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Japanese Yen Interest Rate Benchmark Reform – Crossroad of the Local Movements in Japan and the Global Movement in the Derivatives Space


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1 Starting Point – Andrew Bailey's Speech in Summer 2017

In July 2017, Andrew Bailey, Chief Executive of the UK Financial Conduct Authority ("**FCA**") at that time, declared that the authority would no longer persuade or compel panel banks to make London Interbank Offered Rate ("**LIBOR**") submissions after 2021.[1] As submissions are necessary for the creation of LIBOR, which is widely referenced to determine applicable interest rates in financial transactions, concern has increased among market participants that LIBOR itself would not exist after end-2021. This concern has been addressed globally through various means.

2 Japan's Movements by the Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks

1 Summary of the Consultation Paper

The response in Japan to potential LIBOR discontinuation involved the establishment of the Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks (the "**Committee**") in August 2018. The secretariat of the Committee is the Bank of Japan, the central bank of Japan. Through practical and robust discussions in and among its three sub groups (based on Loans, Bonds, and Development of Term Reference Rates), relative proposals were put forth and the *Public Consultation on the Appropriate Choice and Usage of Japanese Yen Interest Rate Benchmarks* (the "**Consultation Paper**")[2] was published on July 2, 2019. The Consultation Paper is lengthy (with the main body alone approaching 50 pages). Below, we will introduce its major points organised by keywords.

According to Appendix 1-a of the Consultation Paper, the outstanding volume of the relevant LIBOR transactions is as follows: USD 30 trillion for JPY LIBOR; USD 150 trillion for USD LIBOR; and USD 30 trillion for GBP LIBOR. For reference, the amounts are USD 150 trillion for EURIBOR and USD 5 trillion for TIBOR (Tokyo Interbank Offered Rate).

(a) Multiple-Rate Approach, IBORs, and RFR (pp. 2–3)

In *Reforming Major Interest Rate Benchmarks*,[3] the Financial Stability Board ("**FSB**") advocated a multiple-rate approach by which different appropriate interest rate benchmarks are used depending on the financial instruments or nature of the transactions. This is to be accomplished by: (i) enhancing the reliability and robustness of existing interbank offered rates ("**IBORs**"), such as LIBOR and TIBOR; and (ii) identifying a nearly risk-free rate ("**RFR**") that should not reflect the credit risks of banks. The assumption is that IBORs would be used for loans, etc., and RFRs would be used in many derivatives transactions.

In Japan, TIBOR reform has been implemented by the JBA TIBOR Administration, and a Tokyo Overnight Average Rate ("**TONA**") was selected to serve as an RFR. On the other hand, in the U.S.A., U.K., and Switzerland, since their existing major interest rate benchmarks are LIBOR-based, transitions to RFRs (U.S.A.: SOFR; U.K.: SONIA; and Switzerland: SARON) are progressing.[4]

(b) "Transition" and "Fallback" (pp. 5–6)

The Consultation Paper proposes "Transition" and "Fallback" as two approaches to prepare for the discontinuation of LIBOR (**Table 1**).

Table 1: LIBOR Replacement Transition and Fallback Approach Comparison

Transition	Fallback
Newly executed financial instruments and transactions use alternative benchmarks (such as RFR and TIBOR) as a reference rate, instead of JPY LIBOR.	Parties to existing contracts using the JPY LIBOR as a reference rate and the terms of which continue beyond LIBOR cessation agree on a fallback provision identifying a replacement rate to be referred to *in lieu* of JPY LIBOR after LIBOR is discontinued.

The "Transition" approach suggests the use of alternative benchmarks in new contracts beginning prior to LIBOR cessation. The "Fallback" approach suggests that provisions identifying replacement rates designed to succeed JPY LIBOR be agreed upon prior to, but implemented after, cessation; specifically, for contracts utilising JPY LIBOR, it will continue to apply but will be replaced with a replacement rate under certain triggering conditions, such as cessation of JPY LIBOR.

