RESPONSE TO CONSULTATION PAPER

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Consultation topic:	Proposed Legislative Amendments to Enhance the Resolution Regime for Financial Institutions in Singapore
Name[1]/Organisation: [1]if responding in a personal capacity	CLS Bank International ("**CLS**")
Contact number for any clarifications:	Alan Marquard, General Counsel +442079715409
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Confidentiality	
I wish to keep the following confidential:	No *(Please indicate any parts of your submission you would like to be kept confidential, or if you would like your identity to be kept confidential. Your contact information will not be published.)*

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May 31, 2016

Ladies and Gentlemen:

CLS Bank International ("**CLS**"), the operator of the CLS settlement system (the "**CLS System**"), appreciates the opportunity to respond to the Consultation Paper (P004-2016) on the Proposed Legislative Amendments to Enhance the Resolution Regime for Financial Institutions in Singapore, dated April 29, 2016 (the "**Consultation Paper**").

CLS is a special purpose corporation organized under the laws of the United States of America and supervised by the Board of Governors of the Federal Reserve System and the Federal Reserve Bank of New York. CLS is also subject to cooperative oversight by 23 central banks whose currencies are settled in the CLS System, including the Monetary Authority of Singapore ("**MAS**"), pursuant to a Protocol for the Cooperative Oversight Arrangement of CLS organized and administered by the Federal Reserve. The CLS System is a designated system in Singapore for the purposes of the Payment and Settlement Systems (Finality and Netting) Act (Cap 231, 2003 Ed) (the "**FNA**").[1]

The CLS System is a global settlement system that offers its members and their customers the ability to mitigate settlement risk with regard to their foreign exchange transactions. The CLS System relies on the protection provided by the FNA to ensure finality of settlement and funding as well as enforceability of its netting and default arrangements. In this manner, CLS ensures that it has an acceptable legal basis for its settlement of Singapore dollar payment instructions and for the participation of Singapore institutions as CLS members. As a financial market infrastructure (an "**FMI**"), the CLS System currently observes the applicable principles of the CPMI[2]-IOSCO Principles for financial market infrastructures (the "**PFMI**"), including Principle 1: Legal Basis ("An FMI should have a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities in all relevant jurisdictions").

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1 CLS has also been designated under finality legislation in various other jurisdictions and has been designated as a systemically important Financial Market Utility by the United States Financial Stability Council under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

2 Effective September 1, 2014, the Committee on Payment and Settlement Systems changed its name to the Committee on Payments and Market Infrastructures ("CPMI").

General comments:

Advance Notice

CLS notes that, under the proposed Singapore resolution framework, there is no express reference to the provision of advance notice of participant resolution to FMIs by the resolution authority. In 2014, the Financial Stability Board ("**FSB**") introduced Appendix II, Annex 1 to the FSB's Key Attributes,[3] which emphasizes the relevance of notice to FMIs, drawing particular attention to the importance of advance notice. The Key Attributes specifically stipulate that "resolution authorities should inform FMIs as soon as possible of the resolution of a participant, and ***if possible in advance of the firm's entry into resolution***" [emphasis added].[4] Receipt of prior notice by FMIs will maximize the likelihood of continued participation in the FMI by the institution or any bridge bank or other successor institution to which the entity's business is transferred as part of a resolution proceeding. CLS fully agrees with the Key Attributes approach, and is of the view that advance notice to FMIs is critical for the following reasons:

1. FMI's role as provider of information. If the entity in resolution is a participant in an FMI, the FMI will be able to provide the resolution authority with comprehensive up-to-date information regarding that participant, including information about its role in the FMI ecosystem, that will increase the likelihood of a successful resolution.

2. Ability to comply with obligations to the FMI. FMIs need sufficient time to ensure that a participant in resolution will be able to comply with its obligations. In the case of CLS, for example, timely funding is critical to ensure timely settlement and to avoid use of default arrangements. Subject to specific facts and circumstances, a failure to fund can have a significant adverse impact on the CLS System and its participants. Therefore, CLS will need assurance, prior to the start of the next settlement session, that the participant in resolution will be able to comply with its funding obligations. Ensuring that the participant's obligations are met is in the interest of the resolution authority, the FMI, and other participants in the FMI.

3. Ability to Timely Undertake Necessary Steps. In order to accommodate the continued participation of a participant in resolution (or its successor) in a compressed timeframe, such as a weekend, FMIs need sufficient time to undertake the many necessary

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[3] FSB's Key Attributes of Effective Resolution Regimes for Financial Institutions, dated October 15, 2014 (the "**Key Attributes**").

[4] Please refer to Section 5.1 of Appendix II, Annex 1 to the Key Attributes, relating to resolution of FMI participants, which provides that "Resolution authorities should inform FMIs as soon as possible of the resolution of a participant, and ***if possible in advance of the firm's entry into resolution*** [emphasis added]. Throughout the period that a participant is in resolution, authorities should provide the FMI with information about the participant or any bridge institution to which its functions have been transferred relevant to the continued participation of that firm or bridge institution in the FMI".

(and often complex) internal steps and processes, which may include operational, liquidity, credit, and legal-related assessments and actions.[5]

4. Application of mitigants. FMIs require the time to assess the need to apply appropriate mitigants in a resolution scenario so that the safety of the FMI will not be comprised.

