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

### **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 are affected by the **announcement** and the outcome statement and Tokyo Swap Rate (for swaps referencing TIBOR®) cessation **notice** (the “**TIBOR TSR Cessation Notice**”) published by Refinitiv on October 31, 2022 and relating to the future cessation of all tenors of the Tokyo Swap Rate (for swaps referencing TIBOR®) (the “**TIBOR TSR**”).

In the TIBOR TSR Cessation Notice, Refinitiv announced that it would cease publication of all tenors of TIBOR TSR, with the final publication of TIBOR TSR occurring at 15:30 (Tokyo time) on March 31, 2023.

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) **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 one of Versions 1.0 to 7.0 of the 2021 Definitions, apply to the TIBOR TSR Cessation Notice;
- (2) **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, apply to the TIBOR TSR Cessation Notice; and
- (3) **2018 ISDA Benchmarks Supplement:** to describe how the terms of the 2006 ISDA Definitions Benchmarks Annex to the ISDA Benchmarks Supplement (the “**ISDA Benchmarks Supplement**”) apply to the TIBOR TSR Cessation Notice.

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

### **The TIBOR TSR Cessation Notice**

Refinitiv issued consultation papers and outcome statements in December 2021 and January 2022, in relation to the possible cessation of TIBOR TSR and a change of methodology of TIBOR TSR<sup>1</sup>. On August 10, 2022, Refinitiv issued another **consultation paper** to collect feedback on the proposed approach to cessation of the TIBOR TSR.

On October 31, 2022, Refinitiv issued the TIBOR TSR Cessation Notice, providing that:

*“Calculation and publication of all tenors of Tokyo Swap Rate (for swaps referencing TIBOR®) [...] will permanently cease immediately following the final publication at 15:30 (Tokyo time) on Friday 31 March 2023. This announcement constitutes an “Index Cessation Event” pursuant to the 2021 ISDA Interest Rate Derivatives Definitions and the 2006 Definitions Benchmarks Annex to the ISDA Benchmarks Supplement in respect of the Tokyo Swap Rate (for swaps referencing TIBOR®) as the “Settlement Rate”.*”

*“Following the final publication, the page <27143> will display the final published rates and the notice “Tokyo Swap Rate (for swaps referencing TIBOR®) has now ceased. Users may want to consider using an alternative rate.” The other RICs will display the final published rates without the notice. Three months after Tokyo Swap Rate (for swaps referencing TIBOR®) cessation the RICs [...] will be removed from Refinitiv products. Refinitiv will not publish a fallback for Tokyo Swap Rate (for swaps referencing TIBOR®) after 31 March 2023. This information about this cessation is also available via a Data Notification (DN204998).”*

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<sup>1</sup> The December 2021 consultation paper and outcome statement can be found [here](#) and [here](#), respectively. The January 2022 consultation paper and outcome statement can be found [here](#) and [here](#), respectively.

The notice further states that “*The cessation of Tokyo Swap Rate (for swaps referencing TIBOR®) will have no impact on other versions of Tokyo Swap Rate. RBSL will continue to publish Tokyo Swap Rate (for swaps referencing TONA) and Tokyo Swap Rate Fallback.*”<sup>2</sup>.

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<sup>2</sup> Tokyo Swap Rate Fallback provides a fallback swap rate for Tokyo Swap Rate (for swaps referencing JPY LIBOR) (which is a separate benchmark from Tokyo Swap Rate (for swaps referencing JPY TIBOR) and is no longer published). ISDA guidance is available [here](#).

### **Application to the 2021 Definitions and the 2006 Definitions**

The TIBOR TSR measures the fixed leg of interest rate swaps where the floating leg references Euroyen TIBOR, commonly known as Z-TIBOR. The TIBOR TSR is not directly referenced in either of the 2021 Definitions (any version) or the 2006 Definitions. However, there are Floating Rate Options (see below) in both the 2021 and 2006 Definitions which reference Z-TIBOR<sup>3</sup>.

The TIBOR TSR will potentially be relevant as the Settlement Rate for a swaption referencing one of the Z-TIBOR Floating Rate Options, 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 2021 and 2006 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 table in Annex 2 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) for a transaction referencing Z-TIBOR or D-TIBOR under both the 2021 Definitions and the 2006 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 by 3 Supplements since December 2020 and so vary depending on which version of the 2006 Definitions the parties are using.

The table in Annex 2 also sets out the fallbacks which will apply to transactions for which TIBOR TSR is the Settlement Rate following TIBOR TSR’s cessation on March 31, 2023<sup>4</sup> under both the 2021 Definitions and the 2006 Definitions.

