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Potential Future Cessation Guidance – 2006 ISDA Definitions and 2021 ISDA Interest Rate Derivatives Definitions

Refinitiv publication of consultation on the future of the Tokyo Swap Rate (for swaps referencing TIBOR®)

The International Swaps and Derivatives Association, Inc. (“**ISDA**”) provides the following guidance for parties to over-the-counter derivative transactions that may be affected by the results of the consultation published on January 19, 2022 by Refinitiv (the “**Refinitiv Consultation**”) relating to the possible cessation of the Tokyo Swap Rate (for swaps referencing TIBOR®) (the “**TIBOR TSR**”). Depending on the responses received from market participants by the cut-off time of 12:00 (UK time) on January 27, 2022, Refinitiv will decide on and implement a specific approach in respect of the future publication of the TIBOR TSR.

ISDA is issuing this guidance in the interest of mitigating market risk and the promotion of orderly and consistent application of triggers and fallbacks by market participants. This guidance is not legal advice and market participants should consult their legal advisors as appropriate. Market participants should not rely on this guidance for any purpose but should review the contractual terms of each affected transaction in order to understand the effects of the events described above. ISDA does not assume any responsibility for this guidance and it is not intended to set a precedent. Parties are not obliged to follow this guidance. For cleared transactions and transactions executed on electronic confirmation platforms, market participants should refer to the contractual terms of the applicable clearing house or confirmation platform, as applicable.

Guidance

The purpose of this Guidance is:

- (1) **2006 ISDA Definitions:** to describe how the terms of the 2006 ISDA Definitions (the “**2006 Definitions**”), for swap transactions and swaptions that incorporate the 2006 Definitions and are entered into (i) before the publication of Supplement 66 on December 14, 2020, (ii) following the publication of Supplement 66 but before the publication of Supplement 82 on August 6, 2021, (iii) following the publication of Supplement 82 but before the publication of Supplement 88 on November 10, 2021 and (iv) following the publication of Supplement 88, will apply to the Refinitiv Consultation; and
- (2) **2021 ISDA Interest Rate Derivatives Definitions:** to describe how the terms of the 2021 ISDA Interest Rate Derivatives Definitions (the “**2021 Definitions**”), for swap transactions and swaptions that incorporate either Versions 1.0 or 2.0, or Versions 3.0 or 4.0 of the 2021 Definitions, will apply to the Refinitiv Consultation,

in each case, **assuming that, following the results of that consultation, Refinitiv will cease publication of the TIBOR TSR following publication on January 31, 2022.**

Terms used but not defined in this Guidance have the meanings given to them in the 2006 Definitions or the 2021 Definitions, as applicable.

The Refinitiv Consultation

On January 19, 2022, Refinitiv issues a consultation in respect of the possible cessation of the TIBOR TSR.

The Refinitiv Consultation provides that:

*“There are currently three banks contributing to Tokyo Swap Rate (for swaps referencing TIBOR®) and one of them intends to withdraw from the panel immediately after 31 January 2022. The publication of Tokyo Swap Rate (for swaps referencing TIBOR®) using the existing methodology is not viable past this date, hence Refinitiv plans to cease publication of Tokyo Swap Rate (for swaps referencing TIBOR®). **Please note this consultation paper is not a cessation notice for Tokyo Swap Rate (for swaps referencing TIBOR®).** If there is extremely limited use of Tokyo Swap Rate (for swaps referencing TIBOR®), Refinitiv proposes to cease the rate immediately after completion of the consultation and following publication on 31 January 2022. If there is material use of Tokyo Swap Rate (for swaps referencing TIBOR®) in financial contracts that don’t have suitable fallback language or other material use cases, Refinitiv proposes to enhance the fallback procedure in the methodology to allow continued publication for more than a few days without bank contributions and issue a cessation notice providing market participants with sufficient time to adopt an alternative benchmark and avoid a disorderly cessation. The purpose of this consultation paper is to collect feedback on the level of use of Tokyo Swap Rate (for swaps referencing TIBOR®) and the approach for an orderly cessation of the rate.”*

Introduction to application to the 2006 Definitions and 2021 Definitions

The TIBOR TSR measures the fixed leg of interest rate swaps where the floating leg references Euroyen TIBOR, commonly known as Z-TIBOR. TIBOR TSR is not directly referenced in either of the 2006 Definitions or the 2021 Definitions (any version of either). However, there are Floating Rate Options (see below) in both the 2006 and 2021 Definitions which reference Z-TIBOR. In addition, there are a number of Floating Rate Options that reference Yen TIBOR (also known as D-TIBOR).