(c) Term Reference Rates and Options (1) to (5) for Alternative Benchmarks (pp. 7–17)

Regardless of the choice to use the Transition or Fallback approach, an interest rate benchmark is required to succeed JPY LIBOR. On this point, the Consultation Paper notes five options (**Table 2**).[5]

Table 2: Five JPY LIBOR Interest Rate Successors Proposed in the Consultation Paper

	Underlying Rate	Timing of Interest Rates	Reference Period	Reference and Calculation Periods
(1) O/N RFR Compounding (Advance)	TONA	Setting in advance	A certain period prior to the reset date	Inconsistent
(2) O/N RFR Compounding (Arrears)		Setting in arrears	A future certain period commencing from the spot date based on the reset date	Almost consistent (reference period limitations)
(3) Term Reference RFR (Swap)	JPY OIS	Setting in advance		Generally consistent
(4) Term Reference RFR (Futures)	Futures on overnight call rate			
(5) TIBOR	TIBOR			

O/N RFR – Overnight Risk Free Rate; TIBOR – Tokyo Interbank Offered Rate; OIS – Overnight Index Swap

With reference to Table 2, options (1) and (2) develop term reference rates by compounding the actual TONA figures every business day. This is seen as a means of counteracting the potential problems of using an RFR as an alternative benchmark, such as in the case of TONA, where it is merely an overnight rate, and there is no term reference rate with tenors of three months or six months, as with JPY LIBOR or TIBOR. The difference in options (1) and (2) lies in whether the actual figures are compounded from the preceding or following interest rate setting period. The former is referred to as "setting in advance" because the interest rate is already determined at the beginning of the period to which it will be applied, and the latter is referred to as "setting in arrears" because the applicable interest rate is set close to the end day of the interest rate calculation period.

The method for calculating term reference rates in option (3) of Table 2 proposes basing them upon derivatives transactions deemed to indicate the future outlook of TONA, such as JPY Overnight Index Swaps.[6] Option (4) is a method of developing rates based on the prices of futures on unsecured overnight call rates listed on the Tokyo Financial Exchange (for which trading is currently suspended). Both options (3) and (4) are classified as "setting in advance". Furthermore, a method using the existing TIBOR also has been proposed as option (5).

(d) Fallback Provisions and "Value Transfer" (pp. 17–30)

Implementation of the Fallback approach requires provisions in contracts stipulating a replacement rate to be referenced *in lieu* of JPY LIBOR. For such provisions, three issues were acknowledged as being in need of further clarification: (i) provision of "triggers"; (ii) determination of the replacement rate; and (iii) identification of introduction procedures.

For (i), in addition to LIBOR cessation being set as a trigger, certain events prior to cessation could be set as triggers; for example, when the reliability of LIBOR is beginning to falter due to its anticipated demise. Further, mainly in relation to loans, early "opt-in" triggers to activate fallbacks at a stage prior to cessation of LIBOR can also be discussed by the parties. In any case, such efforts have little meaning unless the trigger works, so it is important to identify specific and clear triggers that are likely to be considered acceptable by market participants.

In relation to (ii), if JPY LIBOR is supplanted by a replacement rate, the difference between the two (i.e., the "spread") may result in a "value transfer" in which one party to the transaction receives benefits and the other party incurs losses. This potential leads to concerns that accounting or tax issues or litigation risks will arise; as such, adjustments to minimise such potential are also discussed in the Consultation Paper. Therein, considering that options (1) to (5) will primarily utilise RFR as a fallback rate,[7] three spread adjustment processes are discussed,[8] based on the following formula:

Replacement rate of fallback provisions = Fallback rate + Spread adjustment

In relation to (iii), Japanese legal issues pertaining to loans and bonds must be discussed.[9]

2 Consultation result

On November 29, 2019, the Committee revealed the result of the consultation for items in the Consultation Paper by publishing the *Final Report on the Results of the Public Consultation on the Appropriate Choice and Usage of Japanese Yen Interest Rate Benchmarks*.[10] There are 40 respondents, including banks, securities companies, institutional investors and non-financial corporates.

Among options (1) to (5) for alternative benchmarks for "Transition":

- Approximately 60% of the market participants prefer option (3) or (4) Term Reference RFR for both loans and bonds.
- For loans, the second majority (30%) is option (5) TIBOR. During the tentative period before the development of Term Reference RFR, which is not currently available but is intended to be available in the first half of 2021, market participants prefer option (5) TIBOR and option (2) O/N RFR Compounding (Arrears), where all banks prefer option (5) TIBOR.
- For bonds, the second majority (37%) is option (2) O/N RFR Compounding (Arrears). During the tentative period, market participants prefer option (2) O/N RFR Compounding (Arrears) and option (5) TIBOR, where non-financial corporates and securities companies particularly prefer option (2) O/N RFR Compounding (Arrears) as compared to option (5) TIBOR.

