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Ladies and Gentlemen:

CLS Bank International ("CLS") welcomes the opportunity to share its views on the consultative report on *Principles for Financial Market Infrastructures* (the "Proposed Principles") prepared by the Committee on Payment and Settlement Systems ("CPSS") and the Technical Committee of the International Organization of Securities Commissions ("IOSCO"). The Proposed Principles are intended, once finalized, to replace the existing CPSS and CPSS-IOSCO standards (the "Existing Principles") for systemically important payment systems ("Payment Systems"), central securities depositories ("CSDs"), securities settlement systems ("SSSs"), central counterparties ("CCPs") and trade repositories ("TRs", and, together with Payment Systems, CSDs, SSSs and CCPs, "FMIs").

CLS was established by the private sector as a payment versus payment ("PvP") system to mitigate settlement risk—loss of principal—associated with the settlement of payments relating to foreign exchange ("FX") transactions.[1] CLS is now the predominant settlement system for FX and provides a PvP settlement service for 17 currencies. These currencies represent an estimated 94 percent of the total daily value of FX swaps and FX forwards traded globally.[2] Over the years, CLS has grown consistently with the FX market to mitigate what is generally considered to be the primary risk in FX transactions, namely settlement risk. Today, CLS serves over 60 Settlement Members, all of which are banks subject to prudential regulation and supervision, and over 12,000 third-party users. While CLS is owned by many of the largest participants in the FX market, it continues to acknowledge and further the dual public-private purpose that gave rise to its creation. CLS extended its service to single currency payment

[1] See "Settlement Risk in Foreign Exchange Transactions", CPSS (March 1996) (the "Allsopp Report").

[2] CLS provides other services to over-the-counter FX market participants, such as the Aggregation Service through CLS Aggregation Services LLC and the In/Out Swap Program through CLS Services Ltd.

instructions relating to non-deliverable forward ("NDF") FX transactions and over-the-counter ("OTC") credit derivative transactions in 2007.[3]

The settlement service operated by CLS is viewed as a systemically important system for settling payment instructions relating to certain types of underlying financial transactions (i.e., FX contracts, NDF contracts and OTC credit derivative contracts) in specifically authorized currencies. As such, CLS is subject to the Existing Principles through the Federal Reserve and under cooperative oversight by a number of central banks. Specifically, as an Edge corporation, CLS Bank is regulated and supervised by the Federal Reserve as a bank under a program of ongoing supervision, combining full-scope and targeted on-site examinations with a variety of off-site monitoring activities.[4] In addition, the central banks whose currencies are settled in CLS have established a cooperative oversight arrangement for CLS as a mechanism for these central banks to fulfill their responsibilities to promote safety, efficiency, and stability in the local markets and payment systems in which CLS participates. The Protocol for Cooperative Oversight of CLS is designed to facilitate comprehensive oversight of CLS, enhance oversight efficiency by minimizing potential burden on CLS and duplication of effort by the participating central banks, foster consistent and transparent central bank communications with CLS, enhance transparency among the participating central banks regarding the development and implication of international and domestic policies applicable to CLS, and support fully informed judgments when participating central banks make their oversight assessments and decisions regarding CLS.[5] The Federal Reserve organizes and administers the CLS Oversight Committee, which is the primary forum for the participating central banks to carry out their cooperative oversight of CLS.

I. General Comments on the Proposed Principles

As a preliminary matter, CLS would like to express its broad, general support for the Proposed Principles and recognize the significant efforts of the regulatory community in their promulgation. As a result, CLS's comments below are limited to those instances where CLS believes the Principle or a related Key Consideration ("KC") or Explanatory Note ("EN") is either unclear, inappropriate or would impose on FMIs, including Payment Systems or their users, costs that are disproportionate with the benefits sought to be obtained by the Principle itself. As a general matter, we note that the Proposed Principles are at such a level of generality that they must necessarily be read together with the related KCs and ENs. Where there could be questions about the meaning of the Proposed Principle without the benefit of the additional interpretation of the relevant KCs and ENs, we have read the Principle together with its related KCs and ENs together as one and commented accordingly. We believe it is particularly important for the final Principles to make clear that the KCs and ENs are authoritative guidance, as the regulatory authorities will be using these to regulate, supervise and oversee the FMIs.