The TIBOR TSR will potentially be relevant as the Settlement Rate for a swaption referencing one of the Z-TIBOR Floating Rate Option, either on Automatic Exercise/Fallback Exercise or on cash settlement (a “**Z-TIBOR Swaption**”) or a swap transaction referencing Z-TIBOR that is cash settled on an Optional Early Termination/Mandatory Early Termination (if the Cash Settlement Method is one that uses the ‘Settlement Rate’) (a “**Cash Settled Z-TIBOR Swap Transaction**”). Under the 2006 Definitions, the default Cash Settlement Method for JPY Transactions is Zero Coupon Yield (Adjusted) which uses the Settlement Rate. Under the 2021 Definitions, the default Cash Settlement Method is Collateralized Cash Price which also uses the Settlement Rate.

Whether the TIBOR TSR will be the Settlement Rate for a transaction referencing Z-TIBOR or D-TIBOR depends on (1) the definition of Settlement Rate that applies (which differs under different versions of the 2006 and 2021 Definitions), (2) the Settlement Rate for JPY Transactions set out in the ISDA Settlement Matrix for Swaptions and Early Terminations (the “**Settlement Matrix**”), and (3) what has been specified by the parties as the ‘Settlement Rate’ in the Confirmation (if anything). The second table below sets out what the outcome would be (i.e. when the contractual terms direct the parties to use the TIBOR TSR as the Settlement Rate) under both the 2006 Definitions and the 2021 Definitions.

Note that in the 2006 Definitions, the definition of Settlement Rate is slightly different for Automatic Exercise/Fallback Exercise and Cash Settlement, and these two definitions of Settlement Rate have been amended in the past 14 months by 3 Supplements and so vary depending on which version of the 2006 Definitions the parties are using.

List of TIBOR Floating Rate Options

TIBOR Floating Rate Options		
Booklet	Floating Rate Option	Location
2006 Definitions	JPY-TIBOR-TIBM (All Banks)-Bloomberg [Yen TIBOR]	7.1 (I)(viii)
	JPY-TIBOR-ZTIBOR [Euroyen TIBOR]	7.1 (I)(ix)
	JPY-TIBOR-TIBM-Reference Banks <i>[Rate quoted for Yen TIBOR by Reference Banks at 11:00am Tokyo time two Business Days prior to the Reset Date]</i>	7.1 (I)(x)
	JPY-TIBOR-17096 <i>[This rate was discontinued on 1 October 2014 and falls back to JPY-TIBOR-TIBM-Reference Banks]</i>	7.1(I)(xvii)
	JPY-TIBOR-17097 <i>[Rate on Reuters Screen 17097 Page as of 12:50 p.m., Tokyo time two Business Days prior to the Reset Date]</i>	7.1(I)(xviii)
	JPY-TIBOR-TIBM <i>[Rate on Reuters Screen TIBM Page as of 11:00 a.m., Tokyo time two Business Days prior to the Reset Date]</i>	7.1(I)(xxx)
2021 Definitions	JPY-Euroyen TIBOR	Floating Rate Matrix, p. 45 of Version 4.0
	JPY-TIBOR	Floating Rate Matrix, p. 49 of Version 4.0