Among options (1) to (5) for alternative benchmarks for "Fallback", option (3) or (4) Term Reference RFR is most preferred for loans. Option (5) TIBOR is the second preferred fallback rate for loans. For bonds, most respondents agree that consistency of fallback rates and trigger events for bonds with those for derivatives is important from the perspective of hedge accounting.

3 Global Movement for Derivatives Fallback Led by ISDA

You may have noticed that the consultation result to the Consultation Paper does cover cash products (i.e., loans and bonds) but does not cover any derivatives matters. So, how can we handle the transition matter and fallback provisions in the derivatives world?

In a letter dated July 2016 from the FSB to International Swaps and Derivatives Association, Inc. ("**ISDA**"), the FSB requested that ISDA coordinate (internationally) to enhance the contractual robustness of derivatives transactions denominated in major currencies (including Japanese yen) in preparation for the cessation of the IBORs; therefore, it was deemed unnecessary to include derivatives transactions within the scope of the Consultation Paper. However, the Consultation Paper reiterates results of the ISDA public consultation at multiple points, especially concerning the relationship between alternative benchmarks and fallback provisions, highlighting the fact that consistency between cash instruments and derivatives transactions was considered.

Below, we will explore the current status of ISDA activities for the derivatives space in light of the cessation of the IBORs.

1 Supplement to the 2006 ISDA Definitions and related protocol to be published in the near future

The 2006 ISDA Definitions are utilised in confirmation of individual derivatives transactions and provide the basic framework for privately negotiated interest rate and currency derivatives transactions. The definitions of IBORs, among many currencies, are set as defined terms (e.g., USD-LIBOR-BBA and JPY-LIBOR-BBA) in the 2006 ISDA Definitions.

ISDA is currently working on drafting (i) the Supplement to the 2006 ISDA Definitions (the "**Supplement**"), and (ii) the ISDA 2020 IBOR Fallbacks Protocol (the "**Protocol**").

- The Supplement is to provide contractual fallback provisions for IBORs so that they are replaced by RFRs, plus spreads. After publication of the Supplement, market participants can implement contractual fallback provisions in newly executed derivatives transactions by incorporating the Supplement into transaction documents. Upon publication of the Supplement, all <u>new</u> derivatives transactions entered into on or after the date of the amendments that incorporate the 2006 ISDA Definitions will include the fallbacks (counterparties will not have to take any additional steps).
- For existing derivatives transactions that refer to the 2006 ISDA Definitions, ISDA will prepare the Protocol so that the Supplement will be incorporated into such <u>existing</u> derivatives transactions by adhering to the Protocol by both transaction parties.

However, since the final versions of the Supplement and the Protocol have not been published at the time of writing this chapter (in March 2020), we will briefly provide readers with the progress and discussion points of the Supplement and the Protocol.[11]

2 Progress and discussion points in the supplement and protocol

(a) Covered Currencies/IBORs/RFRs

The Supplement expects to cover the following currencies/IBORs/RFRs. As you can see, major currencies will be covered, and on the Japanese front, both LIBOR and TIBOR will be captured.

Currency	IBOR	RFR
Australian Dollar	BBSW	RBA Cash Rate
Canadian Dollar	CDOR	CORRA
Swiss Franc	LIBOR	SARON
Euro	EURIBOR	€STR
Euro	LIBOR	€STR
Sterling	LIBOR	SONIA
Hong Kong Dollar	HIBOR	Adjusted HONIA
Japanese Yen	Euroyen TIBOR	TONA
Japanese Yen	LIBOR	TONA
Japanese Yen	TIBOR	TONA
Singapore Dollar	SOR	SORA
US Dollar	LIBOR	SOFR

(b) Trigger Events for Permanent Discontinuation – Index Cessation Event

If a certain trigger event occurs, contractual fallbacks will be enacted. Thus, the definition of trigger events serves a key role. Assuming the "permanent discontinuation" of IBORs, ISDA is currently preparing the following "Index Cessation Event" for the permanent discontinuation trigger:

(i) a public statement or publication of information by or on behalf of the administrator of [the relevant IBOR] announcing that it has ceased or will cease to provide [the relevant IBOR] permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide [the relevant IBOR]; or

(ii) a public statement or publication of information by the regulatory supervisor for the administrator of [the relevant IBOR], the central bank for the currency of [the relevant IBOR], an insolvency official with jurisdiction over the administrator for [the relevant IBOR], a resolution authority with jurisdiction over the administrator for the [the relevant IBOR] or a court or an entity with similar insolvency or resolution authority over the administrator for [the relevant IBOR], which states that the administrator of [the relevant IBOR] has ceased or will cease to provide [the relevant IBOR] permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide [the relevant IBOR].

