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ISDA response to the European Commission's consultation on the draft equivalence decisions for financial benchmarks in Japan

The International Swaps and Derivatives Association ('ISDA') and the Futures Industry Association ('FIA'), hereinafter 'The Associations', welcome the European Commission (EC)'s draft equivalence decisions to declare the regulatory and supervisory of framework of Japan, in accordance with the 'Financial Instrument and Exchange Act' (FIEA), as "equivalent" under Article 30 of the European Benchmarks Regulation (BMR).

Dynamic alignment

The Associations welcome that the legal approach taken for the equivalence decision for financial benchmarks in Singapore and Australia is also used for the equivalence decision with respect to Japan. We encourage the EC to follow the same approach for upcoming equivalence decisions. The Associations would like to highlight that the cross-references in Article 1 of the draft equivalence decision to the '*Specified Financial Benchmarks in accordance with the FIEA, as published in the Official Gazette...*' provides the most dynamic form of alignment and does not require Japanese authorities or the EC to update an equivalence decision in the event that a new benchmark is added to the regulatory and supervisory framework for financial benchmarks in Japan, or a benchmark's name is changed by its administrator.

The suggested approach would automatically bring benchmarks subject to the Japanese supervisory regime, under the relevant EU BMR equivalence decisions. This is particularly welcomed as it would provide market participants and regulators with the ability to continue to respond to market developments in a timely fashion, i.e. any change to the Japanese framework would be automatically reflected in the EU's equivalence framework for financial benchmarks.¹ For instance, the Japanese Yen Term RFR would be covered by the suggested equivalence approach as it is expected to become a Specified Financial Benchmark under Japanese law around mid-2021.

Low scalability

The Associations agree with the EC's assessment that Japanese Yen TIBOR and Euroyen TIBOR, administered in Japan, are frequently referenced by EU users, as outlined in Recital 4 of the draft equivalence decisions. However, Japanese and EU market participants are engaging in several financial market activities which also require the use of many other Japanese financial benchmarks. For instance, neither the Nikkei benchmarks nor the JPX Benchmarks are covered by the draft decisions despite being widely referenced by EU benchmarks users and independently assessed to be compliant with respect to the IOSCO Principles for Financial Benchmarks. Unfortunately, the equivalence decisions under BMR only cover benchmarks which are registered and supervised in third country jurisdictions.

¹ Under the assumption that the cooperation arrangement between the European Securities and Markets Authority (ESMA) and the Japanese Financial Services Agency ('JFSA') in accordance with BMR Article 30(4) is in place.

This means EU supervised entities will not be able to use currently widely referenced Japanese benchmarks after the third-country BMR transition expiry of end-2021, and would be disadvantaged vis-à-vis firms operating in other jurisdictions. Unlike previous expectations when the BMR was drafted, third country jurisdictions either a) opted for benchmark regulations covering the largest interest rate benchmarks or b) did not implement any framework for financial benchmarks. As ISDA previously noted in its response to the European Commission's consultation on the review of the Benchmarks Regulation:

- *“Equivalence is not a scalable solution because the vast majority of other jurisdictions have not introduced regulation similar to BMR.*
- *Where jurisdictions have introduced regulations, they have only covered systemically important interest rate benchmarks and occasionally FX benchmarks.*
- *This means that equivalence decisions, when they are given, are only provided on a benchmark-by-benchmark basis”*

In light of the above, given that Japan's regulatory framework with regards to financial services is known to be well defined, it is disappointing to note that an equivalence decision for financial benchmarks in Japan only covers two benchmarks. The Associations are not aware of any third country jurisdictions currently in the process of drafting or implementing legislation, ensuring the integrity of financial benchmarks, with such a wide scope as the EU BMR. Therefore, equivalence will remain characterised by extreme low scalability. To put this into perspective, it is important to note that the Index Industry Association estimates that there are over 2.9 million benchmarks in use globally.² Unlike equivalence decisions for trading venues under Regulation (EU) No 600/2014 ('MiFIR') or CCPs under Regulation (EU) No 648/2012 ('EMIR'), which increase EU market participants' landscape to conduct important activities, equivalence decisions under the BMR are restricted in scope, i.e. only provide compliance for a few benchmarks per jurisdictions, and are, thus, less beneficial. The Associations sincerely hope that the ongoing BMR review process will rectify this acknowledged shortcoming of the EU BMR's equivalence framework with a view to reinforcing the EU's competitiveness at global level.

About ISDA

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 900 member institutions from 72 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy

² <http://www.indexindustry.org/2019/10/15/index-industry-associations-third-annual-survey-finds-2-96-million-indexes-globally/>

and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org.

About FIA

[FIA](#) is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries as well as technology vendors, law firms and other professional service providers.

FIA's mission is to:

- support open, transparent and competitive markets,
- protect and enhance the integrity of the financial system, and
- promote high standards of professional conduct.

As the principal members of derivatives clearinghouses worldwide, FIA's clearing firm members play a critical role in the reduction of systemic risk in global financial markets.