Dino Kos
Chief Regulatory Officer
dkos@cls-bank.com

September 14, 2018

Via email

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

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

Re: Proposed 165(d) Guidance for the Domestic Firms
Docket No. OP–1614

Dear Ms. Misback and Mr. Feldman:

CLS Bank International ("CLS") welcomes the opportunity to comment on the proposed resolution planning guidance for the eight largest, complex U.S. banking organizations[1] (the "Proposed 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 July 16, 2018.[2]

CLS was established by the private sector, in cooperation with a number of central banks, to mitigate 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 (the "CLS system") and provides payment-versus-payment settlement in 18 currencies directly to 70 settlement members, some of which provide access to the CLS system for over 24,000 third-party institutions.

[1] i.e., "Covered Companies" or "firms".

[2] 83 Fed. Reg. 32,856 (Jul. 16, 2018).

As an Edge Act corporation established under Section 25A of the United States Federal Reserve Act, CLS is regulated and supervised by the Board and the Federal Reserve Bank of New York (collectively, the "Federal Reserve") under a program of ongoing supervision, combining full-scope and targeted on-site examinations with a variety of off-site monitoring activities. 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*,[3] as a 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.

In July 2012, CLS was designated a systemically important financial market utility ("DFMU") by the Financial Stability Oversight Council 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. As a systemically important financial market infrastructure ("FMI"), CLS is also subject to the *Principles for financial market infrastructures* (the "PFMI"), as applicable to payment systems.[4]

Under the scope set forth in the Proposed Guidance, CLS is an "FMU" providing services that fall within "payment, clearing, and settlement (PCS) services". Accordingly, CLS's comments are provided from an FMU's perspective, since the Proposed Guidance is made applicable to only the Covered Companies and has no direct impact on FMUs. As such, CLS's comments are directed to specific areas where CLS believes it can provide useful input from this perspective, including the application of the Proposed Guidance to Covered Companies in their roles as providers of PCS services (since many of CLS's settlement members act as providers of PCS services with respect to the CLS system). Section I of this comment letter provides general feedback and, in particular, emphasizes the need for a flexible approach to ensuring continuity of access to FMUs in line with existing regulatory guidance and requirements in the U.S., as well as globally. Section II responds to several of the Agencies' specific questions raised in the request for comments on the Proposed Guidance.

I. General Comments on the Proposed Guidance

CLS agrees that the 2007 – 2009 global financial crisis reinforced the need to reduce systemic risk and to foster financial stability within both the U.S. market and the broader global financial system, including minimizing systemic adverse impact from failures of financial institutions. Post-crisis, it has become clear that comprehensive and credible resolution planning is an important and necessary requirement to address the aforementioned needs as part of a broader

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

[4] 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").

resolution regulatory regime. In this regard, CLS strongly supports the Agencies' efforts to further guide firms on how to improve their resolvability and facilitate their orderly resolution, including consideration of additional ex-ante measures. To this end, CLS suggests amending the Proposed Guidance to emphasize more clearly the importance of Covered Companies' continued engagement with their key external stakeholders, including FMUs and agent banks, as resolution plans and related guidance continue to evolve and mature.[5] In addition, CLS submits three overarching principles to incorporate or expand upon within the Proposed Guidance.

First, CLS agrees that it is important that firms take measures (as part of their resolution planning) to ensure continuity of access to FMUs in resolution, and that firms should be aware of the tools available to FMUs, reflected in their respective rules, that might be utilized in the event a firm enters resolution. CLS further suggests that firms also understand which of an FMU's tools (especially those that mitigate risk) are most likely to be utilized in specific scenarios and to prepare accordingly.[6] In particular, firms should ensure a full understanding of any tools that, if utilized, could result in changes to the normal timeline, and understand the ramifications of the use of such tools. For example, in certain limited situations, CLS's rules provide that CLS may defer the settlement of certain instructions in order to afford a member additional time to comply with its funding obligations. In this manner, CLS seeks to protect the continued safe and orderly operations of the CLS system and mitigate risk to the other CLS members and relevant stakeholders. As the Financial Stability Board ("FSB") observes in its July 2017 *Guidance on Continuity of Access to Financial Market Infrastructures ('FMIs') for a Firm in Resolution* ("FMI Guidance"):

> FMIs in particular should have objectives that place a high priority on the safety and efficiency of the FMI and explicitly support financial stability and taking into account other public interest considerations. These public interest considerations should include the implications on the FMI and on FMI service users, as well as the broader financial system, of a failure by a direct member to meet the additional requirements and the potential consequences thereof . . . .[7]

This is consistent with the stated public policy objectives outlined in Regulation HH, especially the objective of safety.