We can see the wording "permanently" or "indefinitely" to capture the permanent discontinuation status. We can also see that item (i) assumes the trigger events by the relevant IBOR administrator itself and that item (ii) assumes those by official bodies such as the regulatory supervisor and the central bank for the relevant IBOR administrator or the currency of the relevant IBOR.

In conjunction with the cessation event trigger, there have been many discussions about the "pre-cessation" trigger/fallback issue, which we will discuss later.

(c) Adjusted IBOR, Compounding Methods for RFRs and Publication Body

To account for any permanent discontinuation of a relevant IBOR, amendments to the floating rate options in Section 7.1 of the 2006 ISDA Definitions for the relevant IBORs will be added. The form of such amendments is as follows:

- Firstly, a statement identifying the objective triggers that would activate the selected fallbacks as discussed in (b) above.
- Secondly, a description of the fallbacks that would apply upon the occurrence of that trigger, which will be: (i) the

relevant RFR adjusted using methodologies to account for (A) the fact that the RFR is an overnight rate, and (B) the various premia included within the IBOR; and (ii) if the relevant RFR is permanently discontinued, one or more further fallbacks.

The ISDA's material[12] shows a sample permanent cessation fallback clause for USD LIBOR as follows.

> Following the occurrence of an Index Cessation Event and from the Index Cessation Effective Date:
> 1. References to USD LIBOR to be read as references to adjusted SOFR, plus a spread.
> 2. If adjusted SOFR is permanently discontinued:
>   a) Fed Recommended Rate*
>   b) Daily Overnight Bank Funding Rate*
>   c) Short-term interest rate target set by the Federal Open Market Committee*
>
>   * plus a spread (this spread will be the same spread as used for adjusted SOFR after making any necessary adjustments)

To construct a term rate (e.g., three months or six months) from an overnight RFR, compounding methods must be specified. Based on the feedback from market participants,[13] the "compounded setting in arrears rate", which corresponds to (2) O/N RFR Compounding (Arrears) in the Consultation Paper, will be applicable. More technically, a backward shift adjustment will be added for operational and payment purposes so that the rate is to be known prior to the relevant payment date. For spread adjustments, the "historical mean/median approach" will be applicable; more specifically, a historical median approach over a five-year lookback period will be adopted.

For rate calculations, Bloomberg Index Services Limited ("**BISL**") has been selected to calculate and publish adjustments related to fallbacks.[14] BISL expects to publish compounded rates, spreads and the sum of the compounded rates and spreads (i.e., term rates derived from RFRs for fallbacks).

(d) Outstanding Issues – Pre-Cessation Events

In order to capture the situation where LIBOR becomes a "non-representative" interest rate benchmark, whether or not to implement pre-cessation trigger events (e.g., if the UK FCA finds that any LIBOR settings are no longer going to be representative of the underlying market which the rates seek to measure)[15] in the derivatives fallbacks has been discussed among market participants, particularly in the backdrop of pressure from regulators. According to the results of consultation on pre-cessation issues published by ISDA in October 2019, the views of market participants varied and fell into the following four categories; i.e., no clear majority existed.[16]

Views	Percentage
Those who generally supported adding a pre-cessation trigger to the permanent cessation triggers in a "hard wired" amendment to the 2006 ISDA Definitions but did not specifically address a preference regarding optionality or flexibility.	14.6%
Those who supported the inclusion of a pre-cessation trigger in the 2006 ISDA Definitions and opposed the publication of a protocol with optionality or flexibility.	26.97%
Those who supported the inclusion of a pre-cessation trigger in the 2006 ISDA Definitions and supported implementation with optionality and flexibility.	22.5%
Those who opposed the inclusion of a pre-cessation trigger in the 2006 ISDA Definitions.	28.1%
Outside of these categories, 3.4% of the respondents gave non-committal answers and 4.5% of the responses were considered unresponsive to the questions asked.	

With further increasing pressure by the regulators following the split consultation result, in February 2020, ISDA launched a new consultation on how to implement pre-cessation fallbacks for derivatives.[17] ISDA will analyse the responses to this consultation and determine the approach for implementing pre-cessation fallback provisions.

