



CLS Bank International

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Via E-mail

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C/Oquendo 12
28006 Madrid, Spain
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RE: CLS Bank International response to the CPSS-IOSCO Consultative report: Assessment methodology for the oversight expectations applicable to critical service providers (December 2013)

Ladies and Gentlemen:

CLS Bank International ("CLS") welcomes the opportunity to share its views on the CPSS-IOSCO Consultative report: Assessment methodology for the oversight expectations applicable to critical service providers (December 2013) (the "Consultative Report")

CLS is a special purpose corporation, organized under the laws of the United States, established by the private sector as a payment versus payment system to mitigate settlement risk (loss of principal) associated with the settlement of payments relating to foreign exchange transactions (the "CLS System"). As an Edge corporation, CLS is regulated and supervised by the Federal Reserve. In addition, the 22 central banks whose currencies are settled in the CLS System have established a cooperative oversight arrangement for the CLS System (the "CLS Oversight Committee") organized and administered by the Federal Reserve pursuant to a Protocol for the Cooperative Oversight Arrangement of CLS, as a mechanism for the fulfillment of their responsibilities to promote safety, efficiency and stability in the local markets and payment systems in which CLS participates.

General Comments

CLS would like to express its broad support for the Consultative Report and its appreciation for the CPSS-IOSCO's guidance with respect to the oversight of providers of critical services to Financial Market Infrastructures (each an "FMI"). CLS acknowledges that FMIs' services are vital to the efficient operation of the financial system, and disruption to such services would pose significant risks to the financial system and be a potential source of contagion,¹ and therefore providers of critical services to FMIs must maintain appropriate risk management controls and must be appropriately monitored. CLS also agrees that an FMI should remain ultimately responsible for its operations, and should be vigilant with regard to the oversight of its critical service provider(s).²

Specific Comments

The Oversight Expectations and Assessment Methodology Should Not Apply to FMIs that Provide Critical Services to Other FMIs

FMIs are subject to the comprehensive regulatory framework contained in the PFMI (as implemented in relevant jurisdictions), which aims to enhance safety and efficiency in payment, clearing, settlement, and recording arrangements, and more broadly, to limit systemic risk and foster transparency and financial stability.³ Moreover, FMIs are regulated and may also be subject to significant oversight in addition to their primary regulatory framework. For example, as described above, CLS is regulated by the Federal Reserve and subject to the oversight of the CLS Oversight Committee.

For the avoidance of doubt, CLS requests clarification that the oversight expectations and accompanying assessment methodology described in the Consultative Report will not apply to FMIs, even in circumstances where FMIs provide critical services to other FMIs. This position is consistent with CPSS-IOSCO's apparent intent with respect to the oversight expectations, which is to ensure that the operations of a critical service provider are held *to the same standards as the FMI* would be if it provided the same service, thus implying that FMIs are already subject to adequate oversight.⁴ Therefore, application of the oversight expectations and assessment methodology to

¹ CPSS-IOSCO Principles for financial market infrastructures (the "PFMI"), Section 1.1.

² Consultative Report, page 1.

³ PFMI, Section 1.15.

⁴ Consultative Report, page 1 (emphasis added); see also Consultative Report, page 2 ("[t]his assessment methodology mirrors the approach used in the [PFMI]: Disclosure framework and Assessment methodology report"). Indeed, the oversight expectations in the Consultative Report generally mirror the requirements in the PFMI. For example, the expectation of strong risk identification and management is set forth in PFMI 3 (Framework for the comprehensive management of risks), the expectations of robust information security management and reliability and resilience of systems are set forth in PFMI 17 (Operational risk), the expectation of effective technology planning is set forth in PFMI 21 (Efficiency and effectiveness), and the

FMI(s) that provide service(s) to other FMIs would be duplicative.

Approach to Oversight Should Depend on the Type of Service Provider

CLS agrees with the Consultative Report, which provides that if a critical service provider delivers services to multiple FMIs, authorities of the respective FMIs could cooperate with each other in assessing the critical service provider against the expectations.⁵ CLS would further add that it may be more efficient for a critical service provider that serves a large number of FMIs and other market participants internationally, such as SWIFT, to be subject to consistent implementation of the oversight expectations, and therefore implementation through such provider's existing regulatory or oversight framework would be desirable, to the extent such a framework is in place.⁶ This approach would serve to prevent piecemeal and inefficient application of the oversight expectations and assessment methodology.

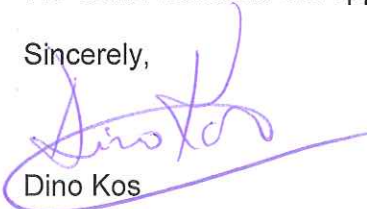
Application of the Oversight Expectations and Assessment Methodology Should be Tailored Based on the Service(s) Provided by the Critical Service Provider

CLS agrees that if a critical service provider operates other lines of business or provides other services that are not essential or important to the operation of an FMI, these activities should not be subject to the oversight expectations.⁷ This will protect service providers from the extra costs associated with undue oversight, which may discourage them from providing services to FMIs.

* * *

We would welcome the opportunity to discuss any of these comments in further detail.

Sincerely,



Dino Kos

CC: Alan Marquard, Chief Legal Officer, CLS Group
Sankar Aiyar, Chief Technology Officer, CLS Bank International

expectation of strong communications with users is set forth in PFMI 23 (Disclosure of rules, key procedures and market data).

⁵ Consultative Report, page 2.

⁶ See also SWIFT White Paper on CPSS-ISOCO's Principles for Financial Market Infrastructures (FMIs) ("SWIFT confirms compliance with the expectations for critical service providers").

⁷ Consultative Report, page 1 ("[u]nless otherwise indicated by relevant authorities, activities not directly related to essential operations of the FMI and utilities (such as basic telecommunication services, water, electricity and gas) are out-of-scope when identifying critical service providers.").