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June 4, 2020

Via email

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
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regs.comments@federalreserve.gov

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
comments@fdic.gov

Re: Proposed Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies, Docket No. OP-1699 / RIN 3064-ZA15

Dear Ms. Misback and Mr. Feldman:

CLS Bank International (“**CLS**”) welcomes the opportunity to comment on the proposed guidance for the 2021 and subsequent resolution plan submissions by certain foreign banking organizations (“**FBOs**”)¹ (the “**Proposed FBO Guidance**”), jointly issued by the Board of Governors of the Federal Reserve System (the “**Board**”) and the Federal Deposit Insurance Corporation (“**FDIC**”) (together, the “**Agencies**”), and published in the Federal Register on March 18, 2020.²

CLS is an Edge Act corporation organized under the laws of the United States of America and regulated and supervised by the Board and the Federal Reserve Bank of New York (collectively, the “**Federal Reserve**”). The CLS system (the “**CLS System**”) is a global multicurrency cash settlement system that offers its participants (“**members**”) and their customers the ability to mitigate settlement risk with respect to their foreign exchange (“**FX**”) transactions in 18 currencies. Additionally, the central banks whose 18 currencies are settled in the CLS System have established the CLS Oversight Committee (the “**OC**”), organized and administered by the Federal Reserve pursuant to the *Protocol for the Cooperative Oversight Arrangement of CLS* (the “**OC Protocol**”),³ as a

¹ i.e., “Specified FBOs” or “firms”.

² 85 FR 15,449 (Mar. 18, 2020).

³ https://www.federalreserve.gov/paymentsystems/cls_protocol.htm.

mechanism to carry out the central banks' individual responsibilities to promote safety, efficiency, and stability in the local markets and payments systems in which CLS participates. CLS has over 70 settlement members, including the three Specified FBOs⁴ (or their affiliates, as applicable) whose U.S. operations would fall within the remit of the Proposed FBO Guidance (as of the date of the Proposed FBO Guidance).

CLS has been designated as a systemically important financial market utility ("**DFMU**") by the United States Financial Stability Oversight Council under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**").⁵ The Board is CLS's "Supervisory Agency" (as defined by the Dodd-Frank Act), and CLS is subject to the risk management standards set forth in Regulation HH,⁶ which implements the *Principles for financial market infrastructures* (the "**PFMI**")⁷ in the U.S.⁸

Under the scope set forth in the Proposed FBO Guidance, CLS is an "FMU" providing services that fall within "payment, clearing, and settlement (PCS) services".⁹ Accordingly, CLS's comments are provided from an FMU's perspective.¹⁰ Section I of this comment letter provides general feedback, including considerations specifically for resolution authorities (e.g., the Agencies). Section II responds to several of the Agencies' specific questions regarding the Proposed FBO Guidance.

I. General Comments on the Proposed FBO Guidance

First, CLS believes the Agencies should consider resolution-related guidance emanating from the European Union's Single Resolution Board ("**SRB**") that is germane to Specified FBOs' resolution planning and resolvability—in particular, the SRB's "Expectations for Banks" (the "**SRB Expectations**").¹¹ The SRB will play a key role in any resolution as either the home resolution authority or a host resolution authority (as applicable) for two of the three Specified FBOs. In the interest of increased regulatory harmonization and efficiency (to the extent possible and

⁴ See the Agencies' Joint Press Release – 'Agencies invite comment on updates to resolution plan guidance for large foreign banks', March 6, 2020, available at <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200306b.htm>.

⁵ The CLS System was also designated by the Bank of England for the purposes of Directive 98/26/EC (the "**Settlement Finality Directive**").

⁶ 12 CFR Part 234.

⁷ Committee on Payment and Settlement Systems ("**CPSS**") and Technical Committee of the International Organization of Securities Commissions ("**IOSCO**"), *Principles for financial market infrastructures* (Apr. 2012). Effective September 1, 2014, CPSS changed its name to the Committee on Payments and Market Infrastructures ("**CPMI**").

⁸ CLS is subject to the provisions of the PFMI (as implemented in the U.S.) that are applicable to payment systems.

⁹ "FMU" and "financial market infrastructure" (or, "**FMI**") should be read herein as interchangeable terms, unless otherwise indicated.

¹⁰ For additional context with respect to the comments made herein, please refer to CLS's comments on the Agencies' resolution planning guidance for the eight largest, complex U.S. banking organizations (submitted in September 2018), which are available at: <https://www.fdic.gov/regulations/laws/federal/2018/2018-proposed-guidance-eight-large-banking-organizations-165d-c-006.pdf>.