After the consultation, the Supplement and the Protocol will be finalised. Below is the expected timeline disclosed by ISDA.[18]

- Deadline for consultation responses: March 25, 2020 (extended to April 1, 2020 due to COVID-19).
- Publication of consultation results and announcement of next steps for implementing permanent cessation and pre-cessation fallbacks: Late April 2020–early May 2020.
- Publication of Bloomberg indicative fallback rates: First half of 2020.
- Publication of final form of Supplement to the 2006 ISDA Definitions and of ISDA 2020 IBOR Fallbacks Protocol: Targeting Q3 2020.
- Effectiveness of Supplement to the 2006 ISDA Definitions and of ISDA 2020 IBOR Fallbacks Protocol: three to four months after publication.

4 Crossroad of the Local Movements in Japan and the Global Movement in the Derivatives Space

We expect that ISDA's "global" completion of the derivatives fallback mechanism would apparently have an influence on Japan's interest rate benchmark reform. As discussed earlier, the Consultation Paper does not explicitly cover any derivatives matters. However, as derivatives transactions are typically used for hedging purposes of cash products such as loans and bonds, the mechanism determined in the derivatives space such as compounded setting in the arrears rate and the historical median approach over a five-year lookback period for spread calculations could have a reverse effect on the Transition and Fallback mechanisms for loans and bonds in the Japanese market. In this regard, we may argue that the "local" benchmark reform movement in Japan cannot be isolated from the global movement in the derivatives space. In other words, it is important to closely monitor these two movements going forward.

Endnotes

1. "Our intention is that, at the end of this period [2021], it would no longer be necessary for the FCA to persuade, or compel, banks to submit to LIBOR. It would therefore no longer be necessary for us to sustain the benchmark through our influence or legal powers." Available at https://www.fca.org.uk/news/speeches/the-future-of-libor.
2. We refer to the page numbers in the English translation of the Consultation Paper: https://www.boj.or.jp/en/paym/market/jpy_cmte/data/cmt190702b.pdf.
3. https://www.fsb.org/wp-content/uploads/r_140722.pdf (published in July 2014).
4. In relation to the status of other countries, for example, see Appendix A to the *Reforming major interest rate benchmarks: Progress report* dated December 18, 2019, published by the FSB available at https://www.fsb.org/wp-content/uploads/P181219.pdf.
5. For the background information on proposing each option and technical details, see the main body of the Consultation Paper and applicable appendices.
6. *Principles for Financial Benchmarks Final Report* (July 2013) by the International Organization of Securities Commissions (available at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf) was also considered (p. 15 of the Consultation Paper).
7. A waterfall structure which decides the priority of application of options (1) to (5) is also discussed.
8. Forward Approach: based on the spread of each "forward rate" between JPY LIBOR and the fallback rate observed in the market at the time of triggering.
   Historical Mean/Median Approach: based on the mean or median of the spread between the past JPY LIBOR and the fallback rates for a certain period.
   SpotSpread Approach: based on the spread between JPY LIBOR and the fallback rate on the business day immediately before triggering.
9. See part 3 of *Phasing Out LIBOR after 2021: Notes and Legal Considerations Concerning the Cross Industry Committee on Japanese Yen Interest Rate Benchmark's Public Consultation Paper* (Nishimura & Asahi's Finance Law Newsletter, August 2019) available at https://www.jurists.co.jp/sites/default/files/newsletter_pdf/en/en_newsletter_190819_finance.pdf.
10. https://www.boj.or.jp/en/paym/market/jpy_cmte/data/cmt191129b.pdf.
11. ISDA provides market participants with various explanatory documents available at https://www.isda.org/category/legal/benchmarks/, and we referred to such various publicly available documents when writing this chapter.
12. Available at https://www.isda.org/2020/02/24/2020-pre-cessation-fallback-consultation/.
13. https://www.isda.org/2019/11/15/isda-publishes-results-of-consultation-on-final-parameters-for-benchmark-fallback-adjustments/.
    https://www.isda.org/2020/02/24/isda-publishes-results-of-consultation-on-fallbacks-for-derivatives-referencing-euro-libor-and-euribor/ (the additional consultation for Euro LIBOR and EURIBOR).
14. https://www.isda.org/2019/07/31/bloomberg-selected-as-fallback-adjustment-vendor/.
15. https://www.fca.org.uk/markets/transition-libor/libor-contractual-triggers.
16. https://www.isda.org/2019/10/21/isda-publishes-report-summarizing-results-of-benchmark-fallbacks-consultation-on-pre-cessation-issues/.
17. https://www.isda.org/2020/02/25/isda-launches-new-consultation-on-pre-cessation-fallbacks/.
    A summary of the dialogue between ISDA and the regulators is also shown on this link.
18. See endnote 12.

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