the U.S. Securities and Exchange Commission will regulate their securities activities, and state insurance regulators will regulate their insurance activities. Rules developed by the federal financial institutions regulators under these laws require disclosure of privacy policies to consumers and, in some circumstances, allow consumers to prevent the disclosure of certain personal information to nonaffiliated third parties.

### **Recent Developments**

The events of the past few years have led to numerous new laws in the United States and internationally for financial institutions. The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act or Dodd-Frank), which was enacted in July 2010, significantly restructures the financial regulatory regime in the United States and provides for enhanced supervision and prudential standards for, among other things, bank holding companies like M&T that have total consolidated assets of \$50 billion or more. The implications of the Dodd-Frank Act for the Company's businesses will depend to a large extent on the manner in which rules adopted pursuant to the Dodd-Frank Act are implemented by the primary U.S. financial regulatory agencies as well as potential changes in market practices and structures in response to the requirements of the Dodd-Frank Act and financial reforms in other jurisdictions. Among other things:

Dodd-Frank repealed the federal prohibitions on the payment of interest on demand deposits, thereby permitting depository institutions to pay interest on business transaction and other accounts.

Dodd-Frank centralized responsibility for consumer financial protection by creating a new agency, the Consumer Financial Protection Bureau (CFPB), and giving it responsibility for implementing, examining and enforcing compliance with federal consumer protection laws.

Dodd-Frank provided that debit card interchange fees must be reasonable and proportional to the cost incurred by the issuer with respect to the transaction. This provision is known as the Durbin Amendment. In June 2011, the Federal Reserve Board adopted regulations setting the maximum permissible interchange fee as the sum of 21 cents per transaction and 5 basis points multiplied by the value of the transaction, with an additional adjustment of up to one cent per transaction if the



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issuer implements certain fraud-prevention standards. For more information regarding the impact of the Durbin Amendment on M&T's results of operations, see Part II, Item 7.

Dodd-Frank created a new systemic risk oversight body, the Financial Stability Oversight Council (FSOC), to oversee and coordinate the efforts of the primary U.S. financial regulatory agencies in establishing regulations to address financial stability concerns.

Dodd-Frank directs the FSOC to make recommendations to the Federal Reserve Board as to enhanced supervision and prudential standards applicable to large, interconnected financial institutions, including as indicated above bank holding companies like M&T with total consolidated assets of \$50 billion or more (often referred to as systemically important financial institutions), and authorizes the Federal Reserve Board to establish such standards either on its own or upon the recommendations of the FSOC. Dodd-Frank mandates that the requirements applicable to systemically important financial institutions be more stringent than those applicable to other financial companies. In December 2011, the Federal Reserve Board issued for public comment a notice of proposed rulemaking establishing enhanced prudential standards responsive to these provisions for:

- risk-based capital requirements and leveraged limits;
- stress testing of capital;
- liquidity requirements;
- overall risk management requirements;
- resolution plan and credit exposure reporting; and
- concentration/credit exposure limits.

Comments on the proposed rules (the Proposed SIFI Rules) are due by March 31, 2012. The Proposed SIFI Rules address a wide, diverse array of regulatory areas, each of which is highly complex. In some cases they would implement financial regulatory requirements being proposed for the first time, and in others over-lap with other regulatory reforms (including the Basel III capital and liquidity reforms discussed below in this section). The requirements generally will become effective on the first day of the fifth calendar quarter after the effective date of the final rule, although certain requirements have different transition periods. M&T is analyzing the impact of the Proposed SIFI Rules on its businesses. However, the full impact will not be known until the rules, and other regulatory initiatives that overlap with the rules, are finalized and their combined impacts can be understood.

Dodd-Frank requires various U.S. financial regulatory agencies to implement comprehensive rules governing the supervision, structure, trading and regulation of swap and over-the-counter derivative markets and participants. Dodd-Frank requires a large number of rulemaking in this area, many of which are not yet final. Once these rules are finalized, they could affect the way M&T or its subsidiaries operate, and changes to the markets and participants could impact business models and profitability of M&T or its subsidiaries.