¹¹ SRB Expectations (March 2020), available at https://srb.europa.eu/sites/srbsite/files/efb_main_doc_final_web_0.pdf.

appropriate), CLS suggests that the Agencies align the Proposed FBO Guidance (where appropriate) with certain aspects of the SRB Expectations, as highlighted throughout herein. CLS believes this will help not only avoid potentially adverse fragmentary effects from differing implementation of international standards relating to, e.g., resolution regimes, but also promote financial stability more broadly.¹²

Second, CLS believes the majority (if not all) of its comments regarding the Proposed FBO Guidance are relevant to resolution planning and resolvability for global systemically important banks (“**G-SIBs**”) more generally (i.e., not only the Specified FBOs). In the interest of regulatory harmonization, should the Agencies look to further refine their resolution planning guidance for the U.S. G-SIBs in the future, CLS suggests that the Agencies consider incorporating the substance of CLS’s comments herein into that guidance for the U.S. G-SIBs.¹³

Third, CLS agrees that robust and credible communication strategies are vitally important to resolution planning, and CLS believes resolution authorities should seek to bolster resolution planning by creating and refining their own comprehensive communication strategies with key market stakeholders, including FMUs and agent banks. In developing and maintaining such communication strategies, resolution authorities should coordinate ex-ante with Crisis Management Group (“**CMG**”) ¹⁴ authorities—as well as the relevant authorities for those entities (including intragroup entities) that play important roles ¹⁵ with respect to the relevant firm’s participation in key FMUs—in order to ensure consistency in expectations across jurisdictions. In light of the foregoing, CLS suggests that the Agencies consider discussing and vetting their communication strategies with the Specified FBOs and DFMUs¹⁶ to ensure there is a common set of general expectations and assumptions regarding communications in the runway period leading up to resolution and during resolution.¹⁷ Furthermore, CLS believes this would enable the Agencies, DFMUs, and the Specified FBOs to act more quickly and confidently in a resolution scenario.¹⁸

¹² See, e.g., Financial Stability Board (“**FSB**”), *FSB Report on Market Fragmentation* (June 2019), available at <https://www.fsb.org/wp-content/uploads/P040619-2.pdf>.

¹³ See also *supra* note 10.

¹⁴ As defined in the FSB’s July 2017 *Guidance on Continuity of Access to Financial Market Infrastructures (‘FMIs’) for a Firm in Resolution*, available at <https://www.fsb.org/wp-content/uploads/P060717-2.pdf> [hereinafter the “**FSB FMI Guidance**”].

¹⁵ E.g., providing nostro services.

¹⁶ CLS suggests coordination with DFMUs at a minimum, as most (if not all) of the Specified FBOs utilize DFMUs to support their business activities and operations. CLS observes that it would be even more useful if there was similar coordination with the Specified FBOs’ other key FMUs, if possible; however, CLS acknowledges this may be more difficult in practice.

¹⁷ As provided in the FSB FMI Guidance, “The appropriate exchange of information between resolution and supervisory authorities, FMI supervisors and overseers, firms and providers of critical FMI services is also essential to providing the levels of understanding and assurance necessary to support the execution of plans for maintaining access [to FMIs.]” FSB FMI Guidance, sec. 3, p. 18.

¹⁸ See, e.g., FSB, *Principles on Bail-in Execution* (June 2018), sec. VI, p. 24, available at <http://www.fsb.org/wp-content/uploads/P210618-1.pdf> (“Clear communication of relevant information to creditors, market participants and other key stakeholders should promote certainty and predictability. Market stakeholders such as institutional investors and financial institutions are likely to have valuable input regarding the information they would expect to receive during the bail-in period and the timing and channels of communications.”).

II. Specific Comments on the Proposed FBO Guidance

A. Scope of Application

Question – “Is the proposed guidance sufficiently clear with respect to the following concepts: scope of PCS services, user vs. provider, and direct vs. indirect relationships? What additional clarifications or alternatives concerning the proposed framework or its elements, if any, should the agencies consider? For instance, would further examples of ways that a Specified FBO may act as provider of PCS services be useful? Should the agencies consider further distinguishing between providers based on the type of PCS service they provide?”