Under the 2021 Definitions, the fallback will generally be to the Generic Fallback Provisions. One exception to this is Z-TIBOR Transactions specifying ‘Tokyo Swap Rate’ or similar as the Settlement Rate in the Confirmation and which apply any of Version 5.0, 6.0 or 7.0 of the 2021 Definitions<sup>5</sup>. In

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<sup>3</sup> In addition, there are a number of Floating Rate Options that reference Yen TIBOR (also known as D-TIBOR). The TIBOR TSR Cessation Notice does not concern Z-TIBOR itself and consequently does not impact the Floating Rate Options that reference Z-TIBOR.

<sup>4</sup> Under each version of the 2021 Definitions (i) the TIBOR TSR Cessation Notice will constitute an “Index Cessation Event” with respect to the Settlement Rate, and (ii) the “Index Cessation Effective Date” is expected to be the first Tokyo business day after March 31, 2023 on which TIBOR TSR would ordinarily have been published or provided but is not published or provided (i.e. Monday, April 3, 2023 unless Monday, April 3, 2023 is an unscheduled holiday). The same terminology does not apply to the Settlement Rate under the 2006 Definitions which simply refer to the Settlement Rate not being published/provided.

<sup>5</sup> This will only apply to a transaction that was entered into under one of Versions 1.0 to 4.0 of the 2021 Definitions and which was then subsequently amended to apply one of Version 5.0, 6.0 or 7.0 of the 2021 Definitions. This is because since the publication of Version 5.0 of the 2021 Definitions, TIBOR Tokyo Swap Rate has been published with a revised methodology calculated using Tokyo Swap Rate (for swaps referencing TONA) plus a spread and this synthetic version of TIBOR Tokyo Swap Rate is not for use in new transactions.

this case, the “*Permanent Cessation Fallback Provisions in respect of the Settlement Rate for Euroyen TIBOR Swap Rate Transactions*” set out in Section 17.3.7 of the 2021 Definitions will apply which applies Reference Banks as the first fallback with a further fallback to the Generic Fallback Provisions and a final fallback to Calculation Agent determination.

Under the Generic Fallback Provisions, the parties are obliged to seek to apply the Alternative Continuation Fallbacks and will apply the first Alternative Continuation Fallback pursuant to which a Continuation Amendment can be made. For the purposes of the Settlement Rate, the Generic Fallback Provisions (as set out in the 2021 Definitions) include certain modifications which do not apply to the Generic Fallback Provisions used in respect of a Floating Rate Option<sup>6</sup>.

### ***ISDA Benchmarks Supplement***

TIBOR TSR, when used as the Settlement Rate, will be a “Relevant Benchmark” for the purposes of the 2006 ISDA Definitions Benchmarks Annex to the ISDA Benchmarks Supplement. Under that annex, a “Priority Fallback” will not apply to the relevant transactions. Instead, each party must seek to apply one or more “Alternative Continuation Fallbacks” prior to the “Cut-off Date” of the first Tokyo business day immediately following March 31, 2023<sup>7</sup>. The 2006 ISDA Definitions Benchmarks Annex to the ISDA Benchmarks Supplement includes equivalent Alternative Continuation Fallbacks to those set out in the Generic Fallback Provisions within the 2021 Definitions. As such, the operation of the Alternative Continuation Fallbacks in the 2006 ISDA Definitions Benchmarks Annex to the ISDA Benchmarks Supplement is the same as the operation of the Generic Fallback Provisions in the 2021 Definitions. However, the amendments made to the Generic Fallback Provisions for the purposes of the Settlement Rate under the 2021 Definitions will not apply under the 2006 ISDA Definitions Benchmarks Annex to the ISDA Benchmarks Supplement.

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<sup>6</sup> Refer to Annex 3 for the wording of the Generic Fallback Provisions as set out in Section 8.6 of the 2021 Definitions and for the additional wording of the amendments made to the Generic Fallback Provisions in respect of the Settlement Rate as set out in Section 17.3.5 of the 2021 Definitions, and to Annex 4 for a summary of the Generic Fallback Provisions as modified for the purposes of the Settlement Rate.

<sup>7</sup> It is expected that the first Tokyo business day immediately following Friday, March 31, 2023 will be Monday, April 3, 2023, unless Monday, April 3, 2023 is an unscheduled holiday.