The Dodd-Frank Act requires the federal financial regulatory agencies to adopt rules that prohibit banks and their affiliates from engaging in proprietary trading and investing in and sponsoring certain unregistered investment companies (defined as hedge funds and private equity funds), with implementation starting as early as July 2012. The statutory provision is commonly called the Volcker Rule. In October 2011, federal regulators proposed rules to implement the Volcker Rule that included an extensive request for comments on the proposal, which were due by February 13, 2012. The proposed rules are highly complex, and many aspects of their application remain uncertain. Based on the proposed rules, M&T does not currently anticipate that the Volcker Rule will have a material effect on the operations of M&T and its subsidiaries. Until a final rule is adopted, the precise financial impact of the rule on M&T, its customers or the financial industry more generally, cannot be determined.

New laws or regulations or changes to existing laws and regulations (including changes in interpretation or enforcement) could materially adversely affect M&T's financial condition or results of operations. As discussed further throughout this section, many aspects of the Dodd-Frank Act are subject to further rulemaking and will take effect over several years, making it difficult to anticipate the overall financial impact on M&T and its subsidiaries or the financial services industry generally. In addition to the

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discussion in this section, see **Recent Legislative Developments** in Part II, Item 7, **Management's Discussion and Analysis of Financial Condition and Results of Operations** for a discussion of the potential impact legislative and regulatory reforms may have on the Company's results of operations and financial condition.

### **Dividends**

The Registrant is a legal entity separate and distinct from its banking and other subsidiaries. Historically, the majority of the Registrant's revenue has been from dividends paid to the Registrant by its subsidiary banks. M&T Bank and Wilmington Trust, N.A. are subject, under one or more of the banking laws, to restrictions on the amount of dividend declarations. Future dividend payments to the Registrant by its subsidiary banks will be dependent on a number of factors, including the earnings and financial condition of each such bank, and are subject to the limitations referred to in note 23 of Notes to Financial Statements filed herewith in Part II, Item 8, **Financial Statements and Supplementary Data**, and to other statutory powers of bank regulatory agencies.

An insured depository institution is prohibited from making any capital distribution to its owner, including any dividend, if, after making such distribution, the depository institution fails to meet the required minimum level for any relevant capital measure, including the risk-based capital adequacy and leverage standards discussed herein.

Dividend payments by M&T to its shareholders and stock repurchases by M&T are subject to the oversight of the Federal Reserve Board. As described below under the heading **Federal Reserve Board's Comprehensive Capital Assessment Review**, dividends and stock repurchases generally may only be paid or made under a capital plan as to which the Federal Reserve Board has not objected.

As described herein under the heading **U.S. Treasury Capital Purchase Program**, in connection with the issuance of Series A Preferred Stock to the U.S. Department of the Treasury (U.S. Treasury), M&T is restricted from increasing its common stock dividend.

### **Supervision and Regulation of M&T Bank's Subsidiaries**

M&T Bank has a number of subsidiaries. These subsidiaries are subject to the laws and regulations of both the federal government and the various states in which they conduct business. For example, M&T Securities is regulated by the Securities and Exchange Commission, the Financial Industry Regulatory Authority and state securities regulators.