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[3] The extension of the CLS's settlement service to any new type of payment instruction, including those relating to a new type of transaction or new currency is, in each case, subject to regulatory review and approval. For more information regarding the operation of the CLS settlement service, see Sections 0 through 0.5 of CLS's most recent assessment of compliance with the Existing Principles available at http://www.cls-group.com/About/Documents/CLS%20Bank%20-%20Core%20Principles%20Assessment.pdf.

[4] CLS Bank operates pursuant to a charter issued by the Federal Reserve in accordance with Section 25A of the Federal Reserve Act in November 1999.

[5] http://www.federalreserve.gov/paymentsystems/cls_protocol.htm.

As a Payment System, CLS has, in the main, focused its comments on the application of the Proposed Principles to Payment Systems. We do not believe that as a Payment System we necessarily are well positioned to comment on how the Proposed Principles would apply to CCPs and other FMIs. However, given the level of actual or potential interconnectedness and interdependencies that may exist among FMIs, minimum standards set forth in the Proposed Principles should broadly apply to all types of FMIs to mitigate against the risk in one FMI (should it materialize) being transferred to another FMI; any exception to the application of the same minimum standard must be thoroughly considered. We recognize that the Proposed Principles have already acknowledged that certain distinctions should be drawn and CLS supports such existing distinctions. However, we believe that the Proposed Principles, KCs and ENs could benefit from additional distinctions among the various types of FMIs. Further, we strongly believe that it is critical that the standards be applied equally to all FMIs, whether publicly or privately owned. If these Principles are intended to "provide greater consistency in the oversight and regulation of FMIs worldwide"[6] they must be applied consistently with the concomitant benefits to be enjoyed (and the burdens to be borne) by the financial system as a whole.

As a general matter, it appears as though the principles of efficiency and cost-effectiveness have been given secondary consideration. While CLS fully endorses the overarching goal of enhancing the stability of the financial system, regulators must not lose sight of these other principles of efficiency and cost effectiveness as well. An FMI whose structure results in fees or other costs that are uncompetitive will lose users who are free to decide to use a competing system or method that, while less robust, may be less expensive for the users. The Proposed Principles should be more explicit in addressing this concern.

A number of the Proposed Principles are expressed as minimum standards, which would allow for more immediate initial compliance. Others, however, will be aspirational. Many FMIs will require a period of time to achieve compliance with these enhanced standards. It is not realistic to expect all FMIs to be compliant with all Proposed Principles at the outset; an adequate transition period will be required in many instances. We encourage the drafters to acknowledge this need and accommodate the FMIs by including such a transition period in the final Principles.

As a final general note, CLS would like to stress that there is a need for consistency and coordination among the various regulators who will be enforcing compliance with the final Principles. We believe it is important that the relevant supervisors give careful consideration to how they will implement the Proposed Principles across all jurisdictions and how they will monitor and ensure consistent application of the Proposed Principles and compliance with them. One manner in which this might be accomplished and maintained could be through compliance reviews or referrals to the primary regulator or supervisor under a cooperative oversight mechanism which could then consult and coordinate with the other regulators and authorities.

In the context of a global, cross-border payment system such as CLS (or any other similarly situated FMI), it is important that national standards be adopted in the context of international norms. In short, CLS views the Proposed Principles as the opportunity for the international regulatory community to come to a consensus that the international standards

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[6] See Cover Note to the Consultative Report, page 1.

being proposed are appropriate. It should not, and in fact cannot, be the case that the international community comes to such a consensus only to find that an individual jurisdiction decides to break with that consensus and impose additional standards on FMIs outside the Proposed Principles. This is not to suggest any restriction on an individual country or its authorities to policies that such jurisdiction may wish to apply to an FMI for domestic policy reasons (e.g., those regarding the location of FMIs). We believe that the regulatory community understands this as exemplified by Responsibilities D and E. These Responsibilities support our assertion that the Proposed Principles should seek to prevent the regulatory community from unnecessarily overburdening FMIs though duplicative efforts. In CLS's experience, the protocol under which CLS is supervised and regulated has proven to be an effective mechanism to ensure a streamlined and efficient system for enabling central banks to discharge their domestic responsibilities with respect to their currencies. These efficiencies lessen the burden on CLS, while providing the regulatory community with access to the information it seeks.