1. CLS recommends that the Agencies consider clarifying that the term “provider of PCS services” encompasses the other key roles in which a firm may act within an FMU’s ecosystem,¹⁹ not only those roles where there are clients benefitting from or relying on the firm’s provision of those PCS services. For example, with respect to CLS, firms may also act as Liquidity Providers,²⁰ whereby they provide liquidity facilities in CLS-eligible currencies for CLS’s potential use in certain circumstances (e.g., if CLS is unable to make a pay-out in a particular currency due to the actions or failures to act by a member).²¹ Thus, in this context, there is no “client” in the sense contemplated by the Proposed FBO Guidance (unless the FMU itself is to be considered the firm’s “client”). However, it is clear that a firm’s role as a Liquidity Provider is an important part of its relationship with CLS, as a loss of a Liquidity Provider could potentially impact CLS’s ability to successfully mitigate risk to the CLS ecosystem stemming from the firm’s resolution. As such, this type of role—one that is integral to the FMU’s ecosystem but is without “clients” in the traditional sense—would have to be properly accounted for as part of the firm’s resolution planning (e.g., in playbooks as provided by the Proposed FBO Guidance).
2. CLS recommends that the Agencies consider clarifying that the term “agent bank” specifically includes (among others) “nostro agents”.²² This would be consistent with the subpart ‘Capabilities’ within Section V – ‘Operational’, subsection ‘Payment, Clearing, and

¹⁹ This would be consistent with the FSB FMI Guidance, where the FSB has included within its definition of “critical FMI services” the following: “related activities, functions or services whose on-going performance is necessary to enable the continuation of the clearing, payment, securities settlement or custody activities, functions or services.” FSB FMI Guidance, ‘Definition of key terms’, p. 5. See also SRB Expectations, sec. 2.4.4, pp. 30 – 31 (“Banks are expected to: . . . identify all of the roles that they play with respect to FMIs” (footnote omitted)).

²⁰ As defined under the CLS Bank International Rules dated December 23, 2019 (the “CLS Rules”), available for public download at <https://www.cls-group.com/products/settlement/clssettlement/membership/>. Please note that any description or summary herein of CLS Rules provisions is non-binding, and the text of the CLS Rules controls. Some other examples of the roles that a firm might play with respect to participation in CLS include: participant in another PCS service provided by CLS (e.g., the CLSNow service); third-party service provider; and nostro agent for other CLS members. More broadly, a firm may also act in a number of roles with respect to participation in other FMUs.

²¹ Please refer to Rule 8 – ‘Liquidity Facilities’ of the CLS Rules for details.

²² CLS understand the Agencies’ need and desire for sufficient flexibility with respect to terms’ definitions, so CLS believes that when making the above-requested clarification, the Agencies could indicate that any examples are non-exhaustive (or similar language to that effect). See, e.g., SRB Expectations, sec. 2.4.4, p. 31, n. 93. See also *id.* at p. 31, n. 89 (listing “nostro agent, custodian, liquidity provider, etc.” as examples of roles a bank may play with respect to FMIs).

Settlement Activities' of the Proposed FBO Guidance, wherein there is specific reference to "Nostro agents".²³

B. Playbook Content

Question – “Are the expectations with respect to playbook content for firms that are direct or indirect users or providers (or both) of PCS services sufficiently clear? What additional clarifications, alternatives, or additional information, if any, should the agencies consider?”

1. CLS strongly supports the Agencies' efforts to further guide firms on how to improve their resolvability and facilitate their orderly resolution, including not only the development of playbooks but also consideration of additional ex-ante measures. To this end, CLS suggests amending the Proposed FBO Guidance to emphasize more clearly the importance of Specified FBOs' continued engagement with their key external stakeholders, including FMUs and agent banks, as resolution plans and related guidance continue to evolve and mature.

In particular, as indicated by the Agencies in the Proposed FBO Guidance, part of such ex-ante engagement should include, “updat[ing] contracts to incorporate appropriate terms and conditions to prevent automatic termination and facilitate continued provision of [critical outsourced] services [during resolution].” In this regard, CLS suggests that the Agencies consider amending the Proposed FBO Guidance to encourage firms to amend (where possible) their bilateral contracts with agent banks—particularly contracts with nostro agents—in order to facilitate continuity of access to PCS services,²⁴ which would also necessarily include consideration of how to ensure (to the extent possible) continued access to credit lines in resolution. Agent banks, especially those that provide nostro services, play an important role in PCS, and while playbooks for key agent banks help with firms' resolution readiness, additional measures may be appropriate. For example, if a nostro agent of a member in resolution did not fund that member's obligations to CLS in one or more currencies, this could (depending on the amount of the obligations) result in disruption to the CLS System and other members, as well as the broader FX market, given the multilateral netting of those obligations. Failure to fund can have an adverse impact on (i) the CLS System and other members, whose funding obligations have been calculated on the basis that all other members will comply with their funding obligations in multiple currencies and (ii) the broader financial markets. By proactively reviewing their respective contracts with nostro agents and potentially making appropriate amendments (e.g., inclusion of “resolution-resilient” clauses), firms will significantly reduce systemic risk.