### **Federal Reserve Board's Comprehensive Capital Assessment Review**

In November 2011, the Federal Reserve Board published a final rule requiring bank holding companies (including M&T) with \$50 billion or more of total consolidated assets to submit annual capital plans to the appropriate Federal Reserve Bank. The capital analysis and review process provided for in the rule is known as the Comprehensive Capital Analysis and Review, or CCAR. The capital plans are required to be submitted on an annual basis. Such bank holding companies will also be required to collect and report certain related data on a quarterly basis to allow the Federal Reserve Board to monitor the companies' progress against their annual capital plans. The comprehensive capital plans, which are prepared using Basel I capital guidelines, include a view of capital adequacy under four scenarios—a BHC-defined baseline scenario, a baseline scenario provided by the Federal Reserve Board, at least one BHC-defined stress scenario, and a stress scenario provided by the Federal Reserve Board. Covered bank holding companies, including M&T, may pay dividends and repurchase stock only in accordance with a capital plan that has been reviewed by the Federal Reserve Board and as to which the Federal Reserve Board has not objected. The rules provide that the Federal Reserve Board may object to a capital plan if the plan does not show that the covered BHC will meet all minimum regulatory capital ratios and maintain a ratio of Tier 1 common equity to risk-weighted assets of at least 5% on a pro forma basis under expected and stressful conditions throughout the nine-quarter planning horizon covered by the capital plan. The rules also require, among other things, that a covered BHC may not make a capital distribution unless after giving effect to the distribution it will meet all minimum regulatory capital ratios and have a ratio of Tier 1 common equity to risk-weighted assets of at least 5%. As part of this process, M&T also provides the Federal Reserve Board with projections covering the time period it will take to fully comply with Basel III capital guidelines, including the 7% Tier 1 common equity, 8.5% Tier 1 capital and 3% leverage ratios as well as granular components of those elements. M&T's capital plan was filed with the Federal Reserve Board on January 9, 2012.

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The purpose of the Federal Reserve Board's capital plan review is to ensure that these bank holding companies have robust, forward-looking capital planning processes that account for each BHC's unique risks and that permit continued operations during times of economic and financial stress. The CCAR rule, consistent with prior Federal Reserve Board guidance, provides that capital plans contemplating dividend payout ratios exceeding 30% of projected after-tax net income will receive particularly close scrutiny.

### **Capital Requirements**

M&T and its subsidiary banks are required to comply with the applicable capital adequacy standards established by the Federal Reserve Board. There are two basic measures of capital adequacy for bank holding companies that have been promulgated by the Federal Reserve Board: a risk-based measure and a leverage measure.

*Risk-based Capital Standards.* The risk-based capital standards are designed to make regulatory capital requirements more sensitive to differences in credit and market risk profiles among banks and financial holding companies, to account for off-balance sheet exposure, and to minimize disincentives for holding liquid assets. Assets and off-balance sheet items are assigned to broad risk categories, each with appropriate weights. The resulting capital ratios represent capital as a percentage of total risk-weighted assets and off-balance sheet items.

The minimum guideline for the ratio of total capital ( Total Capital ) to risk-weighted assets (including certain off-balance sheet items, such as standby letters of credit) is 8.0%. At least half of the Total Capital must be Tier 1 Capital, which currently consists of qualifying common equity, qualifying noncumulative perpetual preferred stock (including related surplus), senior perpetual preferred stock issued to the U.S. Treasury as part of the Troubled Asset Relief Program Capital Purchase Program (the CPP ), minority interests relating to qualifying common or noncumulative perpetual preferred stock issued by a consolidated U.S. depository institution or foreign bank subsidiary, and certain restricted core capital elements, as discussed below, less goodwill and certain other intangible assets. Currently, Tier 2 Capital may consist of, among other things, qualifying subordinated debt, mandatorily convertible debt securities, preferred stock and trust preferred securities not included in the definition of Tier 1 Capital, and a limited amount of the allowance for loan losses. Non-cumulative perpetual preferred stock, trust preferred securities and other so-called restricted core capital elements are currently limited to 25% of Tier 1 Capital. Pursuant to the Dodd-Frank Act, trust preferred securities will be phased-out of the definition of Tier 1 Capital of bank holding companies having consolidated assets exceeding \$500 million, such as M&T, over a three-year period beginning in January 2013.

