

December 10, 2021

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

Refinitiv announcement of future permanent cessation of JPY LIBOR Tokyo Swap Rate

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 made on 10 December 2021 by Refinitiv[®]¹ (“**Refinitiv**”) relating to the future cessation of all tenors of the Tokyo Swap Rate (for swaps referencing 6-month JPY interbank offered rates from London banks), referred to in this guidance note as the JPY LIBOR Tokyo Swap Rate (the “**Refinitiv Cessation Announcement**”).

On 10 December 2021, Refinitiv announced that, following the announcement by the Financial Conduct Authority (“**FCA**”) on 5 March 2021, regarding future cessation and loss of representativeness of JPY LIBOR, and the industry consultation published by Refinitiv in April 2021, Refinitiv does not expect panel banks to continue contributing to the JPY LIBOR Tokyo Swap Rate after the end of 2021. Consequently, publication of each tenor of the JPY LIBOR Tokyo Swap Rate for both the morning and afternoon settings (which is the JPY LIBOR Tokyo Swap Rate with an underlying rate of 6-month JPY LIBOR) will cease immediately after publication of the afternoon settings on December 30, 2021. The announcement can be found [here](#).

The Refinitiv Cessation Announcement also announces that, on January 4, 2022, the Tokyo Swap Rate fallback rate, referenced in the relevant ISDA documentation, will become a production benchmark administered by Refinitiv Benchmark Services (UK) Limited (RBSL), and which is designed to support the continuation of contracts referencing the Tokyo Swap Rate (for swaps referencing 6-month JPY LIBOR) post cessation in all tenors except 35 years.

This guidance is of particular relevance in the context of publication by ISDA of:

- (i) [Supplement number 88](#) to the 2006 ISDA Definitions (the “**2006 Definitions**”), published and effective on November 10, 2021 (the “**JPY and USD Fallbacks Supplement**”) which updates provisions in the 2006 Definitions that refer or relate to the JPY LIBOR Tokyo Swap Rate;
- (ii) Version 3.0 of the 2021 ISDA Interest Rate Derivatives Definitions (the “**2021 Definitions**”), published and effective on November 10, 2021, which includes new fallbacks for Floating Rate Options and Settlement Rate provisions referencing the JPY LIBOR Tokyo Swap Rate; and
- (iii) the [Template Form of Amendment](#) for adoption of JPY LIBOR Tokyo Swap Rate Fallback Provisions in Confirmations for legacy transactions incorporating either the 2006 Definitions or the 2021 Definitions (the “**JPY Standalone Fallbacks Amendment**”) and the [Template Form of Amendment](#) for adoption of GBP LIBOR ICE Swap Rate, USD LIBOR ICE Swap Rate and JPY LIBOR Tokyo Swap Rate Fallback Provisions in Confirmations for legacy

¹ The administrator of the Tokyo Swap Rate is Refinitiv Asia Pacific Limited.

transactions incorporating either the 2006 Definitions or the 2021 Definitions (the **“Combined GBP/USD/JPY Fallbacks Amendment”**, together with the JPY Standalone Fallbacks Amendment, the **“TSR Fallbacks Amendments”**).

The JPY and USD Fallbacks Supplement introduces fallbacks for provisions in the 2006 Definitions which refer or relate to the JPY LIBOR Tokyo Swap Rate, including the “JPY-TSR-Reuters-10:00” and “JPY-TSR-Reuters-15:00” Rate Options. These same fallbacks are included in Version 3.0 of the 2021 Definitions, including for the equivalent Floating Rate Options in the 2021 Definitions. The TSR Fallbacks Amendments enable parties to amend one or more existing Confirmations incorporating either the 2006 Definitions or the 2021 Definitions to include those new fallbacks in those Confirmations.

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**”), both for Swap Transactions entered into before the publication of the JPY and USD Fallbacks Supplement on November 10, 2021 and following publication of the JPY and USD Fallbacks Supplement on November 10, 2021, will apply to the Refinitiv Cessation Announcement;
- (2) **2021 ISDA Definitions:** to describe how the terms of the 2021 ISDA Interest Rate Derivatives Definitions (the “**2021 Definitions**”), both for Transactions entered into before the publication of Version 3.0 on November 10, 2021 (which included the same fallbacks as set out in the JPY and USD Fallbacks Supplement) and those entered into following publication of Version 3.0 on November 10, 2021, will apply to the Refinitiv Cessation Announcement;
- (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 Refinitiv Cessation Announcement; and
- (4) **ISDA IBOR Fallbacks:** to describe how the terms of Supplement number 70 to the 2006 Definitions, finalized on October 23, 2020 and published by ISDA and effective on January 25, 2021 (the “**IBOR Fallbacks Supplement**”) and the ISDA 2020 IBOR Fallbacks Protocol published on October 23, 2020 (the “**IBOR Fallbacks Protocol**”) apply to the Refinitiv Cessation Announcement.