Further, although we appreciate that the relevant constituencies (i.e., the regulators and regulated entities) may not have the ability to legislate on their own, we do believe that these constituencies should consider whether legislative or other changes outside the areas of their responsibility or jurisdiction could be helpful in achieving the international consistency that is necessary for the Proposed Principles to be fully effective. If so, the regulators should advise legislators and/or national governments of this, in particular by alerting the relevant oversight authorities and government officials. It should be unacceptable for a Principle or Responsibility to be only partially applied in a particular jurisdiction because the FMI or regulator does not have sufficient powers or because there is insufficient legal clarity or protection.

II. Specific Comments on Proposed Principles

A. Principle 1: Legal Basis

An FMI should have a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.

As a general matter, CLS believes that it is important for an FMI to have a well-founded legal basis for all activities that are critical to the FMI's core functions in the relevant jurisdictions. This legal basis should be supported by regularly updated opinions of counsel in each of these relevant jurisdictions. These legal opinions should address matters including, but not limited to settlement finality and the enforceability of the FMI's rules such that the FMI may be confident that its rules and the finality of the transactions processed through the FMI are enforceable.

Proposed Principle 1 goes much further than that, and indeed, much further than Existing Principle 1. That Principle states: "the system should have a well founded legal basis under all relevant jurisdictions". If Paragraph 3.1.4 is not modified to limit its impact to these "core" functions, and an FMI were required to have such a legal basis for "each aspect" of its activities, one could read the Principle to mean that FMIs would be required to adhere to a higher degree of certainty for every aspect of their operations and the recommended approach is to obtain legal opinions or analyses. We doubt that the Committees intend this reading. Setting aside the question of whether one could adhere to this standard and procure useful opinions on activities as wide-ranging as the provision of employee benefits, the leasing of real and personal

property and the procurement of routine services, the cost of procuring the requisite "high degree of certainty" could vastly outweigh the utility thereof. At a minimum, we suggest that the final version of this Principle allow the FMI to take into account considerations such as the importance of the relationship to the systemically important activities of the FMI and the availability of substitutes. CLS believes that a more appropriate standard would be to require a well-founded legal basis, supported by legal opinions, for functions critical to the core activities of the FMI and the provision of systemically important services. Other, less critical activities/relationships/contracts would then be managed as general business risks. As to these matters, specific measures such as the receipt of legal opinions might be appropriate in some cases but would not be generally required.

In addition, the Principle itself calls for a "clear…legal basis". Clarification in the final report of what attributes are covered by the designation of "clear" that are not encompassed within "well-founded", "transparent" and "enforceable" would be very helpful. It is not evident to us that "clear" adds meaningfully to the content of the Principle. In this case, in particular, it is important to read the Principle in light of the KCs and the ENs. Even these additional paragraphs, however, do not illuminate the meaning of the term as used in the Principle.

KC 4 under the Principle states in part that the FMI's "rules, procedures and contracts [should be] enforceable in all relevant jurisdictions, even when a participant defaults or becomes insolvent." We are concerned that this KC could be read to suggest that an FMI's rules apply with the same force and effect to insolvent participants as they do to solvent participants. This is, of course, almost never the case. The "enforceable legal basis" on which FMIs should operate must, at least in the case of a payment system, "address when settlement finality occurs", as EN 3.1.6 states. The rules or procedures of an FMI should state clearly what steps will be taken in the event of an insolvency of a participant and whether and how the insolvency will affect transactions that have *already been settled*. Accordingly, we believe that KC 4 should be revised to delete the first sentence and to amend the second sentence to read as follows: "There should be a high degree of certainty that actions taken under the rules and procedures of an FMI prior to an insolvency of a participant will not be stayed, voided or reserved upon the insolvency of that participant". This revised language is more consistent with EN 3.1.6 which, we submit, more accurately reflects the actual structure and operation of Payment Systems which regulators have supported.