Application to the 2006 Definitions and 2021 Definitions

Settlement Rate for TIBOR Swaptions and Cash Settled TIBOR Swap Transactions under 2006 Definitions and 2021 Definitions			
Booklet	Scenario	Settlement Rate	Fallback
2006 Definitions	Post-Supplement 88		
	Automatic/Fallback Exercise of Z-TIBOR Swaptions	Settlement Matrix is silent. TIBOR TSR will apply ¹	1. Reference Banks ² 2. Seller determination
	Automatic/Fallback Exercise of D-TIBOR Swaptions	No relevant swap rate. Reference Banks will apply.	Seller determination
	Z-TIBOR Swaption/OET/MET Cash Settlement	Settlement Matrix is silent. If Confirmation specifies 'TSR', 'Tokyo Swap Rate' or similar, TIBOR TSR will apply. ³	1. Reference Banks 2. Calculation Agent determination
	D-TIBOR Swaption/OET/MET Cash Settlement	Settlement Matrix is silent. If Confirmation specifies 'Tokyo Swap Rate' ⁴ , Reference Banks will apply. ⁵	Calculation Agent determination
	Post-Supplement 82 / pre-Supplement 88:		
	Automatic/Fallback Exercise of Z-TIBOR Swaptions	JPY LIBOR TSR ⁶ As this is no longer available, Fallbacks will apply	1. Reference Banks 2. Seller determination
	Automatic/Fallback Exercise of D-TIBOR Swaptions	JPY LIBOR TSR ⁷ As this is no longer available, Fallbacks will apply	1. Reference Banks 2. Seller determination
	Z-TIBOR Swaption/OET/MET Cash Settlement	If Confirmation specifies 'Tokyo Swap Rate', TIBOR TSR will apply. If Confirmation silent, JPY LIBOR TSR As this is no longer available, Fallbacks will apply ⁸	1. Reference Banks 2. Calculation Agent determination
	D-TIBOR Swaption/OET/MET Cash Settlement	If Confirmation specifies 'Tokyo Swap Rate' ⁹ , Reference Banks will apply. If Confirmation silent, JPY LIBOR TSR	1. Reference Banks 2. Calculation Agent determination

¹ This conclusion requires reading the reference to "ICESWAP Rate Administrator" in Section 13.9(b) as a reference to the administrator of the TIBOR TSR. Not interpreting it as such would have the unusual result that even when the TIBOR TSR is available, the Settlement Rate is based on Reference Banks or Seller determination.

² "Reference Banks" in this table is a reference to, in respect of the 2006 Definitions, a dealer poll based on quotations from the Cash Settlement Reference Banks and, in respect of the 2021 Definitions, a dealer poll based on quotations from the Settlement Rate Reference Banks.

³ The scenario in which the parties have not specified the Settlement Rate (e.g. they had assumed that the Settlement Matrix specified a Settlement Rate for the Transaction) is not addressed by Section 18.2(f).

⁴ TIBOR TSR will not apply as it is not a swap rate for D-TIBOR as required by Section 18.2(f)(ii).

⁵ The scenario in which the parties have not specified the Settlement Rate (e.g. they had assumed that the Settlement Matrix specified a Settlement Rate for the Transaction) is not addressed by Section 18.2(f).

⁶ The Settlement Matrix (13 May 2021 version) provides for JPY LIBOR TSR (by referring to the par swap rate on Refinitiv Screen 17143).

⁷ The Settlement Matrix (13 May 2021 version) provides for JPY LIBOR TSR (by referring to the par swap rate on Refinitiv Screen 17143).

⁸ The Settlement Matrix (13 May 2021 version) specifies JPY LIBOR TSR (by referring to the par swap rate on Refinitiv Screen 17143) and the language in Section 18.2(f) directs users to use the par swap rate which appears in the price source specified. This therefore likely directs firms to use the swap rate published on Refinitiv Screen 17143, which is JPY LIBOR TSR.

⁹ TIBOR TSR will not apply as it is not a swap rate for D-TIBOR as required by Section 18.2(f)(ii).

		As this is no longer available, Fallbacks will apply ¹⁰	
Post Supplement 66 / pre-Supplement 82:			
Automatic/Fallback Exercise of Z-TIBOR and D-TIBOR Swaptions		Same as 'Post-Supplement 82 / pre-Supplement 88'	Same as 'Post-Supplement 82 / pre-Supplement 88'
Z-TIBOR and D-TIBOR Swaption/OET/MET Cash Settlement		Same as 'Post-Supplement 82 / pre-Supplement 88'	Same as 'Post-Supplement 82 / pre-Supplement 88'
Pre-Supplement 66			
Automatic/Fallback Exercise of Z-TIBOR and D-TIBOR Swaptions		JPY LIBOR TSR ¹¹ As this is no longer available, Fallbacks will apply	1. Reference Banks 2. Seller determination
Z-TIBOR and D-TIBOR Swaption exercised as a result of Automatic/Fallback Exercise		JPY LIBOR TSR ¹² As this is no longer available, Fallbacks will apply	1. Reference Banks 2. Seller determination
Z-TIBOR and D-TIBOR Swaption exercised other than by Automatic/Fallback Exercise and OET/MET Cash Settlement		JPY LIBOR TSR ¹³ As this is no longer available, Fallbacks will apply	1. Reference Banks 2. Calculation Agent determination
2021 Definitions¹⁴ Versions 3.0 or 4.0			
Z-TIBOR Automatic/Fallback Exercise and Cash Settlement		Settlement Rate specified in Confirmation as 'Tokyo Swap Rate' or similar, TIBOR TSR will apply Settlement Rate not specified in Confirmation, Reference Banks will apply ¹⁵	Generic Fallback Provisions ¹⁶
D-TIBOR Automatic/Fallback Exercise and Cash Settlement		Settlement Rate specified in Confirmation as 'Tokyo Swap Rate' or similar, no relevant swap rate. ¹⁷	Generic Fallback Provisions ¹⁹