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

The Refinitiv Cessation Announcement

In April 2021, Refinitiv issued a consultation in respect of, amongst other things, possible cessation of the JPY LIBOR Tokyo Swap Rate.

Having considered the feedback received, in the Refinitiv Cessation Announcement Refinitiv stated:

“Refinitiv today announced that it will cease the publication of both morning and afternoon settings of Tokyo Swap Rate (for swaps referencing 6-month JPY interbank offered rates from London banks), as published on <17143> and other RICs, for all tenors via all delivery channels. The final publication will be the afternoon settings at 15:30 (Tokyo time) on 30 December 2021 prior to the Japanese market holiday on 31 December 2021.

Following the FCA’s [announcement](#) on 5 March 2021 regarding the future cessation and loss of representativeness of JPY LIBOR and an [industry consultation](#) process, Refinitiv does not expect panel banks to continue contributing to Tokyo Swap Rate (for swaps referencing 6-month JPY interbank offered rates from London banks) after the end of the year.”

2006 Definitions: Application of the Refinitiv Cessation Announcement to (1) Section 7.1(I)(xi) (JPY-TSR-Reuters-10:00), Section 7.1(I)(xiii) (JPY-TSR-Reuters-15:00), Section 7.1(I)(xxxviii), Section 13.9 (Settlement Rate on Automatic Exercise or Fallback Exercise), Section 18.2(f)

(Settlement Rate) and related settlement rate provisions and (2) the JPY and USD Fallbacks Supplement

For Swap Transactions with a Trade Date prior to the publication of the JPY and USD Fallbacks Supplement on November 10, 2021, or which have not otherwise been amended to include the terms of the JPY and USD Fallbacks Supplement (whether via the TSR Fallbacks Amendments or otherwise), once the JPY LIBOR Tokyo Swap Rate is no longer provided:

- (i) pursuant to the terms of the two Rate Options referencing the JPY LIBOR Tokyo Swap Rate (“JPY-TSR-Reuters-10:00” and “JPY-TSR-Reuters-15:00”, as set out in Section 7.1(l)(xi) and Section 7.1(l)(xiii) of the 2006 Definitions respectively), the rate for the Reset Date will be determined using the Rate Option “JPY-TSR-Reference Banks” which requires the rate to be determined based on quotations provided by Reference Banks; and
- (ii) if the Settlement Rate is the JPY LIBOR Tokyo Swap Rate for purposes of (i) determining whether the Buyer of a JPY swaption is “in-the-money” for the purposes of Automatic Exercise or Fallback Exercise and (ii) calculating the settlement amount for cash settled JPY swaptions (and certain Swap Transactions to which Optional Early Termination or Mandatory Early Termination apply)², pursuant to Sections 13.9 and 18.2(f) of the 2006 Definitions respectively, the Settlement Rate will be determined using a Cash Settlement Reference Bank dealer poll or, if fewer than three quotations are provided by Cash Settlement Reference Banks, by the Seller (if Section 13.9 applies) or the Calculation Agent (if Section 18.2(f) applies).

For Swap Transactions with a Trade Date on or after publication of the JPY and USD Fallbacks Supplement on November 10, 2021 and for Swap Transactions with a Trade Date prior to November 10, 2021 but which have been amended to include the terms of the JPY and USD Fallbacks Supplement (whether via the TSR Fallbacks Amendments or otherwise), from the first day on which **JPY LIBOR**³ would ordinarily have been provided but is either Non-Representative or no longer provided, the fallback rate in the JPY and USD Fallbacks Supplement will apply (as further explained below). The Refinitiv Cessation Announcement does not affect this outcome.

The JPY and USD Fallbacks Supplement updates Sections 7.1(l)(xi) (JPY-TSR-Reuters-10:00), Section 7.1(l)(xiii) (JPY-TSR-Reuters-15:00), Section 13.9 and Section 18.2(f) to include fallbacks which would apply upon 6-month **JPY LIBOR**, as the benchmark referenced in the transactions that underlie the JPY LIBOR Tokyo Swap Rate (although JPY LIBOR is a different benchmark from the JPY LIBOR Tokyo Swap Rate), becoming Non-Representative or being no longer provided following a ‘JPY LIBOR Index Cessation Event’. These fallbacks include the fallback rate published by Refinitiv which will become a production benchmark on January 4, 2022 and which is described further in the Refinitiv Cessation Announcement. For the purposes of the JPY and USD Fallbacks

² The JPY LIBOR Tokyo Swap Rate applies on a Cash Settlement either (1) as a result of being specified as an “Other Price Source” in the Confirmation or, (2) when the ISDA Settlement Matrix applies, as the specified Settlement Rate for the Cash Settlement Method “Zero Coupon Yield – Adjusted”.