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[5] As the Agencies note in the Proposed Guidance, resolution planning is "an iterative process", and firms should be expected to have ongoing dialogue with relevant stakeholders to support the continued success of this process.

[6] CLS notes that the Proposed Guidance already requires firms' playbook content related to users of PCS services to include "[d]iscussion of the potential range of adverse actions that may be taken by [a] key FMU or agent bank when the firm is in resolution, the operational and financial impact of such actions on each material entity, and contingency arrangements that may be initiated in response by the firm in response . . . ." Proposed Guidance, section V – 'Operational': 'Payment, Clearing, and Settlement Activities' (internal footnote omitted). However, the term "adverse actions" could potentially mislead a firm to not consider other tools available to an FMU if the firm is in resolution, as the firm might not consider them to be "adverse".

[7] FMI Guidance, section 1.3, p. 11, available at http://www.fsb.org/wp-content/uploads/P060717-2.pdf.

Second, CLS agrees that firms should take as many ex-ante preparatory measures as possible in order to improve their resolvability and minimize disruption in resolution. One such measure, as reflected in prior guidance, is "updat[ing] contracts to incorporate appropriate terms and conditions to prevent automatic termination and facilitate continued provision of [critical outsourced] services during resolution."[8] As the Agencies have previously noted, many of the firms have amended their service contracts with key vendors to ensure continuity of services as long as the firm continues to perform its obligations under the contract.[9] However, CLS suggests that firms consider amending their bilateral contracts with agent banks,[10] where possible, to facilitate continuity of access to PCS services (e.g., correspondent banking services), which would also necessarily include consideration of how to ensure (to the extent possible) continued access to credit lines in resolution. CLS recommends amending the Proposed Guidance to encourage firms to consider adopting such contractual amendments where possible. 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 were to advise CLS that it will not fund that member's obligations to CLS in one or more currencies, this would likely be significantly disruptive to CLS's settlement service and other members, as well as the broader foreign exchange ("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.[11] By proactively reviewing their respective contracts with nostro agents and potentially making appropriate amendments (e.g., inclusion of "resolution-favorable" clauses), firms will significantly reduce systemic risk.

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")[12] authorities to ensure consistency across jurisdictions. In light of

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[8] Proposed Guidance, section V – 'Operational': 'Shared and Outsourced Services'.

[9] *Resolution Plan Assessment Framework and Firm Determinations (2016)*, 'Progress to Date', p. 7, available at https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20160413a2.pdf.

[10] CLS recognizes that firms may have an extensive network of agent banks that they use for PCS services; thus, CLS recommends that firms focus on their contractual relationships with those agent banks deemed critical as part of their resolution plans.

[11] As the FSB notes in its June 2018 *Funding Strategy Elements of an Implementable Resolution Plan* ("Funding Guidance"), "A firm in resolution is likely to have a need for funding in currencies other than its home currency. The resolution funding plan should consider potential options to meet liquidity needs and address potential shortfalls in foreign currencies. . . . [T]here may be shortfalls in particular currencies during resolution due to, for example, operational or timing constraints, or counterparty reluctance, to swap significant amounts of currency in the period immediately following entry into resolution." Funding Guidance, section 2.4, pp. 11 – 12, available at http://www.fsb.org/wp-content/uploads/P210618-3.pdf.

[12] As defined in the FMI Guidance.

the foregoing, CLS suggests that the Agencies consider discussing and vetting their communication strategy with the Covered Companies and DFMUs[13] 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.[14] Additionally, CLS recommends that the Agencies consider how they could leverage firms' capabilities and resources to assist with executing the communication strategy as appropriate. The foregoing is consistent with Principles 19 and 20 of the FSB's June 2018 *Principles on Bail-in Execution* ("Bail-in Guidance").[15] As the Bail-in Guidance notes:

> 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.[16]

CLS believes such coordination (especially when done ex-ante) would be beneficial to the Agencies, DFMUs, and the Covered Companies (in their capacities as users and providers of PCS services), as it would enable them to act more quickly and confidently in a resolution scenario.