**Annex 1**

**List of TIBOR Floating Rate Options**

<b>TIBOR Floating Rate Options</b>		
<b>Booklet</b>	<b>Floating Rate Option</b>	<b>Location</b>
2006 Definitions	JPY-TIBOR-TIBM (All Banks)-Bloomberg <b>[Yen TIBOR]</b>	7.1 (I)(viii)
	JPY-TIBOR-ZTIBOR <b>[Euroyen TIBOR]</b>	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. 53 of Version 7.0
	JPY-TIBOR	Floating Rate Matrix, p. 57 of Version 7.0

## Annex 2

### 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	<b>Post-Supplement 88</b>		
	Automatic/Fallback Exercise of Z-TIBOR Swaptions	Settlement Matrix is silent. <b>TIBOR TSR</b> will apply <sup>8</sup>	1. Reference Banks <sup>9</sup> 2. Seller determination
	Automatic/Fallback Exercise of D-TIBOR Swaptions	No relevant swap rate. <b>Reference Banks</b> will apply.	Seller determination
	Z-TIBOR Swaption/OET/MET Cash Settlement	Settlement Matrix is silent. If Confirmation specifies 'TSR', 'Tokyo Swap Rate' or similar, <b>TIBOR TSR</b> will apply. <sup>10</sup>	1. Reference Banks 2. Calculation Agent determination
	D-TIBOR Swaption/OET/MET Cash Settlement	Settlement Matrix is silent. If Confirmation specifies 'Tokyo Swap Rate' <sup>11</sup> , <b>Reference Banks</b> will apply. <sup>12</sup>	Calculation Agent determination
	<b>Post-Supplement 82 / pre-Supplement 88:</b>		
	Automatic/Fallback Exercise of Z-TIBOR Swaptions	<b>JPY LIBOR TSR</b> <sup>13</sup> As this is no longer available, Fallbacks will apply	1. Reference Banks 2. Seller determination
	Automatic/Fallback Exercise of D-TIBOR Swaptions	<b>JPY LIBOR TSR</b> <sup>14</sup> 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', <b>TIBOR TSR</b> will apply.  If Confirmation silent, <b>JPY LIBOR TSR</b> As this is no longer available, Fallbacks will apply <sup>15</sup>	1. Reference Banks 2. Calculation Agent determination
	D-TIBOR Swaption/OET/MET Cash Settlement	If Confirmation specifies 'Tokyo Swap Rate' <sup>16</sup> , <b>Reference Banks</b> will apply.  If Confirmation silent, <b>JPY LIBOR TSR</b>	1. Reference Banks 2. Calculation Agent determination

<sup>8</sup> 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.

<sup>9</sup> "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.

<sup>10</sup> 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).

<sup>11</sup> TIBOR TSR will not apply as it is not a swap rate for D-TIBOR as required by Section 18.2(f)(ii).

<sup>12</sup> 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).

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

<sup>14</sup> The Settlement Matrix (May 13, 2021 version) provides for JPY LIBOR TSR (by referring to the par swap rate on Refinitiv Screen 17143).

<sup>15</sup> The Settlement Matrix (May 13, 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.

<sup>16</sup> 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 <sup>17</sup>	
<b>Post Supplement 66 / pre-Supplement 82:</b>		
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'
<b>Pre-Supplement 66</b>		
Automatic/Fallback Exercise of Z-TIBOR and D-TIBOR Swaptions	<b>JPY LIBOR TSR</b> <sup>18</sup> 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	<b>JPY LIBOR TSR</b> <sup>19</sup> 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	<b>JPY LIBOR TSR</b> <sup>20</sup> As this is no longer available, Fallbacks will apply	1. Reference Banks 2. Calculation Agent determination
2021 Definitions <sup>21</sup>	<b>Versions 5.0, 6.0 or 7.0</b>	
Z-TIBOR Automatic/Fallback Exercise and Cash Settlement	Settlement Rate specified in Confirmation as 'Tokyo Swap Rate' or similar, <b>TIBOR TSR</b> will apply	1. Reference Banks 2. Generic Fallback Provisions 3. Calculation Agent determination <sup>22</sup>
	Settlement Rate not specified in Confirmation, <b>Reference Banks</b> will apply <sup>23</sup>	<b>Generic Fallback Provisions</b> <sup>24</sup>

<sup>17</sup> The Settlement Matrix (May 13, 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.

<sup>18</sup> As per the Settlement Matrix (which directs firms to use the par swap rate on Refinitiv Screen 17143) and Section 13.9.

<sup>19</sup> As per the Settlement Matrix (which directs firms to use the par swap rate on Refinitiv Screen 17143) and Section 13.9.

<sup>20</sup> As per the Settlement Matrix, Section 18.2(f)(ii) and Section 19.1.

<sup>21</sup> There is no distinction between the Settlement Rate for Automatic Exercise/Fallback Exercise and the Settlement Rate for Cash Settlement in the 2021 Definitions.

<sup>22</sup> Fallbacks determined as per Section 17.3.7 (*Permanent Cessation Fallback Provisions in respect of the Settlement Rate for Euroyen TIBOR Swap Rate Transactions*) of Versions 5.0 to 7.0 of the 2021 Definitions.