²³ *E.g.*, “For example, firms should be able to: . . . Assess the potential effects of adverse actions by FMUs, *Nostro agents*, custodians, and other agents and service providers, including suspension or termination of membership or services, on the firm's U.S. operations and customers and counterparties of those U.S. operations . . .” Proposed FBO Guidance, sec. V – ‘Operational’, subsection ‘Payment, Clearing, and Settlement Activities’ (emphasis added).

²⁴ *See, e.g.*, SRB Expectations, sec. 2.4.4, p. 31, n. 93 (highlighting “nostro agents” as an example of “other service providers, whose services are necessary for using the services of FMIs”); *id.* at p. 32 (“[B]anks are also expected to consider the following measures to enhance resolution preparedness: where banks have found that their contracts with intermediaries or with other service providers necessary for maintaining access to FMIs are not resolution-resilient, *making these bilateral contracts resolution-resilient*, as appropriate . . .” (emphasis added) (footnote omitted)).

2. CLS generally supports the Agencies' requirements with respect to 'PCS Liquidity Sources' under subpart 'Content Related to Users of PCS Services'. However, CLS suggests that the reference to "various currencies", when used in connection with a firm's "PCS-related key FMU and key agent bank obligations", would benefit from clarification by amending the Proposed FBO Guidance to specify that firms should ensure that they can meet their obligations to each key FMU and/or key agent bank in all currencies that are relevant to firms' participation in (or access to) each key FMU and/or key agent bank.²⁵ For example, with respect to the ability of a member in resolution to continue to participate in CLS, the "various currencies" would be all of the CLS-eligible currencies in which the member settles, given the multilateral netting of funding obligations to CLS.
3. CLS generally supports the Agencies' requirements with respect to 'PCS Liquidity Uses' under subpart 'Content Related to Users of PCS Services'. However, CLS believes further clarification would be helpful to indicate that firms should assess their key FMU and key agent bank liquidity needs in the aggregate, so firms do not double-count (or under-count) the availability of funds for use across more than one key FMU or key agent bank. This is important, because FMUs and agent banks may impose additional requirements on a firm in resolution at or around the same time—including intraday—leading to a liquidity "crunch" that could, if there is insufficient contingency planning, undermine the Agencies' objective to ensure financial stability in the United States. Additionally, it is reasonable to assume that market counterparties will significantly reduce their credit limits against a firm in resolution, which may adversely impact the firm's ability to meet its obligations to key FMUs and key agent banks and may therefore jeopardize the firm's continued access to key PCS services. Furthermore, providing this additional clarification within the 'PCS Liquidity Uses' text would be consistent with the related requirement indicated under the subpart 'Capabilities' that firms should be able to "[q]uantify the liquidity needs and operational capacity required to meet all PCS obligations, including any change in demand for and sources of liquidity needed to meet such obligations."
4. CLS supports, in principle, the Agencies' requirement for Specified FBOs' playbooks (as users of PCS services) to assess the "potential range of adverse actions that may be taken by that key FMU or key agent bank when the firm is in resolution" and the "contingency arrangements that may be initiated by the firm in response to [those] potential adverse actions". However, CLS believes that the use of the term "adverse actions" is not accurate, because the actions an FMU may take with respect a member/participant in resolution are done to mitigate risk to the FMU and its operations, as well as to protect the FMU's other members/participants from contagion risk. Such actions are not taken to adversely impact the member/participant in resolution, and FMUs share the same goal "to help facilitate FMI

²⁵ See, e.g., SRB Expectations, sec. 2.3.3, p. 23 ("These cash flows and the counterbalancing capacity shall be simulated: . . . at aggregated level in the reporting currency and at the level of each material currency *including all currencies relevant to banks' participation in FMIs . . .*" (emphasis added)). See also *id.* at p. 24 ("Where relevant, banks are expected to demonstrate how potential shortfalls, in particular in material currencies, could be addressed." (footnote omitted)).

service users' continued access to critical FMI services in resolution."²⁶ As such, CLS believes a more appropriate term would be "risk-mitigating actions".²⁷

5. With respect to 'Intraday Liquidity Inflows and Outflows' under subpart 'Content Related to Users of PCS Services', CLS supports the Agencies' requirement for firms to "identify and prioritize time-specific payments". However, CLS recommends that Agencies consider amending the Proposed FBO Guidance to clarify that firms should: (i) map out a comprehensive timeline of key deadlines for payment obligations across all key FMUs and key agent banks; and (ii) consider and document (as applicable) the potential knock-on effects of failing to pay a particular payment obligation and any mitigating actions they may need take to avoid such effects. For example, as already noted above, in the context of participation in the CLS System, members' funding obligations are multilaterally netted, so there could be potentially significant disruptive knock-on effects to the CLS ecosystem and other members in the event a member in resolution fails to fund all of its CLS-related obligations.