II. Specific Comments on the Proposed Standards

Scope of Application

Q1. Do the topics in the proposed guidance discussed above represent the key vulnerabilities of the Covered Companies in resolution? If not, what key vulnerabilities are not captured?

CLS believes that the topics in the Proposed Guidance generally represent the vulnerabilities of the Covered Companies in resolution; however, CLS recommends refining the Proposed

[13] CLS suggests coordination with DFMUs at a minimum , as most (if not all) of the Covered Companies 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 Covered Companies' other material FMUs, if possible; however, CLS acknowledges this may be more difficult in practice.

[14] As the FSB provides in the 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 maintain access [to FMIs.]" FMI Guidance, section 3, p. 18.

[15] Bail-in Guidance, section V, Principles 19 – 20, pp. 23 – 25, available at http://www.fsb.org/wp-content/uploads/P210618-1.pdf. While the Bail-in Guidance is focused on assisting authorities "as they develop bail-in resolution strategies and make resolution plans operational for G-SIBs", CLS finds some its principles—particularly Principles 19 through 21—to be generally applicable to resolution planning as a whole (not solely those resolution plans focused on bail-in strategies).

[16] Bail-in Guidance, section V, Principle 19, p. 24.

Guidance to include certain additional considerations within these topics. In particular, CLS proposes more explicit encouragement for the Covered Companies to analyze concentration risks, including those relating to their external counterparties, in furtherance of what has already been considered in the "Derivatives and Trading Activities" section of the Proposed Guidance. For example, CLS suggests that the Covered Companies take into account within their PCS playbooks the degree of interconnectedness and reliance they have with other firms (non-FMUs) for PCS services, especially if the Covered Companies would lack or find it difficult to utilize viable alternatives in a resolution scenario. CLS recommends that the Covered Companies evaluate such concentration risk from their perspective as providers of PCS services—e.g., where they are the only provider, or one of a select few, for a particular PCS service. It may also be appropriate for the Covered Companies to factor concentration risk into their methodology for determining which providers of PCS services (particularly agent banks) are deemed the most critical as part of their resolution plans. CLS makes the foregoing suggestions, because conducting such analyses will allow for increased transparency as to where the potential for contagion in the broader market is greatest in a resolution scenario.

Additionally, for the "Legal Entity Rationalization and Separability" section, CLS recommends that firms consider including continuity of access to key FMUs and agent banks as part of their respective legal entity rationalization criteria ("LER Criteria").[17] This will help ensure, for example, that legal entities with key FMU memberships and/or agent bank relationships are not improperly (or inadvertently) eliminated from a Covered Company's legal entity structure.

PCS Activities

Q2. Is the guidance sufficiently clear with respect to the following concepts: Scope of PCS services, user vs. provider, 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 firms 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?

Scope of PCS services

CLS suggests clarifying that firms should also evaluate and plan for maintaining access to relevant real-time gross settlement ("RTGS") systems and the Society for Worldwide Interbank Financial Telecommunications ("SWIFT") during a resolution scenario. These service providers are of vital importance to the financial market and, as such, should be explicitly referenced within the Proposed Guidance for the avoidance of doubt. With respect to CLS, for example, it is imperative that CLS's settlement members maintain continued access to the RTGS systems for the 18 currencies in the CLS system in a resolution scenario. Additionally, CLS acknowledges

[17] As defined within the Proposed Guidance.

that most if not all of the Covered Companies have included SWIFT within their contingency planning with respect to PCS services. However, as a messaging system, SWIFT does not technically fit the definition of an FMU, and a firm could potentially omit SWIFT from consideration within their resolution plan and contingency plans. Given numerous FMUs' dependency on SWIFT and RTGS systems for the operation of their respective PCS services, CLS suggests that the Proposed Guidance should explicitly include SWIFT and RTGS systems within the scope of "PCS services".[18] In addition, the Proposed Guidance should clarify that firms' contingency plans should also cover their relationships with SWIFT and relevant RTGS systems, including any considerations with respect to governing law.[19]