<sup>23</sup> Version 5.0 of the Settlement Matrix (which is the latest published version of this matrix) specifies "Reference Banks" as the Settlement Rate for JPY Z-TIBOR transactions. This reflects the fact that synthetic TIBOR Tokyo Swap Rate (TONA Tokyo Swap Rate + spread) is not intended for use with new transactions. Section 17.1.2 (*Settlement Rate specified in Settlement Matrix*) is not relevant here, as a Settlement Rate specified to be "Reference Banks" in the Settlement Matrix is carved out from the scope of Section 17.1.2 (*Settlement Rate specified in Settlement Matrix*).

<sup>24</sup> 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.



D-TIBOR Automatic/Fallback Exercise and Cash Settlement	Settlement Rate specified in Confirmation as 'Tokyo Swap Rate' or similar, <b>no relevant swap rate</b> . <sup>25</sup>  Settlement Rate not specified in Confirmation, <b>Reference Banks</b> will apply <sup>26</sup>	<b>Generic Fallback Provisions</b> <sup>27</sup>
<b>Versions 3.0 or 4.0</b>		
Z-TIBOR Automatic/Fallback Exercise and Cash Settlement	Settlement Rate specified in Confirmation as 'Tokyo Swap Rate' or similar, <b>TIBOR TSR</b> will apply  Settlement Rate not specified in Confirmation, <b>Reference Banks</b> will apply <sup>28</sup>	<b>Generic Fallback Provisions</b> <sup>29</sup>
D-TIBOR Automatic/Fallback Exercise and Cash Settlement	Settlement Rate specified in Confirmation as 'Tokyo Swap Rate' or similar, <b>no relevant swap rate</b> . <sup>30</sup>  Settlement Rate not specified in Confirmation, <b>Reference Banks</b> will apply <sup>31</sup>	<b>Generic Fallback Provisions</b> <sup>32</sup>
<b>Versions 1.0 or 2.0</b>		
Z-TIBOR Automatic/Fallback Exercise and Cash Settlement	Settlement Rate specified in Confirmation as 'Tokyo Swap Rate' or similar, <b>TIBOR TSR</b> will apply  Settlement Rate not specified in Confirmation, <b>TIBOR TSR</b> will apply <sup>33</sup>	<b>Generic Fallback Provisions</b>

<sup>25</sup> 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 swap rate for D-TIBOR.

<sup>26</sup> Version 5.0 of the Settlement Matrix (which is the latest published version of this matrix) specifies "Reference Banks" as the Settlement Rate for JPY D-TIBOR transactions.

<sup>27</sup> 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 D-TIBOR swaps are still traded.

<sup>28</sup> 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.

<sup>29</sup> 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.

<sup>30</sup> 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.

<sup>31</sup> As per Section 17.1.4.

<sup>32</sup> 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 D-TIBOR swaps are still traded.

<sup>33</sup> The Version 1.0 and Version 2.0 Settlement Matrix refers to "Tokyo Swap Reference Rate".

	D-TIBOR Automatic/Fallback Exercise and Cash Settlement	Settlement Rate specified in Confirmation as 'Tokyo Swap Rate' or similar, <b>no relevant swap rate</b> <sup>34</sup>  Settlement Rate not specified in Confirmation, <b>Reference Banks</b> will apply <sup>35</sup>	<b>Generic Fallback Provisions</b> <sup>36</sup>
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<sup>34</sup> 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.

<sup>35</sup> 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.

<sup>36</sup> 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 D-TIBOR swaps are still traded.

## Annex 3

### **Generic Fallback Provisions as set out in the 2021 Definitions<sup>37</sup>**

#### **8.6 Generic Fallback Provisions.**

##### **8.6.1 Application of Alternative Continuation Fallbacks.**

- (i) Subject to Section 8.6.6 (*Cut-off Date and Determinations prior to Cut-off Date*) and Section 8.6.8(ii) (*Non-compliant fallbacks and material additional regulatory obligations*) and unless otherwise agreed between the parties, when the Generic Fallback Provisions apply, during the period from and including the date of the Permanent Cessation Trigger or the Administrator/Benchmark Event, to and including the Cut-off Date, each party shall act in good faith and use commercially reasonable efforts in seeking to apply each applicable Alternative Continuation Fallback (including in seeking to resolve any disputes under Section 8.6.7(ii) (*Generic Fallback Provisions – Dispute Resolution Process*)) to allow the Transaction to continue in accordance with its terms, as amended in accordance with the relevant Alternative Continuation Fallback.
- (ii) If:
  - (a) in seeking to apply Section 8.6.3(i) (*Agreement between the parties*) to Section 8.6.3(iv) (*Application of Calculation Agent Nominated Replacement Index*), a Continuation Amendment can be made under more than one applicable Alternative Continuation Fallback, then the Continuation Amendment which can be made under the first such applicable Alternative Continuation Fallback that appears in Section 8.6.3 (*Alternative Continuation Fallbacks*) shall prevail and that Alternative Continuation Fallback shall be implemented in accordance with Section 8.6.2 (*Implementation of Utilized Fallback*); or
  - (b) no Continuation Amendment can be made under any of the applicable Alternative Continuation Fallbacks by Close of Business on the Cut-off Date, then Section 8.6.4 (*No Fault Termination*) shall apply.