Finally, CLS agrees with the first sentence of paragraph 3.1.8 ("Novation, open offer, and other similar legal devices that enable an FMI to act as a CCP should be founded on a sound legal basis"). At the same time, this paragraph could be read to suggest that CCPs, or even other FMIs, may only effect net settlement. We request that the final text clarify that this is not necessarily the case, and that nothing in the Principles is intended to bar gross settlement.

B. Principle 2: Governance

An FMI should have governance arrangements that are clear and transparent, promote the safety and efficiency of the FMI, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.

CLS very much supports this broad Principle and the related KCs and ENs. However, while we agree that an "FMI should have objectives that place a high priority on the

safety and efficiency of the FMI and explicitly support financial stability and other relevant public interests", we strongly believe that "other relevant public interest considerations" need to be defined with some reasonable specificity. This is particularly important for the directors of private sector organizations, who may under the relevant governing law of the FMI's jurisdiction of formation, owe a duty of care to the corporation and its shareholders, yet will be asked to take account of these considerations even if they are in conflict with shareholders' interests. Such considerations need to be made explicit lest there be a conflict between those considerations and the local law. Further, there is some danger that without more definition, this category could become something of a "catch all" article which could lead to inconsistent implementation and interpretation across jurisdictions.

In addition, the term "independent board" is used; however, no definition of "independence" is provided. In the owner-user model, for example, where the FMI is owned and operated by its members, the term "independence" may mean not only "non-executive directors" but also directors that are not employed by a shareholder. We note that some FMIs operating on this model already have such definitions incorporated in their governance documents. Appropriate definitions may vary across FMIs, however, so it is also important that the Principle not be overly prescriptive. The value that independent members can bring to a board of directors may lie in a different perspective that results from the independent director's other professional experiences or specialized expertise. These qualities can help to round out the collective skill of the board of directors as a whole. The value contributed by independent directors may also flow from the simple absence of a possible conflict of interest between the interests of a particular shareholder or group of shareholders on the one hand and those of the FMI on the other.

Finally, while we support the notion that it is beneficial to have an FMI's chief risk officer ("CRO") report to an independent director of the board, we similarly think that the intended purpose of the proposed reporting arrangement can be achieved either by providing the CRO direct access to an independent director or the risk management committee of the board. These alternative mechanisms may allow the CRO to more effectively influence change within the organization while preserving an appropriate level of independence.

C. Principle 4: Credit risk

An FMI should effectively measure, monitor, and manage its credit risk from participants and from its payment, clearing, and settlement processes. An FMI should maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. A CCP should also maintain additional financial resources to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the [one/two] participant[s] and [its/their] affiliates that would potentially cause the largest aggregate credit exposure[s] in extreme but plausible market conditions.

We believe that final sentence of KC 7, recommending that a FMI's rules and procedures should indicate its process to cover the potential default of its two largest participants should instead be its " [[two] [three]]" participants and their affiliates that would cause the largest aggregate credit exposure. This would be more consistent with the direction of Principle 7. The inconsistency suggests that this may have been a drafting error or oversight as the reference to

"two" seems inconsistent with Principle 7 (Liquidity Risk)—a "cover one" standard would imply that the reference to "two" in this Principle seems correct; a "cover two" standard would imply that "three" would be correct here.

D. Principle 5: Collateral

An FMI that requires collateral to manage its or its participants' credit risk should accept collateral with low credit, liquidity, and market risk. An FMI should also set and enforce appropriately conservative haircuts and concentration limits.

We believe that the Explanatory Notes should specifically acknowledge that some FMIs may have risk designs that mitigate credit risk through means that function like collateral, but are not within the generally understood definition of the term.