³ Importantly, the relevant benchmark is JPY LIBOR, not the JPY LIBOR Tokyo Swap Rate. The FCA’s announcement regarding the future cessation and loss of representativeness of JPY LIBOR states that all tenors of Japanese yen LIBOR settings will permanently cease, or no longer be representative of the underlying market and economic reality that they are intended to measure and representativeness will not be restored, immediately after December 31, 2021. As mentioned, the Refinitiv Cessation Announcement does not affect the application of fallbacks with respect to cessation or non-representativeness of JPY LIBOR.

This is slightly different to the triggering of the fallbacks for Swap Transactions with a Trade Date prior to November 10, 2021, or which have not otherwise been amended to include the terms of the JPY and USD Fallbacks Supplement (whether via the TSR Fallbacks Amendments or otherwise), as publication of the JPY LIBOR Tokyo Swap Rate will cease after publication of the afternoon setting at 15:30 (Tokyo time) on December 30, 2021.

See comments below in relation to non-publication of the JPY LIBOR Tokyo Swap Rate on December 31, 2021.

Supplement, a 'JPY LIBOR Index Cessation Event' occurred prior to the Refinitiv Cessation Announcement on March 5, 2021 by virtue of the statement by the FCA that JPY LIBOR for the relevant tenors would be non-representative after December 31, 2021. The Refinitiv Cessation Announcement does not affect this outcome.

Whilst the Refinitiv Cessation Announcement states that publication of the JPY LIBOR Tokyo Swap Rate will cease immediately after publication of the afternoon settings on December 30, 2021, market participants should note that December 31, 2021 will be a public holiday in Tokyo and so such day will not constitute a "Tokyo Banking Day", as defined in the 2006 ISDA Definitions. Therefore, ordinarily there will be no publication of the JPY LIBOR Tokyo Swap Rate on such day. Non-publication of the JPY LIBOR Tokyo Swap Rate on December 31, 2021 will therefore not be as a result of the Refinitiv Cessation Announcement. As the Rate Options referencing the JPY LIBOR Tokyo Swap Rate only fix on Tokyo Banking Days, such non-publication will not trigger the temporary non-publication fallbacks for the Rate Options as set out in Sections 7.1(l)(xi) (JPY-TSR-Reuters-10:00) and Section 7.1(l)(xiii) (JPY-TSR-Reuters-15:00) either prior to or post-publication of the JPY and USD Fallbacks Supplement. Such non-publication on December 31, 2021 should also not trigger the fallbacks in Sections 13.9 and 18.2(f) (either prior to or post-publication of the JPY and USD Fallbacks Supplement) (however, this depends on how Cash Settlement Valuation Date has been defined for the relevant Swap Transaction and whether December 31, 2021 is the Cash Settlement Valuation Date).

2021 Definitions: Application of the Refinitiv Cessation Announcement to JPY-TSR-10:00 and JPY-TSR-15:00 and Section 17 (Settlement Rate).

For Transactions documented under the 2021 Definitions with a Trade Date prior to the publication of Version 3.0 on November 10, 2021, or which have not otherwise been amended to include the JPY LIBOR Tokyo Swap Rate fallbacks (whether via the TSR Fallbacks Amendments or otherwise), once the JPY LIBOR Tokyo Swap Rate is no longer provided:

- (i) JPY-TSR-10:00 and JPY-TSR-15:00 will be determined based on quotations provided by Reference Banks; and
- (ii) if the Settlement Rate is the JPY LIBOR Tokyo Swap Rate, the Settlement Rate will be determined using quotations provided by the Settlement Rate Reference Banks or, if fewer than three quotations are provided by Settlement Rate Reference Banks, by the Calculation Agent.

For Transactions with a Trade Date on or after the publication date of Version 3.0 (November 10, 2021) and for Transactions with a Trade Date prior to November 10, 2021 but which have been amended to include the JPY LIBOR Tokyo Swap Rate fallbacks via the TSR Fallbacks Amendments, from the first day on which **JPY LIBOR**⁴ would ordinarily have been provided but is either Non-Representative or no longer provided, the fallback rate⁵ as set out in Version 3.0 will apply. The Refinitiv Cessation Announcement does not affect this outcome.