Proposed framework

With respect to firms' capabilities to source and maintain key static and dynamic data, CLS recommends considering the inclusion of other relevant information requirements not explicitly covered in SR Letter 14-1. To this end, CLS recommends leveraging the FMI Guidance, especially the Annex of the FMI Guidance, which provides an extensive (though non-exhaustive) list of information requirements relevant to resolution planning; this may assist the Agencies in identifying any potential gaps in the Proposed Guidance and/or prior guidance. For example, CLS recommends amending the Proposed Guidance to require firms to maintain up-to-date information regarding: the jurisdiction where the key FMU or agent bank is incorporated; the governing law of the relationship; and whether contractual amendments have been made to recognize home/foreign resolution regimes.[20] Furthermore, to help firms increase the consistency and efficiency of their regulatory reporting, the Agencies may wish to consider coordinating with firms' resolution authorities in other jurisdictions with respect to the content of, and submission process for, their resolution-related reporting templates.

CLS suggests revising the definition of "client" as provided in footnote 31 of section V of the Proposed Guidance to mean only those clients that are external to a firm and not affiliates of that firm. In alignment with the Agencies' prior guidance, CLS agrees that relationships with affiliates should also be accounted for within firms' playbooks as appropriate—e.g., an affiliate providing PCS services to a material entity within the firm's group. CLS supports the Agencies' prior guidance that requires firms to address their intragroup/inter-affiliate interconnectedness within their resolution plans. Internal clients (i.e., affiliates) and external clients, however,

[18] This would be in alignment with the 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."

[19] See, e.g., *Guidance for 2013 §165(d) Annual Resolution Plan Submissions by Domestic Covered Companies that Submitted Initial Resolution Plans in 2012*, Attachment, section B.1, pp. 11 – 12, available at https://www.fdic.gov/regulations/reform/domesticguidance.pdf ("The response [for each of the Covered Company's top 20 FMU providers] should discuss, at a minimum, the following: . . . The degree of reliance of the Covered Company upon an assumption of regulatory coordination and cooperation with FMUs, considering jurisdiction of FMUs and/or third party agents . . . .").

[20] See FMI Guidance, Annex: 'Indicative information requirements for firms to facilitate continuity of access to FMIs', p. 24.

necessarily present different considerations and concerns, especially with respect to contagion risk within the broader financial market. As such, CLS recommends that the Proposed Guidance creates this necessary distinction by revising the definition of "client" as noted above, as well as making other necessary revisions throughout section V of the Proposed Guidance to ensure alignment with the revised definition of "client".

With respect to the framework as applicable to firms that are "providers of PCS services", CLS suggests clarifying that the determination of which clients are "key" are from the perspective of the provider, not the respective clients. For the avoidance of doubt, the Proposed Guidance should explain that it is not the responsibility of the provider of PCS services to determine which of its services are "key" to its clients. Additionally, as noted in Section I herein, CLS encourages firms' engagement with their users and clients to discuss and communicate the range of risk management actions and requirements they may impose on a user where it (or its parent or affiliate) is in resolution, noting which actions and requirements firms are most likely to take as providers of PCS services. To the extent possible, there should be a common set of expectations and processes across a provider's users (i.e., generally non-discriminatory).[21]

Further examples of and distinction between providers of PCS services

CLS suggests refining the Proposed Guidance to include further examples of ways that firms may act as providers of PCS services, as firms may each have slightly different interpretations of how they themselves act as providers of PCS services. Providing further examples—especially highlighting nostro agents and (in the context of CLS) third-party service providers ("TPSPs")—will enable firms to be sufficiently comprehensive in their analyses and contingency plans as part of their resolution planning.

Furthermore, CLS recommends distinguishing between providers based on the type of PCS service they provide, since there may be different considerations for each (e.g., minimum requirements for custody versus clearing services). CLS suggests that, at a minimum, the Proposed Guidance should distinguish nostro agents, given the critical role they play.

Q3. Are the Agencies' expectations with respect to playbook content for firms that are users or providers (or both) of PCS services sufficiently clear? What additional clarifications, alternatives, or additional information, if any, should the Agencies consider?

For all playbook content

CLS suggests clarifying that firms should consider clearly identifying which of their contingency arrangements apply to firm-related PCS activity versus client-related PCS activity (as

[21] This is in alignment with sections 1.2 and 1.3 of the FMI Guidance.

applicable) with respect to any loss of access to their key FMUs and agent banks; firms may require different analyses and approaches depending on the type of activity involved, in order to respond appropriately to a loss of access to an FMU or agent bank during a resolution scenario.