Although CLS generally does not require that its participants post collateral in the conventional or technical sense of the term, CLS will not settle a given payment instruction from a Settlement Member if settlement of the instruction would result in its account with CLS not having an overall positive balance. CLS extends the benefit of intraday short positions in one or more currencies to a Settlement Member, but mitigates against the credit risk of the Settlement Member by ensuring there are at all times sufficient offsetting long balances in other currencies in the Settlement Member's account as a result of settled instructions, after adjustments for significant currency volatility haircuts. While these offsetting long balances may not technically be considered "collateral", they have the effect of mitigating the credit risk that an FMI may face from its participants. In an economic or practical sense, such offsetting balances could be considered as serving the same function as collateral.

E. Principle 7: Liquidity risk

An FMI should effectively measure, monitor, and manage its liquidity risk. An FMI should maintain sufficient liquid resources to effect same-day and, where appropriate, intraday settlement of payment obligations with a high degree of confidence under a wide range of potential stress scenarios that should include, but not limited to, the default of [one/two] participant[s] and [its/their] affiliates that would generate the largest aggregate liquidity need in extreme but plausible market conditions.

CLS can appreciate the desire of the regulatory community to be more conservative in its policing of FMIs' liquidity risk. This can be done in a number of ways; however the arbitrary imposition of a "cover two" minimum for all FMIs is overly broad. While in some cases, an FMI (and the system in general) may be best served by a "cover two" standard, in other cases, this solution may impose costs (to be borne by the participants) that may not be justified by the risk to be managed. We strongly believe that the imposition of a "cover two" standard across all FMIs is the wrong standard for these principles and may be overly conservative and therefore inefficient for the system and its users. Rather, we encourage the regulatory community to instead work with each FMI to come to a thoughtful solution that works for the FMI, its participant and the overall system. We believe that such a solution can be reached for each FMI, and that each solution may be different.

KC 4 suggests that "an FMI should obtain a *high degree of confidence*… that each liquidity provider…would have sufficient information to understand and to manage it associated liquidity risk." In addition, KC 7 refers to "*extreme but plausible* market conditions". However, neither of the terms italicized above is defined. CLS believes there is a need for further definition as an aid to effective governance as well as for competitive equity across (payment system) FMIs internationally.

Finally, CLS requests that the final Principles state explicitly that an FMI that does not currently guarantee settlement (like a Payment System such as CLS) will not be required to move to a guaranteed settlement model. While we believe that this is the intention, we request this confirmation for the sake of clarity.

F. Principle 8: Settlement Finality

An FMI should provide clear and certain final settlement, at a minimum, by the end of the value date. Where necessary or preferable, an FMI should provide final settlement intraday or in real time.

CLS believes that the final Principle should clarify that Principle 8 is not intended to suggest that an FMI must guarantee settlement, but rather that all settlements performed by the FMI must be final. As stated in our comments to Principle 7 above, while we believe that this is the intention, we request this confirmation for the sake of clarity.

G. Principle 15: General Business Risk

An FMI should identify, monitor, and manage its general business risk and hold sufficiently liquid net assets funded by equity to cover potential general business losses so that it can continue providing services as a going concern. This amount should at all times be sufficient to ensure an orderly wind-down or reorganization of the FMI's critical operations and services over an appropriate time period.

International capital standards that are designed to apply to traditional banks are not particularly relevant for certain FMIs. In the case of CLS, for example, we do not engage in traditional banking functions (making loans, taking deposits) or assume the credit risk that is a key function of banks. Notwithstanding the need for an FMI to do the necessary analysis to determine what is the appropriate level of capital to hold, imposition of international capital standards on an FMI like CLS would be challenging because the asset and liability mix of such an FMI are fundamentally different from those of a traditional bank—these capital standards are simply not designed for FMIs.