##### **8.6.2 Implementation of Utilized Fallback.**

The first applicable Alternative Continuation Fallback that appears in Section 8.6.3 (*Alternative Continuation Fallbacks*) pursuant to which a Continuation Amendment can be made in accordance with Section 8.6.1 (*Application of Alternative Continuation Fallbacks*), if any, shall be implemented on the Local Business Day following the Cut-off Date.

##### **8.6.3 Alternative Continuation Fallbacks.**

- (i) **Agreement between the parties.** The parties shall seek to agree on the actions, if any, to be taken in order to account for the Fallback Trigger.

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<sup>37</sup> These apply equally to each version of the 2021 Definitions published as of the date of this Guidance.

- (ii) **Application of Alternative Pre-nominated Index.** If the parties have specified an Impacted Index and an Alternative Pre-nominated Index<sup>38</sup>, the terms of the Transaction shall be adjusted so that:
- (a) references to the Impacted Index are replaced by references to the Alternative Pre-nominated Index;
  - (b) if the parties agree to an Adjustment Payment, the Adjustment Payment shall be made in accordance with that agreement or, if the parties do not agree to an Adjustment Payment, the Calculation Agent shall apply the Adjustment Spread to the Alternative Pre-nominated Index; and
  - (c) the Calculation Agent shall, after taking into account any Adjustment Payment or Adjustment Spread, make any other adjustments to the Transaction that are necessary to account for the effect on the Transaction of referencing the Alternative Pre-nominated Index.
- (iii) **Application of Alternative Post-nominated Index.** The terms of the Transaction shall be adjusted so that:
- (a) references to the Applicable Benchmark are replaced by references to the Alternative Post-nominated Index;
  - (b) if the parties agree to an Adjustment Payment, the Adjustment Payment shall be made in accordance with that agreement or, if the parties do not agree to an Adjustment Payment, the Calculation Agent shall apply the Adjustment Spread to the Alternative Post-nominated Index; and
  - (c) the Calculation Agent shall, after taking into account any Adjustment Payment or Adjustment Spread, make any other adjustments to the Transaction that are necessary to account for the effect on the Transaction of referencing the Alternative Post-nominated Index.

If, in respect of an Applicable Benchmark, more than one Relevant Nominating Body formally designates, nominates or recommends an Alternative Post-nominated Index or, in respect of the same Alternative Post-nominated Index, a spread or methodology for calculating a spread in relation to the replacement of the Applicable Benchmark with that Alternative Post-nominated Index, in each case by Close of Business on the Cut-off Date, and those designations, nominations or recommendations are not the same, then no Continuation Amendment can be made under this paragraph (iii).

- (iv) **Application of Calculation Agent Nominated Replacement Index.** The terms of the Transaction shall be adjusted so that:
- (a) references to the Applicable Benchmark are replaced by references to the Calculation Agent Nominated Replacement Index;

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<sup>38</sup> If the parties want to rely on this fallback, the Impacted Index and one or more Alternative Pre-nominated Indices must be specified in the Confirmation.

- (b) if the parties agree to an Adjustment Payment, the Adjustment Payment shall be made in accordance with that agreement or, if the parties do not agree to an Adjustment Payment, the Calculation Agent shall apply the Adjustment Spread to the Calculation Agent Nominated Replacement Index; and
- (c) the Calculation Agent shall, after taking into account any Adjustment Payment or Adjustment Spread, make any other adjustments to the Transaction that are necessary to account for the effect on the Transaction of referencing the Calculation Agent Nominated Replacement Index.

#### 8.6.4 No Fault Termination.

- (i) Subject to paragraph (ii) below, if this Section 8.6.4 applies then, with effect from the Business Day following the Cut-off Date:
  - (a) if the ISDA Master Agreement is a 1992 ISDA Master Agreement, Section 6 of the ISDA Master Agreement shall apply as if:
    - (I) an “Additional Termination Event” had occurred and is continuing;
    - (II) both parties were “Affected Parties”; and
    - (III) the Transactions in respect of which the Generic Fallback Provisions apply were the only “Affected Transactions”,
 (each of “Additional Termination Event”, “Affected Parties” and “Affected Transactions” as defined in the ISDA Master Agreement); and
  - (b) otherwise, Section 6(b)(iv)(2)(A) of the ISDA 2002 Master Agreement shall apply as if:
    - (I) a “Force Majeure Event” had occurred and is continuing and the “Waiting Period” had expired at Close of Business on the Cut-off Date;
    - (II) both parties were “Affected Parties”; and
    - (III) the Transactions in respect of which the Generic Fallback Provisions apply were the only “Affected Transactions”,
 (each of “Force Majeure Event”, “Waiting Period”, “Affected Parties” and “Affected Transactions” as defined in the ISDA 2002 Master Agreement).
- (ii) If this Section 8.6.4 applies following a failure by the parties to resolve a dispute under Section 8.6.7(ii) (*Generic Fallback Provisions – Dispute Resolution Process*), neither party has exercised its right to terminate the Transaction by the Notification Deadline on the tenth Local Business Day following the Cut-off Date and, prior to the application of this Section 8.6.4, the Calculation Agent had notified the parties of a determination under a proposed Alternative Continuation Fallback (including under Section 8.6.7(ii) (*Generic Fallback Provisions – Dispute Resolution Process*)), then