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."[22] In addition, CLS recommends that firms consider explicitly indicating in their playbooks whether certain analyses and/or contingency arrangements are based on feedback from key FMUs, agent banks, and clients, or whether those analyses and/or arrangements are based on the firms' own assumptions.[23] CLS further recommends clarifying that firms may wish to consider explaining within their playbooks the extent to which they, as providers of PCS services, have discussed with their clients/users any actions the firms expect to take in a resolution scenario with respect to uncommitted credit lines extended to those clients/users (as applicable).

CLS recommends amending the Proposed Guidance to suggest that firms may wish to consider discussing within their playbooks whether any of their contingency arrangements and/or analyses within their playbooks would change at all depending on which entity enters into resolution.[24] This is because each firm may have different entities in their group as the direct members of their key FMUs or as the parties to the contracts with their key agent banks and, as such, there may be different considerations and implications if, for example, the direct member of an FMU is the one to be resolved versus another entity in the same group.

CLS also suggests clarifying what would be considered "financial and operational impacts" of: (1) potential adverse actions that may be taken when the firm is in resolution; and (2) firm's contingency arrangements available to minimize disruption to the provision of PCS services to its clients. This clarification could potentially be achieved by way of inclusion of a non-exhaustive list of examples of financial and operational impacts, such as "the human resources needed to respond to adverse actions and to execute contingency arrangements".

Furthermore, CLS suggests that firms consider including within their playbooks (both as users and providers of PCS services) the expected enhanced communication with key stakeholders (e.g., regulators, FMUs, and 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- and resolution-related communications, thus fostering efficient and appropriate information flows.

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[22] Proposed Guidance, section V – 'Operational': 'Payment, Clearing, and Settlement Activities'.

[23] See, e.g., FMI Guidance, section 2.3, p. 15 ("The firm should make clear to what extent these assessments reflect the firm's own analysis of the likely response and whether such responses have been discussed with the relevant provider of critical FMI services.").

[24] See, e.g., FMI Guidance, section 2.3, pp. 14 – 15.

For playbook content related to users of PCS services

CLS agrees that firms' capabilities to understand and address liquidity issues constitute a critical aspect effective and accurate resolution plans. To that end, CLS recommends that each firm consider taking into account in its playbooks all of the additional requirements that could be imposed on the firm by its providers of critical PCS services in a resolution scenario so that the firm does not double-count availability of funds for use across more than one critical PCS service. This is particularly important, because providers of PCS services (e.g., FMUs, agent banks) may impose additional requirements on a firm at or around the same time—including intraday—leading to a liquidity "crunch" that could, if there is insufficient contingency planning, undermine resolution regimes' goal of maintaining financial stability in the broader market. Additionally, market counterparties may significantly reduce their credit limits against a firm in resolution, which may adversely impact the firm in resolution's ability to meet their obligations at FMUs and may therefore jeopardize their continuity of access to FMUs.[25]

Q4. Should the guidance indicate that providers of PCS activities are expected to expressly consider particular contingency arrangements (e.g., methods to transfer client activity to other firms with whom the clients have relationships, alternate agent bank relationships)? Should the guidance also indicate that firms should expressly consider particular actions they may take concerning the provision of intraday credit to affiliate and third-party clients, such as requiring prefunding? If so, what particular actions should these firms address?

For particular contingency arrangements

CLS suggests amending the Proposed Guidance to require that firms address in their playbooks, to the extent relevant and appropriate, their plan to execute a transfer of FMU membership to another entity (e.g., bridge bank) in a resolution. CLS understands that this is largely dependent on firms' preferred resolution strategy (based on their business and operations), for certain resolution strategies, such analysis will be necessary for effective contingency planning with respect to continuity of access to FMUs.