Irrespective of whether there is a quantitative standard imposed, each FMI will be required to adopt a robust general business risk management process to assess what level of capital would be necessary to minimize the market disruption that would flow from a need to either cover general business losses or provide enough capital to allow the FMI time to decide how to manage that risk, be it a recapitalization, wind-down or some other mechanism. With that in mind, CLS believes that it is important to assess what the value and effect of a quantitative standard would be. If the intention of the CPSS and IOSCO is to impose a "level playing field" through the application of a quantitative standard applied consistently across all FMIs,

irrespective of type, the new Principle may have the unintended consequence of putting an FMI with a lower general business risk profile at a competitive disadvantage by requiring it to hold excess capital. CLS believes that the Proposed Principles intend to give FMIs broad flexibility to craft measures to manage general business risk that are tailored to the characteristics of their businesses. To that end, CLS requests that the final Principle reinforce this point.

H. Principle 17: Operational Risk

An FMI should identify all plausible sources of operational risk, both internal and external, and minimize their impact through the deployment of appropriate systems, controls, and procedures. Systems should ensure a high degree of security and operational reliability, and have adequate, scalable capacity. Business continuity plans should aim for timely recovery of operations and fulfillment of the FMI's obligations, including in the event of a wide-scale disruption.

We note that the Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System[7] set out a thoughtful framework for the recovery of critical market functions in the event of a market disruption. These practices acknowledge the difficulties that may be imposed by telecommunications problems, timing of the disruption and other matters. They encourage subject entities to recover their functionality as quickly as possible without putting a hard and fast deadline on doing so. Proposed Principle 17 seems to impose a higher standard on FMIs. While this is not necessarily inappropriate, Principle 17 does not acknowledge the difficulties that could be posed by a late day disruption and rather, puts a firm "end of day" deadline on all FMIs. We believe this Proposed Principle could benefit from a more nuanced standard.

I. Principle 18: Access and participation requirements

An FMI should have objective, risk-based and publicly disclosed criteria for participation, which permit fair and open access.

While CLS supports open access, an FMI must, as explicitly suggested by the Proposed Principle, put safety first. Allowing less restrictive participation requirements to be imposed by an FMI could compromise the safety of such an FMI. To that end, we suggest that 3.18.7 be amended to remove the reference to "least-restrictive impact" with a focus on arrangements that "do not unduly restrict access and competition." The current drafting may create a standard that could limit the ability of FMIs to set access requirements based on risk and is inconsistent with the tone in the rest of the Proposed Principle.

[7] 68 F.R. 17809, April 11, 2003.

J. Principle 19: Tiered participation requirements

An FMI should, to the extent practicable, identify, understand and manage the risks to it arising from tiered participation requirements.

CLS supports the view that an FMI needs to understand the risks associated in the relationships between direct participants and their customers (indirect participants) in order to be able to understand and assess what risks, if any, the tired arrangements may present to the FMI, its system/service and other participants. CLS believes that the final Principle should make clear that an FMI should raise awareness of these risks, from the perspective of the FMI, not only to its Board of Directors or similar governing body, but also through proactive outreach efforts to its direct participants. An FMI can familiarize its regulators, supervisors and overseers about its understanding of how these relationships operate generally (i.e., not specific to individual participants or their respective customers) and the potential impact of those relationships on the FMI's service. The FMI's responsibility should be to ensure that its direct participants have sufficient information from the FMI to assess its relationship with its customers so that it can evaluate the risks presented by the customer relationship in the context of the participants' overall risk management policies and procedures. We do not believe, however, that FMIs should be required to prescribe and apply (and to assess compliance against) requirements about how a direct participant manages its relationship with its customers. The payment activity relating to FX is likely to be only one aspect of a broader relationship/set of services provided by the direct participant to its customer. In such a case, the FMI may not have sufficient information to make an appropriate assessment or judgment about that relationship. As acknowledged in portions of the Explanatory Note, the direct participant's regulator or supervisor is better situated to do this.