this Section 8.6.4 shall cease to apply and that determination and the applicable Alternative Continuation Fallback shall instead apply.

#### 8.6.5 Adjustment Spread Determination.

The Adjustment Spread shall be:

- (i) as agreed between the parties (on the Trade Date or otherwise); or
- (ii) if the parties are unable to agree, either:
  - (a) determined by the Calculation Agent; or
  - (b) if, in relation to an Alternative Post-nominated Index, a spread or methodology for calculating a spread has been formally designated, nominated or recommended by any Relevant Nominating Body in relation to the replacement of the Applicable Benchmark with the Alternative Post-nominated Index, that spread or the spread determined using that methodology, as applicable, unless otherwise agreed between the parties.

#### 8.6.6 Cut-off Date and Determinations prior to Cut-off Date.

- (i) **Cut-off Date following a Fallback Trigger.** Unless otherwise agreed between the parties, the Cut-off Date will be the later of (1) fifteen Local Business Days following the day on which the Generic Fallback Provisions first apply and (2) the Applicable Fallback Effective Date. However, if:
  - (a) more than one Relevant Nominating Body formally designates, nominates or recommends an Alternative Post-nominated Index or a spread or methodology for calculating a spread and one or more of those Relevant Nominating Bodies does so on or after the day that is three Local Business Days before that date, then the Cut-off Date will instead be the second Local Business Day following the date that, but for this paragraph (a), would have been the Cut-off Date; or
  - (b) a dispute under Section 8.6.7(ii) (*Generic Fallback Provisions – Dispute Resolution Process*) is continuing on the date that, but for this paragraph (b), would have been the Cut-off Date, then the Cut-off Date will instead be the earlier of (1) the date on which that dispute is resolved and (2) the date on which the time period for resolution under Section 8.6.7(ii) (*Generic Fallback Provisions – Dispute Resolution Process*) ends.
- (ii) **Interim measures.** If, after the Generic Fallback Provisions first apply, the Applicable Benchmark is required for any determination under the terms of the Transaction and, at that time, no Continuation Amendment has been made and, if applicable, the Transaction has not terminated pursuant to Section 8.6.4 (*No Fault Termination*), then, for the purposes of that determination, the level of the Applicable Benchmark shall be as agreed between the parties or, failing such agreement:
  - (a) if the Applicable Fallback Effective Date has not yet occurred, shall be determined pursuant to the terms that would apply to the determination of the Applicable Benchmark if no Permanent

Cessation Trigger or Administrator/Benchmark Event had occurred (including pursuant to any Temporary Non-Publication Trigger and Temporary Non-Publication Fallback that applies);

- (b) if an Applicable Fallback Effective Date has occurred, shall be determined pursuant to the relevant Temporary Non-Publication Fallback; and
- (c) if a level for the Applicable Benchmark cannot be determined under paragraph (a) or (b) above, as applicable, shall be determined by reference to the rate published in respect of the Applicable Benchmark at the time at which the Applicable Benchmark is ordinarily determined on (I) the day on which the Applicable Benchmark ceased to be available or (II) the Administrator/Benchmark Event Date, as applicable or, if no rate is published at that time or that rate cannot be used in accordance with applicable law or regulation, by reference to the rate published at that time on the last day on which the rate was published or can be used in accordance with applicable law or regulation, as applicable.