For particular actions concerning the provision of intraday credit to affiliate and third-party clients

In connection with CLS's relevant comments above, CLS recommends clarifying that, with respect to particular actions firms (as providers of PCS services) may take regarding provision

[25] For example, the majority of CLS's settlement members have "In/Out Swap" limits with respect to their counterparties, and they may reduce these limits against a counterparty settlement member that is in resolution. (In/Out Swaps act as a liquidity management tool for participating settlement members, as it allows them trade down certain bilateral positions via an In/Out Swap trade in order to reduce the participating settlement members' funding obligations.) If such limits are reduced against a settlement member in resolution, this will increase the settlement member in resolution's funding obligations to CLS in multiple currencies, which may prove challenging to meet in a resolution scenario.

of intraday credit to clients, firms' playbooks should explain any anticipated differences in treatment of affiliates versus third-party clients, as well as the likelihood that a firm will take a particular action with respect to intraday credit. To this end, CLS suggests including, for example, the following language in section V of the Proposed Guidance, subsection 'Payment, Clearing, and Settlement Activities' (proposed amendments in **bold** text):

- *Content Related to Providers of PCS Services.* Individual FMU and agent bank playbooks[ ] should include at a minimum: . . . Description of the range of contingency actions**, starting with the most likely,** that the firm may take concerning its provision of intraday credit to clients **and affiliates**, including **explanation of any necessary differences in treatment of clients versus affiliates and** analysis quantifying the potential liquidity the firm could generate by taking such actions in stress and in the resolution period . . . ."

Q5. Specifically for users of PCS activities, should the guidance indicate that firms are expected to expressly include particular PCS-related liquidity sources and uses such as client pre-funding, or specific abilities to control intraday liquidity inflows and outflows (e.g., throttling or prioritizing of payments)? If so, what particular sources and uses should firms be expected to include?

CLS supports the requirement that firms describe in their playbooks any "intraday credit arrangements (e.g., facilities of the FMU, agent bank, or a central bank)" as part of their PCS-related liquidity sources. Given the importance of intraday liquidity in stress and resolution, CLS recommends that firms consider clarifying in their playbooks the extent to which they would rely on committed credit lines they have with FMUs and agent banks (as applicable) as liquidity sources in resolution.

Q6. Specifically for providers of PCS services are the Agencies' expectations concerning a firm's communication to its key clients (including affiliates as applicable) of the potential impacts of implementation of identified contingency arrangements sufficiently clear? What additional clarifications, if any, should the Agencies consider? Should the Agencies expect firms to communicate this information at specific times or in specific formats?

As discussed previously, CLS agrees that comprehensive and effective communication strategies are critical in a resolution scenario, and given the various time sensitivities in resolution, such strategies must be readily executable. Furthermore, in alignment with the FMI Guidance, providers of PCS services (particularly firms) should continue to engage with their clients and affiliates (as applicable) with respect to resolution planning and related issues, in order to promote consistent and accurate understanding. In light of the foregoing, CLS suggests revising the Proposed Guidance to encourage firms to communicate in BAU and in writing with their clients and affiliates (as applicable) regarding contingency arrangements and the related

potential impacts. Doing so would enable firms' PCS services clients and affiliates to prepare to the extent possible prior to resolution. CLS further recommends amending the Proposed Guidance to suggest that firms maintain their own internal centralized points of contact for resolution purposes, as well as a list of their clients' and affiliates' key contacts in resolution, and firms should indicate their agreed method (or methods) of communication (e.g., email, phone call, etc.). Additionally, CLS suggests that firms consider regularly updating and disseminating this list of key contacts to their clients, and CLS encourages firms to ask that their clients reciprocate.

Existing Guidance

Q8. Should the Agencies consolidate all applicable guidance? If so, which aspects of the other guidance warrant inclusion, additional clarification or modification?

CLS supports the Agencies' consolidation of all applicable guidance, as it will provide an opportunity to reconcile all requirements and will increase the likelihood of consistency in firms' interpretation and application of the guidance to their resolution plans. As part of the consolidated guidance, CLS recommends including (at a minimum) Section II.A ('Identified Obstacles and Identified Proposed Mitigants') of the *Guidance for 2013 §165(d) Annual Resolution Plan Submissions by Domestic Covered Companies that Submitted Initial Resolution Plans in 2012*, including the associated Attachment.

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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: Naresh Nagia, Chief Risk Officer, CLS Bank International
Gaynor Wood, General Counsel, CLS Services Ltd.
Lauren Alter-Baumann, Head of Regulatory Strategy, CLS Bank International
Andrea Mparadzi, Senior Legal Counsel, CLS Bank International
Irene Mustich, Regulatory Relationship Manager, CLS Bank International
Caitlin Foran, Regulatory Affairs Specialist – Resolution, CLS Bank International