¹⁰ The Settlement Matrix (13 May 2021 version) specifies JPY LIBOR TSR (by referring to the par swap rate on Refinitiv Screen 17143) and the language in Section 18.2(f) directs users to use the par swap rate which appears in the price source specified. This therefore likely directs firms to use the swap rate published on Refinitiv Screen 17143, which is JPY LIBOR TSR.

¹¹ As per the Settlement Matrix (which directs firms to use the par swap rate on Refinitiv Screen 17143) and Section 13.9.

¹² As per the Settlement Matrix (which directs firms to use the par swap rate on Refinitiv Screen 17143) and Section 13.9.

¹³ As per the Settlement Matrix, Section 18.2(f)(ii) and Section 19.1.

¹⁴ There is no distinction between the Settlement Rate for Automatic Exercise/Fallback Exercise and the Settlement Rate for Cash Settlement in the 2021 Definitions.

¹⁵ The Settlement Matrix specifies JPY LIBOR Tokyo Swap Rate but Section 17.1.2 requires the swap rate to be the swap rate for the relevant Floating Rate Option. As JPY LIBOR TSR does not meet that description, Section 17.1.4 applies which provides for Reference Banks as the Settlement Rate. This outcome is different from the equivalent provision in Supplements 66, 82 and 88 of the 2006 Definitions due to the clear language in Section 17.1.4 pointing to Reference Banks.

¹⁶ However, if "Reference Banks" is the Settlement Rate (i.e. when the Settlement Rate is not specified in the Confirmation"), it is questionable whether an Index Cessation Event can be considered to have occurred in respect of 'Reference Banks' while JPY Z-TIBOR swaps are still traded.

¹⁷ Although addressed in this table, it is assumed that 'Tokyo Swap Rate' would not be specified in a confirmation for a D-TIBOR transaction due to the absence of a Tokyo Swap Rate for D-TIBOR.

¹⁹ However, if "Reference Banks" is the Settlement Rate (i.e. when the Settlement Rate is not specified in the Confirmation"), it is questionable whether an Index Cessation Event can be considered to have occurred in respect of 'Reference Banks' while JPY Z-TIBOR swaps are still traded.

		Settlement Rate not specified in Confirmation, Reference Banks will apply ¹⁸	
Versions 1.0 or 2.0			
	Z-TIBOR Automatic/Fallback Exercise and Cash Settlement	Settlement Rate specified in Confirmation as 'Tokyo Swap Rate' or similar, TIBOR TSR will apply Settlement Rate not specified in Confirmation, TIBOR TSR will apply ²⁰	Generic Fallback Provisions
	D-TIBOR Automatic/Fallback Exercise and Cash Settlement	Settlement Rate specified in Confirmation as 'Tokyo Swap Rate' or similar, no relevant swap rate ²¹ Settlement Rate not specified in Confirmation, Reference Banks will apply ²²	Generic Fallback Provisions ²³

¹⁸ As per Section 17.1.4.

²⁰ The Version 1.0 and Version 2.0 Settlement Matrix refers to "Tokyo Swap Reference Rate".

²¹ Although addressed in this table, it is assumed that 'Tokyo Swap Rate' would not be specified in a confirmation for a D-TIBOR transaction due to the absence of a Tokyo Swap Rate for D-TIBOR.

²² Although, the Version 1.0 and Version 2.0 Settlement Matrix refers to "Tokyo Swap Reference Rate", Section 17.1.2 requires this to be the swap rate for the relevant benchmark. As there is not one, Reference Banks applies under Section 17.1.4.

²³ However, if "Reference Banks" is the Settlement Rate (i.e. when the Settlement Rate is not specified in the Confirmation"), it is questionable whether an Index Cessation Event can be considered to have occurred in respect of 'Reference Banks' while JPY Z-TIBOR swaps are still traded.