C. Contingency Arrangements and Communication Plans

Question – "Should the guidance indicate that providers of PCS activities are expected to consider particular contingency arrangements (e.g., methods to transfer client activity to other firms with whom the clients have relationships, alternate agent bank relationships, etc.)? Should the guidance also indicate that firms should consider particular actions they may take concerning the provision of intraday credit to affiliate and third-party clients, such as requiring pre-funding? If so, what particular actions should these firms address?"

1. With respect to these particular contingency arrangements, in furtherance of CLS's comments under Section II.A.1 herein, CLS recommends that the Agencies consider amending the Proposed FBO Guidance to require Specified FBOs to identify and consider (as applicable) all of the roles and capacities in which they act within key FMUs' ecosystems, since this will be an important factor in FMUs' assessments regarding the potential impact on each specific FMU and other participants, and such decisions may have broader systemic ramifications. In particular, firms should clearly identify ex ante the roles/capacities in which they anticipate they will cease to act during their own resolution, and sufficiently plan for any mitigating actions they will need to take to avoid any resulting adverse systemic impact. In the context of the CLS System, for example, if a firm in resolution indicated that it would no longer be able to act as a third-party service provider, this could be significantly disruptive to the firm's third-party clients that rely on the firm in resolution to access CLS in order to settle their FX transactions, especially if there is inadequate planning and a lack of communication. CLS recommends that firms ideally notify key FMUs (and clients, where applicable) ex ante (or at the very least, immediately upon entry into resolution) whether they intend to cease to act in key roles within FMUs' ecosystems, in order to ensure a shared understanding of the

²⁶ FSB FMI Guidance, sec. 1, p. 6.

²⁷ See, e.g., SRB Expectations, sec. 2.3.3, pp. 23 – 24 ("When estimating the liquidity and funding needed to implement the resolution strategy, banks are expected . . . pay particular attention to: obligations related to [PCS] activities, including potential liquidity effects of *risk management actions* by FMIs or FMI intermediaries" (emphasis added)).

anticipated impact of the banks' resolution strategies and allow these stakeholders adequate time to prepare accordingly.

2. CLS agrees that firms should "continue to engage with key FMUs, agent banks and clients" and that "playbooks should reflect any feedback received during such ongoing outreach",²⁸ and supports the requirements within the Proposed FBO Guidance regarding firms' communications with key clients (based on firms' roles as providers of PCS services). CLS recommends that the Agencies consider amending the Proposed FBO Guidance to include similar communication planning requirements with respect to firms' key FMUs and key agent banks. Specifically, CLS suggests that firms consider including within their playbooks (both as users and providers of PCS services) their expected enhanced communication plans with key FMUs and key agent banks during stress and resolution, particularly how and when the firms' communications will be coordinated and executed in the event of stress or resolution. As previously noted in Section I herein, robust and credible communication strategies are essential to effective resolution planning, and developing and maintaining these ex-ante will enable rapid and orderly resolutions, as they will mitigate uncertainty as to the "who, what, where, when, why, and how" for stress-related and resolution-related communications, thus fostering efficient and appropriate information flows. As an important corollary, CLS further recommends that the Agencies consider amending the Proposed FBO Guidance to require firms to: (i) maintain up-to-date lists of key resolution contacts for their key FMUs and key agent banks; and (ii) provide their equivalent key resolution contacts to key FMUs and key agent banks, keeping them up to date and regularly testing them.

* * *

We appreciate the Agencies' consideration of the views set forth in this letter and would welcome the opportunity to discuss any of these comments in further detail.

Sincerely,



Dino Kos
Chief Regulatory Officer

cc: Gaynor Wood, General Counsel
Lauren Alter-Baumann, Head of Regulatory Strategy
Andrea Mparadzi, Senior Legal Counsel
Caitlin Foran, Assistant Corporate Secretary

²⁸ Proposed FBO Guidance, sec. V – 'Operational', subsection 'Payment, Clearing, and Settlement Activities'.