Given the clear regulatory guidance, the critical importance of notice to FMIs, and the fact that it is in the interest of the regulatory authorities to provide as much advance notice as possible to FMIs prior to the use of resolution tools, CLS suggests that the Singapore resolution laws should specifically reflect the importance of advance notice to FMIs whenever possible.

Question 1: MAS seeks comments on the draft amendments to Part IVA of the MAS Act in relation to recovery and resolution planning.

N/A

Question 2: MAS seeks comments on the draft Notice and Guidelines for recovery and resolution planning.

N/A

Question 3: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to temporary stays on termination rights.

Proposed section 30AAZAJ of the Monetary Authority of Singapore Act (Cap. 186) (the "**MAS Act**") provides that stays on termination rights will not apply to termination rights arising "under a contract held by a party which has been prescribed by regulations made under section 30AAZN as an excluded party". CLS notes MAS's intention, as reflected in the "Proposed Enhancements to Resolution Regimes for Financial Institutions in Singapore - Response to Feedback Received" document, dated April 29, 2016 (the "**MAS Feedback**"), to include "*designated payment systems*" as "excluded parties" in the regulations.[6] As CLS is technically designated under the FNA as a "*designated system*" and not a "*designated payment system*", CLS is seeking a technical clarification that "designated systems" will be included as "excluded parties" in the regulations.

Question 4: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to the statutory bail-in regime.

CLS notes that MAS intends to prescribe in future regulations, liabilities that are *within scope* of

[5] This is particularly true in a transfer of membership scenario.

[6] Paragraph 3.8 of the MAS Feedback.

MAS's statutory bail-in powers.[7] In the MAS Feedback, MAS suggests that "unsubordinated obligations towards…payments systems" will be excluded from scope. As it is unclear from both the Consultation Paper and the MAS Feedback whether excluded liabilities will be specifically enumerated in the future regulations, CLS suggests that, for the avoidance of doubt, *liabilities that are out of scope* be expressly set out in the regulations as well. This provides certainty of breadth, and is consistent with the approach taken in other jurisdictions, such as the European Union.[8] In addition, if MAS specifies a list of excluded liabilities, CLS proposes that liabilities and payment obligations, whether unsubordinated or subordinated, owed to designated systems by all parties should be excluded from the scope of bail-in powers. Finally, it is important that the determination as to whether liabilities owed to designated systems are excluded does not hinge on the maturity of such obligations. The imposition of a maturity limitation could result in the bail-in of liabilities to FMIs even though their repayment is necessary to ensure the continuity of essential services, so giving rise to widespread and disruptive contagion to other parts of the financial system.

Question 5: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to cross-border recognition of resolution actions.

N/A

Question 6: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to the creditor compensation framework.

N/A

Question 7: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to resolution funding arrangements.

N/A

Question 8: MAS seeks comments on the draft amendments to the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013.

The inclusion of safeguards to protect set-off and netting rights in respect of financial contracts[9]

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7 Paragraph 6.7 of the MAS Feedback; see also the proposed definition of "eligible instrument" in proposed section 30AAZAA of the MAS Act.

8 Article 44(2) of the EU Bank Recovery and Resolution Directive 2014/59/EU of the European Parliament and of the Council of May 15, 2014.

9 A "financial contract" is defined as "(a) a contract for repurchasing, borrowing or lending securities, units in a collective investment scheme or commodities; (b) a derivatives contract; or (c) a futures contract within the meaning of section 2(1) of the Securities and Futures Act…"

in partial transfer scenarios is welcome.[10] However, CLS is of the view that clearing, payment, and settlement system arrangements should also be classified as protected arrangements under the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013; at a minimum, safeguards should include the protection of transactions through designated systems as well as the application and enforceability of the rules of the designated system. In this regard, CLS further proposes that clearing, payment, and settlement system arrangements should be protected by default not only in partial transfer resolution scenarios, but also in complete transfer and bail-in scenarios.

In connection with safeguarding clearing, payment, and settlement system arrangements, and in order to maximize the likelihood of a successful resolution and minimize systemic disruption, certain amendments should be made to the FNA. Specifically, it should be made clear that proceedings of designated systems take precedence over resolution laws, as is currently the case with respect to insolvency laws under section 8 of the FNA.[11]

Please do not hesitate to contact us if you have any questions regarding this letter.

Best regards,

Alan Marquard

cc: Dino Kos, *Executive Vice President, Head of Regulatory Affairs*
Lauren Alter-Baumann, *Managing Director, Legal and Regulatory Affairs*
Andrea Mparadzi, *Director, Assistant General Counsel*
Irene Mustich, *Associate Director, Regulatory Affairs*

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[10] Section 15 of the Draft Amendments to the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013, Part IV.

[11] For the avoidance of doubt, and because resolution authorities may be afforded powers in a resolution scenario similar to liquidators' powers in an insolvency scenario (e.g. the power to avoid dispositions), MAS may also wish to consider amending section 12 of the FNA to make clear that resolution proceedings do not end finality protections under the FNA.

As a general matter, CLS believes, and has made the point in the past, that MAS might wish to consider amending the FNA to provide that statutory protections under the FNA will not terminate after an insolvency, but will continue at all times (including upon and after insolvency). This is consistent with the statutory approach taken in other jurisdictions, such as Canada and South Africa. Alternatively, MAS should consider making amendments to clarify that all protections continue for transfer orders and funding entered into the designated system after the end of the relevant day in Singapore, if authorized by the relevant insolvency official.