The position in respect of Transactions documented under the 2021 Definitions for Transactions with a Trade Date pre/post November 10, 2021 is substantively the same as for Swap Transactions documented under the 2006 Definitions with a Trade Date pre/post November 10, 2021 (see above).

⁴ See Footnote 3 above.

⁵ The substance of the JPY and USD Fallbacks Supplement is included in Version 3.0 of the ISDA 2021 Interest Rate Derivatives Definitions.

In respect of the non-publication of the JPY LIBOR Tokyo Swap Rate on December 31, 2021, the position is substantially the same as for Swap Transactions under the 2006 Definitions (see above).

Application of the ISDA Benchmarks Supplement to the Refinitiv Cessation Announcement

For the purposes of applying the ISDA Benchmarks Supplement, if the JPY LIBOR Tokyo Swap Rate is the Settlement Rate and/or the index referred to in the Floating Rate Option (such that it is a “Relevant Benchmark”), the Refinitiv Cessation Announcement will constitute an “Index Cessation Event” under the 2006 ISDA Definitions Benchmarks Annex to the ISDA Benchmarks Supplement and the provisions of the ISDA Benchmarks Supplement will therefore apply to transactions that incorporate the 2006 Definitions and the ISDA Benchmarks Supplement (in the case of the latter either directly or via the ISDA 2018 Benchmarks Supplement Protocol). This means that from the occurrence of the Index Cessation Event each party must act in good faith and use commercially reasonable efforts to seek to apply each applicable “Alternative Continuation Fallback” as set out in the ISDA Benchmarks Supplement.

However, if the terms of the JPY and USD Fallbacks Supplement apply to the Swap Transaction (whether via the TSR Fallbacks Amendments or otherwise), as both the updated “JPY-TSR-Reuters-10:00” and “JPY-TSR-Reuters-15:00” Rate Options as well as the updated Settlement Rate provisions relating to the JPY LIBOR Tokyo Swap Rate set out in the JPY and USD Fallbacks Supplement will include a reference to a concept defined or otherwise described as an “index cessation event”, a “Priority Fallback”, as defined in Section 1.1 (*Specific provisions for certain Relevant Benchmarks*) of the 2006 ISDA Definitions Benchmarks Annex to the ISDA Benchmarks Supplement, will apply. Therefore, the new fallbacks in the JPY and USD Fallbacks Supplement will apply in priority to the provisions of Section 1.2 (*Consequences of a Benchmark Trigger Event*) of the 2006 ISDA Definitions Benchmarks Annex to the ISDA Benchmarks Supplement. The provisions of Section 1.2 (*Consequences of a Benchmark Trigger Event*) of the 2006 ISDA Definitions Benchmarks Annex to the ISDA Benchmarks Supplement will consequently only apply (i) to the extent that the “Priority Fallback” (i.e., the fallback in the JPY and USD Fallbacks Supplement) fails to provide a means of determining the index level (although this is not expected), at which point each party must seek to apply one or more “Alternative Continuation Fallbacks” prior to the “Cut-off Date” or (ii) if a contract does not incorporate the terms of the JPY and USD Fallbacks Supplement and therefore a “Priority Fallback” does not apply.

Application of the IBOR Fallbacks Supplement and IBOR Fallbacks Protocol to the Refinitiv Cessation Announcement

The IBOR Fallbacks Supplement amends and restates certain IBOR Rate Options and related terms. “JPY-TSR-Reuters-10:00” and “JPY-TSR-Reuters-15:00” (which are the Rate Options for the JPY LIBOR Tokyo Swap Rate in the 2006 Definitions) are not Rate Options covered by the IBOR Fallbacks Supplement.

An Index Cessation Event under both the IBOR Fallbacks Supplement and the IBOR Fallbacks Protocol only applies to an Applicable Rate. The definition of “Applicable Rate”, as set out in Section 7.3(k) of the 2006 Definitions introduced by the IBOR Fallbacks Supplement, includes Yen LIBOR for the purposes of “JPY-LIBOR-FRASETT”, “JPY-LIBOR-BBA” and “JPY-LIBOR-BBA-Bloomberg” but not for the purposes of “JPY-TSR-Reuters-10:00 Rate” or “JPY-TSR-Reuters-15:00”, which are different benchmarks made up of transactions that reference JPY LIBOR, as well as other inputs. Consequently, the Refinitiv Cessation Announcement does not constitute an Index Cessation Event under the IBOR Fallbacks Supplement or the IBOR Fallbacks Protocol.