CLS believes that it is incumbent on the relevant supervisors to have more detailed and focused discussions with participants (both direct and indirect) regarding their participation in an FMI. This discourse should be a part of such supervisors' regular supervision of such participants in their jurisdictions. Such an effort would complement the efforts of the FMI suggested above—leading to a more effective way of achieving the same objective: the FMI participants (members, nostros, liquidity providers, etc.) having sufficient information to understand and therefore manage their risks of participation in the FMI and thereby manage their particular risks appropriately. We suggest that the Proposed Principle be clarified to make this point. The final Principle should not require that FMIs establish criteria relating to how direct participants manage relationships with their customers, but rather should be supportive of an FMI's efforts to do so if the FMI concludes this is the appropriate risk mitigant for its service.

Finally, paragraph 3.19.7 on its face applies to all FMIs, but for practical purposes CLS questions whether it is more properly aimed at CCPs than at a Payment System whose services or rules may or may not speak to the underlying transactions to which payments relate. This paragraph seems to cover relationships where at some point in the transaction there is a novation and consequential privity of contract between the FMI and the indirect participant. This text should be clarified in the final Principle to take this into account.

K. Principle 21: Efficiency and effectiveness

An FMI should be efficient and effective in meeting the requirements of its participants and the markets it serves.

Existing Principle 8 (to which this Proposed Principle 21 maps) provides much more detail and guidance as to how an FMI should go about looking at efficiency. It is unclear to CLS why this detail has been excluded from the Proposed Principle. To the extent that the reason for such exclusion is a perception that the Payment System Principle on efficiency might be viewed as too specific to Payment Systems, we suggest that the regulators strive to find the parts of the guidance that are relevant / generic to all FMIs, or parts that could be appropriately modified so as to apply more generally, and incorporate them into the final Principle. As noted in our general comments above, it appears as though the principles of efficiency and cost-effectiveness have been given secondary consideration.

L. Principle 23: Disclosure of rules and key procedures

An FMI should have clear and comprehensive rules and procedures and should provide sufficient information to enable participants to have an accurate understanding of the risks they incur by participating in the FMI. All relevant rules and key procedures should be publicly disclosed.

As a general matter, CLS supports this Principle. However, we believe there is a need to clarify the objectives the regulators are hoping to achieve through more disclosure to the "public" – that is, to parties other than participants, potential participants and regulators. This clarification would provide the FMIs with a better framework within which to examine their documents to determine what disclosure should take place in order to make the information meaningful/effective in furtherance of those objectives. We agree that any required public disclosure should be limited to information that permits "market participants and relevant authorities [to] quickly assess potential risks in periods of market stress,", as stated in EN 3.23.2. What is less clear to us is how public disclosure of fee schedules "at the level of individual services" (see KC 4 and EN 3.23.6) and an apparent imposition of a particular type of pricing model (see id.) is related to this objective. FMIs should retain the flexibility to adopt fee structures that are appropriate to their particular circumstances, so long as the fee structure itself does not contribute to systemic risk.

III. Comments on Section 4 of Consultative Report

Section 4 of the Consultative Report sets out five "responsibilities of central banks, market regulators, and other relevant authorities for financial market infrastructures".

CLS broadly agrees with these Proposed Principles. In particular, we believe international consistency in the application of the Principles is extremely important. As mentioned in part I of this comment letter under "General Comments on the Proposed Principles," the international consensus reflected in the Proposed Principles should not be undermined by the imposition of conflicting standards in individual countries. Adoption of the Proposed Principles by member countries can also help to avoid the imposition of duplicative or unnecessary regulatory burdens on FMIs, thus promoting efficiency. Although we believe that

these sentiments are implicit in Responsibility D, we would prefer to see them expressed more directly.

Also, we believe that regulators need to have more detailed and focused discussions with FMI participants about their participation in FMIs and the risks that such participation presents. As noted in our comment on Proposed Principle 19, these discussions would complement the efforts of the FMIs to understand the risks posed to the FMI by individual participants. In addition, benefit from participant's regulator can be expected to have a much more comprehensive understanding of the risk profile of the participant institution and therefore appreciate how other aspects of the participant's business may create interdependencies or latent risks that would not be apparent to the FMI.

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Once again, we appreciate this opportunity to comment on the Proposed Principles and remain available to answer any questions that CPSS and IOSCO may have concerning this comment letter.

Sincerely,

Alan G. Bozian