#### 8.6.7 Calculation Agent Determinations under the Generic Fallback Provisions.

- (i) **Determinations made by the Calculation Agent.**
  - (a) Whenever the Calculation Agent is required to act, make a determination or exercise judgement under the Generic Fallback Provisions, it shall do so by reference to Relevant Market Data available at, or a reasonable period of time prior to, the time of notification.
  - (b) The Calculation Agent shall notify the parties of any determination it makes pursuant to the Generic Fallback Provisions as soon as reasonably practicable after the Generic Fallback Provisions first apply and, in any event, at least two Local Business Days before the Cut-off Date. However, any failure to provide such a notification shall not give rise to a Potential Event of Default or an Event of Default (each as defined in the ISDA Master Agreement) with respect to the party, if any, that is the Calculation Agent.
- (ii) **Generic Fallback Provisions – Dispute Resolution Process.** If a party reasonably disputes the Calculation Agent's determination of an Adjustment Spread, the Calculation Agent Nominated Replacement Index or any other adjustment to be made by the Calculation Agent to the Transaction pursuant to the Generic Fallback Provisions, then:
  - (a) the disputing party shall, by the Notification Deadline on the second Local Business Day following the later of (1) the date on which it was notified of the determination and (2) the date on which it received the relevant Calculation Statement, notify the other party and the Calculation Agent (if the Calculation Agent is not the other party) in writing that it disputes that determination and provide reasonable detail of the reason for its dispute and any supporting Relevant Market Data;

- (b) the parties shall consult with each other in good faith in an attempt to resolve the dispute; and
  - (c) if the dispute is not resolved by the Close of Business on the fourth Local Business Day following the notification of the dispute under paragraph (a) above, then the Alternative Continuation Fallback that is the subject of the dispute shall cease to apply and the next Alternative Continuation Fallback pursuant to which a Continuation Amendment can be made will apply. If no Continuation Amendment can be made under any of the other Alternative Continuation Fallbacks, Section 8.6.4 (*No Fault Termination*) shall apply but subject to paragraph (ii) of Section 8.6.4 (*No Fault Termination*).
- (iii) **Hierarchy of Calculation Agent dispute resolution processes.** If the parties have agreed to a different process for challenging or disputing determinations made by the Calculation Agent that applies to the Transaction (whether set out in the ISDA Master Agreement or any other documentation between the parties), then that process shall take precedence over paragraph (ii) (*Generic Fallback Provisions – Dispute Resolution Process*) above only if the parties have expressly disapplied paragraph (ii) (*Generic Fallback Provisions – Dispute Resolution Process*) above in writing or the corresponding paragraph in the ISDA Benchmarks Supplement.

#### 8.6.8 Application of Generic Fallback Provisions.

- (i) **Separate application of fallbacks.** If there is more than one Applicable Benchmark, then Section 8.6.1 (*Application of Alternative Continuation Fallbacks*) to Section 8.6.5 (*Adjustment Spread Determination*) shall apply separately to each such Applicable Benchmark (except for Section 8.6.4 (*No Fault Termination*) which, if applicable, will apply to the whole Transaction).
- (ii) **Non-compliant fallbacks and material additional regulatory obligations.** If:
  - (a) it is or would be unlawful under any applicable law or regulation to determine the Applicable Benchmark in accordance with any applicable Alternative Continuation Fallback (or it would be unlawful were a determination to be made at that time);
  - (b) it would contravene any applicable licensing requirements to determine the Applicable Benchmark in accordance with any applicable Alternative Continuation Fallback (or it would contravene those licensing requirements were a determination to be made at that time); or
  - (c) the Calculation Agent determines that the Adjustment Spread is or would be a benchmark, index or other price source whose production, publication, methodology or governance would subject the Calculation Agent to material additional regulatory obligations which it is unwilling to undertake,



then the applicable Alternative Continuation Fallback shall cease to apply for the purposes of Section 8.6.1 (*Application of Alternative Continuation Fallbacks*) and the next Alternative Continuation Fallback pursuant to which a Continuation Amendment can be made will apply.

(iii) **Consistent application of fallbacks and disputes.** Unless otherwise agreed, whenever:

(a) the Calculation Agent is required to act, make a determination or exercise judgement under the Generic Fallback Provisions; or

(b) a party exercises a right under the Generic Fallback Provisions,

it will do so in a consistent manner in respect of all Transactions between the parties of the same type which are subject to the same Permanent Cessation Trigger or Administrator/Benchmark Event in respect of the same Applicable Benchmark.

***Amendments to the Generic Fallback Provisions in respect of the Settlement Rate as set out in the 2021 Definitions***

**17.3.5 Generic Fallback Provisions in respect of the Settlement Rate.**

As applied to the Settlement Rate, the following amendments shall be made to Section 8.6 (*Generic Fallback Provisions*).

(i) **Application of Alternative Continuation Fallbacks.** Paragraph (ii)(b) of Section 8.6.1 (*Application of Alternative Continuation Fallbacks*) shall not apply. If no Continuation Amendment can be made under any of the applicable Alternative Continuation Fallbacks by Close of Business on the Cut-off Date, then the Settlement Rate shall be determined in accordance with Section 17.1.6 (*Settlement Rate – Reference Banks*) as though “Reference Banks” had been specified for the purposes of the Settlement Rate.

