

Gaynor Wood
General Counsel
gwood@cls-services.com

November 17, 2022

Via email

FMI Consultation, Prudential Policy Department
Reserve Bank of New Zealand
PO Box 2498
Wellington 6140
fmiconsultation@rbnz.govt.nz

Re: Financial Market Infrastructures Standards

Dear Mr. Steffey,

CLS Bank International (“CLS”) welcomes the opportunity to submit comments in response to the Reserve Bank of New Zealand’s (“RBNZ”) consultation ‘*Financial Market Infrastructures Standards*’ issued in September 2022 (the “Consultation”).

1. Background

CLS was established by the private sector, in cooperation with a number of central banks, as a payment-versus-payment system to reduce the principal risk arising from settling FX transactions. CLS operates the world’s largest multicurrency cash settlement system (the “CLS System”), mitigating settlement risk in respect of FX transactions of CLS’s members and their customers. In 2012, CLS was designated a systemically important financial market utility by the United States Financial Stability Oversight Council, and CLS is regulated and supervised by the Federal Reserve.

The CLS System was declared to be a “designated payment system” for the purposes of the Reserve Bank of New Zealand Act 1989 (the “Act”) pursuant to the Reserve Bank of New Zealand (Designated Payment Systems) Order 2004, and the CLS System has been deemed to be a “pure payment system” for the purposes of the Act pursuant to clause 7(2)(a) of the Reserve Bank of New Zealand Amendment Act 2009.

2. Consultation Questions and Responses

Q2: Is the overseas-equivalence framework appropriate?

CLS welcomes the proposed overseas-equivalence framework and believes that CLS would meet the equivalence requirements as set out below.

Requirement 1: *cooperation arrangements are in place between the New Zealand regulator and the FMI’s home regulator.*

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 CLS¹, a mechanism to carry out the central banks’ individual responsibilities to promote safety, efficiency, and stability in their local markets. The RBNZ has been a long-standing participant of the CLS Oversight Committee.

¹ https://www.federalreserve.gov/paymentsystems/cls_protocol.htm

Requirement 2: *the FMI's home jurisdiction has an FMI regulatory framework that is broadly equivalent to that in New Zealand, and which is part of an independent legal system with a well-founded reputation for integrity.*

The Principles for financial market infrastructures (the "PFMI"), issued by the CPMI and IOSCO in 2012, are the international standards for financial market infrastructures, including payment systems. The Board of Governors of the Federal Reserve System (the "Board") adopted Regulation HH which was enacted to mitigate systemic risk, in part, through enhanced supervision of financial market utilities (FMUs) designated as systemically important by the Financial Stability Oversight Council. Regulation HH enshrines the PFMI principles as well as some additional requirements. CLS, as a designated FMU, is subject to Regulation HH.

CLS notes that in 2018, the CPMI undertook an assessment on whether, and to what degree, the content of the legal, regulatory and oversight frameworks in the United States, including rules and regulations, as well as any relevant policy statements or other forms of implementation, applied to systemically important payment systems are complete and consistent with the PFMI. The resulting report, entitled 'Implementation monitoring of PFMI: Assessment report for the United States,'² found that Regulation HH consistently and completely implements the PFMI principles applicable to systemically important payment systems, with minor gaps, and that the Federal Reserve Policy on Payment System Risk, as implemented by the Board, completely and consistently implements all relevant PFMI principles.

In addition to the PFMI and Regulation HH, as an Edge Act Corporation under section 25A of the United States Federal Reserve Act, CLS is also subject to additional regulation and is supervised by the Federal Reserve.

Requirement 3: *the operator is compliant with the broadly equivalent regulatory framework in the FMI's home jurisdiction.*

At CLS, risk, including compliance risk, is managed under a comprehensive framework that provides processes and tools for adequate controls, transparency, and accountability. As mentioned above, CLS is subject to the supervision and regulatory oversight by the Board and the Federal Reserve Bank of New York, as well as the CLS Oversight Committee.

Separately, in compliance with the requirements of the PFMI and Regulation HH, CLS publishes a disclosure that describes its operations and its approach to observing the applicable PFMI Principles. CLS Bank consults with the CLS Oversight Committee in the drafting of the disclosure.

Q6: Do you have any other comments or feedback on the documents?

CLS supports the application of **Standard 23B** to domestic and overseas FMIs; however, the proposed language will bring into scope incidents that would have little to no impact to New Zealand, and there may be an opportunity to amend the language to focus on incidents relevant to New Zealand.

With respect to **Standard 17A**, CLS recognizes that the Act's contingency requirements are applicable to overseas FMIs and that this standard provides guidance and benchmarking in respect of the expectations under the Act.

CLS understands that its overseas equivalence assessment will be informed by the extent to which it meets the requirements in **Standard 17A**. CLS is comfortable that these requirements are broadly satisfied by CLS's systems, policies, procedures, and controls addressing crisis management, business continuity management, disaster recovery, and recovery and orderly wind-down ("ROWD").

While CLS believes that it would be designated an overseas-equivalent FMI and thereby be exempt from **Standard 17A**, CLS offers the following comments concerning the application of Standard 17A to other

² <https://www.bis.org/cpmi/publ/d184.htm>

FMI's.

First, it may be helpful to clarify that the requirements of **Standard 17A** apply to an FMI's contingency plans considered collectively rather than individually, recognizing that certain requirements may be more applicable to some types of contingency plans than others (for example, in promulgating Regulation HH in the United States, the U.S. Federal Reserve determined that a two-year review cycle is more appropriate for ROWD plans "because an annual review cycle may not allow sufficient time to analyze, discuss with stakeholders and supervisors, and implement any required changes"³).

Second, it may be helpful to clarify the scope of scenarios that must be addressed in certain standards. Paragraph 17A.6 in the Guidance for Standard 17A states that "contingency plans should consider [the scenarios listed in ¶17A.5] and any other *reasonably foreseeable* scenarios or events". However, ¶17A.9 requires contingency plans to "document . . . that [the FMI's] business continuity objectives will be met in *all* scenarios." It is not clear whether "*all*" refers to the scenarios in ¶17A.6 or is intended to broaden the scope to include scenarios that are not reasonably foreseeable.⁴

CLS would be happy to further discuss these submissions with the RBNZ.

Yours faithfully,



Gaynor Wood
General Counsel

cc: Andrew Rodgers, Adviser, Financial Market Infrastructures, Reserve Bank of New Zealand
Michelle Curtin, Head of UK and Corporate Compliance

³ Final Rule implementing Reg. HH, 79 Fed. Reg. 65543 at 65547 (November 5, 2014). Under Regulation HH § 234.3(a)(3)(iii)(G), a designated financial market utility must review its ROWD plan "the earlier of every two years or following changes to the system or the environment in which [it] operates that would significantly affect the viability or execution of the plan[]."

⁴ By comparison, Regulation HH § 234.3(a)(17)(i) requires designated financial market utilities to "[i]dentify] the *plausible* sources of operational risk . . . and mitigate[] their impact through the use of appropriate systems, policies, procedures, and controls that are reviewed, audited, and tested periodically and after major changes." (Emphasis added.) Proposed amendments to this provision that were recently issued for notice and comment would not change the "plausible" standard.