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Via email

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Re: **Payments System Modernisation (Licensing: Defining Payment Functions) Consultation Paper**

CLS Bank International (“CLS”) welcomes the opportunity to respond to the Treasury’s consultation paper, Payments System Modernisation (Licensing: Defining Payment Functions), issued in June 2023 (the “Consultation Paper”).

**Background**

CLS Bank was established by the private sector, in cooperation with a number of central banks, as a payment vs. payment (“PvP”) system, to reduce the principal risk arising from settling FX transactions. The settlement service operated by CLS Bank provides a mechanism for payments relating to underlying FX transactions to be made on a simultaneous basis. This ensures that the final settlement of a payment instruction in one currency occurs if, and only if, settlement of the payment instruction for the currency being exchanged is also final. In this way, the settlement service mitigates the risk that one side of an FX transaction is settled with finality without the corresponding counter-currency payment also being settled with finality: i.e., “settlement risk.” By settling payment instructions on a PvP basis, CLS Bank ensures that the principal amounts involved are protected.

CLS Bank operates the world’s largest multicurrency cash settlement system, mitigating settlement risk in respect of FX transactions of CLS Bank’s Members and their customers. In the twelve months ending December 31, 2021, CLS Bank settled an average daily volume of 986,339 payment instructions with an average daily value of US\$6.183 trillion. CLS Bank began settling FX payment instructions in 2002 in seven currencies and currently settles payment instructions in eighteen currencies (“Eligible Currencies”).<sup>1</sup> The Australian dollar was one of the original seven currencies.

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<sup>1</sup> The eligible currencies are: AUD, CAD, EUR, JPY, CHF, GBP, USD, DKK, NOK, SGD, SEK, HKD, HUF, KRW, NZD, ZAR, ILS, and MXN.

### Exemption from Licensing Requirements

The Consultation indicates that, under the new regulatory framework, certain of the existing exemptions from licensing requirements will remain for institutions while others will no longer apply. Question 20 of the Consultation specifically asks whether payment functions that are not customer facing should be required to hold a payments license or whether providers of these non-customer facing payment functions should have different regulatory obligations, such as only having to comply with relevant industry standards?

By virtue of Regulation 9.12.02 of the Corporations Regulations, CLS has had a longstanding exemption from the requirement to hold an Australian CS facility license. To benefit from this exemption, CLS must operate under section 25A of the Federal Reserve Act of the United States and be regulated as a bank by the Board of Governors of the Federal Reserve System. This remains the case today.

As an Edge Act corporation, CLS Bank is regulated and supervised by the Federal Reserve. Additionally, the central banks whose currencies are settled in CLS Bank, including the Reserve Bank of Australia, have established the CLS Oversight Committee as a mechanism to carry out their individual responsibilities for the safety and efficiency of payment and settlement systems, and the stability of the financial system. In addition to Australia, some of these central banks and other regulatory bodies have granted CLS Bank certain exemptions from their local regulatory requirements, based on their exercise of oversight through participation in the CLS Oversight Committee.

CLS believes that there is a good reason for its exemption to continue to apply given the extensive regulatory oversight of CLS, including the CLS Oversight Committee, and the fact that CLS does not provide services to retail consumers. In response to Question 20 of the Consultation, CLS believes that in its case compliance with relevant industry standards is the right approach.

CLS is subject to the Principles for financial market infrastructures (the "PFMI"), which were 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 financial market infrastructures, including payment systems, and CLS has published a disclosure against the PFMI five times since 2014. Rather than be required to hold an Australian payments license, CLS should continue to be held to the standards of the PFMI.

CLS would be happy to discuss, or further develop, these comments with the Treasury.

Yours truly,



Gaynor Wood

cc: Michelle Curtin, Head of UK and Corporate Compliance  
Craig Rubin, Senior Counsel