(ii) **Interim measures.** Paragraphs (b) and (c) of Section 8.6.6(ii) (*Interim measures*) shall not apply. For the purposes of Section 8.6.6(ii) (*Interim measures*), if the Settlement Rate is no longer available or the Administrator/Benchmark Event Date has occurred, the Settlement Rate shall be determined in accordance with Section 17.1.6 (*Settlement Rate – Reference Banks*) as though “Reference Banks” had been specified for the purposes of the Settlement Rate.

(iii) **Calculation Agent Determinations.** Section 8.6.7 (*Calculation Agent Determinations under the Generic Fallback Provisions*) shall apply to any determination by the Calculation Agent pursuant to Section 8.6 (*Generic Fallback Provisions*) for the purposes of the Settlement Rate.

## Annex 4

### ***Generic Fallback Provisions in respect of the Settlement Rate – summary***<sup>39</sup>

#### ***Alternative Continuation Fallbacks to be pursued in parallel***

The Generic Fallback Provisions set out a waterfall of ‘Alternative Continuation Fallbacks’ each of which the parties agree to seek to apply during a period of 15 business days (subject to extension in some circumstances) in order to allow the transaction to continue. If, at the end of this period of time, more than one Alternative Continuation Fallback can be used, the first in the hierarchy below will prevail.

1. **Agreement between the parties**
2. **Alternative Pre-Nominated Index** specified by the parties on a trade-by-trade basis in the confirmation + **Adjustment Payment/Adjustment Spread**
3. **Alternative Post-Nominated Index + Adjustment Payment / Adjustment Spread**
  - a. Index nominated by a “Relevant Nominating Body”, i.e.:
    - i. central bank for currency in which benchmark is denominated or central bank or supervisor responsible for supervising the Applicable Benchmark or administrator, or
    - ii. any working group or committee officially endorsed or convened by such central bank or supervisor, a group of those central banks or supervisors, the Financial Stability Board or any part thereof.
  - b. Otherwise, any index nominated by the administrator of the Applicable Benchmark provided that it is substantially the same as the Applicable Benchmark.
4. **Calculation Agent Nominated Replacement Index** determined by the Calculation Agent + **Adjustment Payment/Adjustment Spread**

#### ***Adjustments to the transaction***

The alternative index applied under an Alternative Continuation Fallback may have different characteristics from the index it replaces. Provision is therefore made for an ‘Adjustment Payment’ or an ‘Adjustment Spread’. The Calculation Agent may make other adjustments to account for the effect of using the new index in the transaction.

#### ***Dispute rights***

The Generic Fallback Provisions give parties the right to dispute Calculation Agent determinations in relation to the Adjustment Spread, its nomination of the Calculation Agent Nominated Replacement Index, and any other adjustment it makes to the terms of a transaction. The dispute needs to be reasonable and supported by data. If a dispute cannot be resolved by agreement, the relevant Alternative Continuation Fallback is disregarded.

#### ***Fallback to “Reference Banks”***

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<sup>39</sup> This summary applies equally to each version of the 2021 Definitions published as of the date of this Guidance, unless expressly stated otherwise.

If none of the Alternative Continuation Fallbacks can be successfully applied within the allotted period of time, the Settlement Rate shall be determined as though “Reference Banks” had been specified for the purposes of the Settlement Rate.<sup>40</sup>

### ***Interim measures***

A situation may arise where the Generic Fallback Provisions apply and the Applicable Benchmark is required to make a determination, but no Alternative Continuation Fallback has been applied yet. In such a situation, the waterfall will instead be as follows:

1. agreement between the parties
2. determination as if no Permanent Cessation Trigger or Administrator/Benchmark Event had occurred (including by reference to any Temporary Non-Publication Trigger and Fallback), provided that the date on which the Permanent Cessation Fallback or Administrator/Benchmark Fallback applies has not yet occurred
3. determination as if “Reference Banks” had been specified for the purposes of the Settlement Rate.

### ***Non-compliant fallbacks***

In the event that:

- it would be unlawful under any applicable law or regulation to determine the benchmark in accordance with a fallback,
- a fallback would contravene any applicable licensing requirements, or
- the Adjustment Spread constitutes or would constitute a benchmark whose production would subject the Calculation Agent to additional regulatory obligations which it is unwilling to undertake,

the Alternative Continuation Fallback will not apply and the next Alternative Continuation Fallback pursuant to which a Continuation Amendment can be made will apply.

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<sup>40</sup> Note that if Section 17.3.7 (*Permanent Cessation Fallback Provisions in respect of the Settlement Rate for Euroyen TIBOR Swap Rate Transactions*) of the 2021 Definitions applies (i.e. if (i) the transaction uses Version 5.0, Version 6.0 or Version 7.0 of the 2021 Definitions and (ii) TIBOR TSR is the Settlement Rate), this fallback will instead be to Calculation Agent determination.