Gaynor Wood
General Counsel
gwood@cls-services.com

trusted market solutions

June 28, 2019

Via electronic mail

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
regs.comments@federalreserve.gov

Re: Netting Eligibility for Financial Institutions (Docket No. R-1661, RIN 7100-AF 48)

Dear Ms. Misback:

CLS Bank International ("CLS") appreciates the opportunity to comment on the proposal[1] (the "Proposal") of the Board of Governors of the Federal Reserve System (the "Board") to amend Regulation EE to include certain new entities in the definition of "financial institution" contained in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 and clarify how the existing activities-based test in Regulation EE applies following a consolidation of legal entities.

CLS was established by the private sector, in cooperation with a number of central banks, to mitigate the settlement risk (loss of principal) associated with the settlement of payments relating to foreign exchange transactions. CLS operates the world's largest multicurrency cash settlement system for those payments (the "CLS system") and provides payment-versus-payment settlement in 18 currencies directly to 71 members, some of which provide access to the CLS system for over 25,000 third-party institutions.

As an Edge Act corporation established under Section 25A of the Federal Reserve Act, CLS is regulated and supervised by the Board and the Federal Reserve Bank of New York (collectively, the "Federal Reserve"). Additionally, the central banks whose currencies are settled in the CLS system have established the CLS Oversight Committee, organized and administered by the Federal Reserve pursuant to the *Protocol for the Cooperative Oversight Arrangement of CLS*,[2] as a mechanism to carry out the central banks' individual responsibilities to promote safety, efficiency, and stability in the local markets and payment systems in which CLS participates.

As a systemically important financial market infrastructure ("FMI"), CLS is subject to the CPMI-IOSCO *Principles for financial market infrastructures* (the "PFMI"), as applicable to

[1] 84 Fed. Reg. 18741 (May 2, 2019).

[2] https://www.federalreserve.gov/paymentsystems/cls_protocol.htm.

payment systems.[3] In addition, CLS was designated a systemically important financial market utility by the Financial Stability Oversight Council in July 2012 under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). 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, which are based on the PFMI.

* * *

CLS strongly supports the Proposal and agrees that the new entities described in it should qualify as financial institutions. However, CLS respectfully suggests that the following additional categories of entities (the "Additional Entities") also should expressly qualify as financial institutions: (i) foreign central banks; (ii) supranational institutions, such as the Bank for International Settlements and multilateral development banks; (iii) foreign systemically important FMIs (*i.e.*, that are subject to the PFMI, as implemented in their respective jurisdictions) and their operators; and (iv) sovereign wealth funds.

CLS recognizes that some of the Additional Entities could potentially qualify as financial institutions under FDICIA's statutory definition or under the existing activities-based test in Regulation EE. However, in light of the systemic importance of the Additional Entities, CLS believes that an express extension of FDICIA's protections (through Regulation EE) is necessary to provide certainty that netting contracts entered into with the Additional Entities will be enforced. Such an extension of Regulation EE "would reduce systemic risk and increase efficiency in the financial markets"[4] and thus would be consistent with the Proposal.

Sincerely,

Gaynor Wood,
General Counsel

cc: Dino Kos, Chief Regulatory Officer
David A. Trapani, Head of U.S. Legal
Lauren Alter-Baumann, Head of Regulatory Strategy

---

[3] The PFMI were published by the Bank for International Settlements Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions in April 2012 and are designed to ensure that the infrastructure supporting global financial markets is robust and able to withstand financial shocks. The PFMI apply to all systemically important FMIs, including payment systems.

[4] 84 Fed. Reg. 18741, 18742.