The minimum guideline to be considered well-capitalized for Tier 1 Capital and Total Capital is 6.0% and 10.0%, respectively. At December 31, 2011, the Registrant's consolidated Tier 1 Capital ratio was 9.67% and its Total Capital ratio was 13.26%. The elements currently comprising Tier 1 Capital and Tier 2 Capital and the minimum Tier 1 Capital and Total Capital ratios may in the future be subject to change, as discussed in greater detail below.

*Basel I and II Standards.* M&T currently calculates its risk-based capital ratios under guidelines adopted by the Federal Reserve Board based on the 1988 Capital Accord ( Basel I ) of the Basel Committee on Banking Supervision (the Basel Committee ). In 2004, the Basel Committee published a new set of risk-based capital standards ( Basel II ) in order to update Basel I. Basel II provides two approaches for setting capital standards for credit risk—an internal ratings-based approach tailored to individual institutions' circumstances and a standardized approach that bases risk-weighting on external credit assessments to a much greater extent than permitted in the existing risk-based capital guidelines. Basel II also would set capital requirements for operational risk and refine the existing capital requirements for market risk exposures. A definitive final rule for implementing the advanced approaches of Basel II in the United States, which applies only to internationally active banking organizations, or core banks (defined as those with consolidated total assets of \$250 billion or more or consolidated on-balance sheet foreign exposures of \$10 billion or more) became effective on April 1, 2008. Other U.S. banking organizations may elect to adopt the requirements of this rule (if they meet applicable qualification requirements), but are not required to comply. The rule also allows a banking organization's primary federal supervisor to determine that application of the rule would not be appropriate in light of the bank's asset size, level of complexity, risk profile or scope of operations. Neither M&T Bank nor Wilmington Trust, N.A. is currently required to comply with Basel II.

In July 2008, the U.S. bank regulatory agencies issued a proposed rule that would provide banking organizations that do not use the advanced approaches with the option to implement a new risk-based capital framework. This framework would adopt the standardized approach of Basel II for credit risk, the basic indicator approach of Basel II for operational risk, and related disclosure requirements. While this proposed rule generally parallels the relevant approaches under Basel II, it diverges where United States

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markets have unique characteristics and risk profiles, most notably with respect to risk weighting residential mortgage exposures. Comments on the proposed rule were due to the agencies by October 27, 2008, but a definitive final rule has not been issued as of February 2012.

*Leverage Requirements.* Neither Basel I nor Basel II includes a leverage requirement as an international standard, however, the Federal Reserve Board has established minimum leverage ratio guidelines to be considered well-capitalized for bank holding companies. These guidelines provide for a minimum ratio of Tier 1 Capital to average total assets, less goodwill and certain other intangible assets (the Leverage Ratio), of 3.0% for bank holding companies that meet certain specified criteria, including having the highest regulatory rating. All other bank holding companies generally are required to maintain a Leverage Ratio of at least 4%. M&T's Leverage Ratio at December 31, 2011 was 9.28%.

The guidelines also provide that bank holding companies experiencing internal growth or making acquisitions will be expected to maintain strong capital positions substantially above the minimum supervisory levels without significant reliance on intangible assets. Furthermore, the Federal Reserve Board has indicated that it will consider a tangible Tier 1 Capital leverage ratio (deducting all intangibles) and other indicators of capital strength in evaluating proposals for expansion or new activities.

*Basel III Standards.* In December 2010, the Basel Committee released its final framework for strengthening international capital and liquidity regulation, now officially identified by the Basel Committee as Basel III. Basel III, when implemented by the U.S. bank regulatory agencies and fully phased-in, will require bank holding companies and their bank subsidiaries to maintain substantially more capital, with a greater emphasis on common equity. The Basel III final capital framework, among other things:

introduces as a new capital measure Common Equity Tier 1, or CET1, specifies that Tier 1 capital consists of CET1 and Additional Tier 1 capital instruments meeting specified requirements, defines CET1 narrowly by requiring that most deductions or adjustments to regulatory c