Appendix 3

[Translation]

M E M O R A N D U M

TO: JBA TIBOR Administration

FROM: Masanori Sato, Hiroki Aoyama, and Akiko Okanari, attorneys-at-law
MORI HAMADA & MATSUMOTO

DATE: Feburary 20, 2017

RE: JBA TIBOR Reforms

You recently requested our opinion on the above-captioned matter. We have reviewed your questions and have come to the following conclusions.

1. Assumptions

For the purpose of this memorandum, we assumed the following facts.

JBA TIBOR Administration and JBA TIBOR

(a) Since its establishment on April 1, 2014, Ippan Shadan Hojin JBA TIBOR Administration (or JBA TIBOR Administration General Incorporated Association, "**JBATA**") has calculated and published the Japanese Yen TIBOR and Euroyen TIBOR (collectively, the "**JBA TIBOR**"). JBATA has defined and established the method for calculating and publishing the JBA TIBOR in the "JBA TIBOR Code of Conduct" and "JBA TIBOR Operational Rules" (collectively, the "**Code of Conduct**").

(b) JBA TIBOR is an interest rate benchmark, which is published to contribute to the development and vitalization of Japan's short-term financial markets by providing fair and reliable information. It is used or referred to as the benchmark for interest rates (the "**Base Rate**") in many existing agreements for loans, derivatives, and other financial transactions ("**Existing Agreements**").

(c) Under the Code of Conduct,[1] JBA TIBOR is calculated using a predetermined method, whereby reference banks submit to JBATA the rates (the "**Reference Rates**") which they deem to be the prevailing market rates assuming transactions between prime banks on the Japan unsecured call market (in the case of Japanese yen TIBOR) or on the Japan Offshore Market (in the case of Euroyen TIBOR) as of 11:00 a.m. JBATA excludes the two highest quotes and the two lowest quotes from the reference banks and averages the remaining rates. The JBA TIBOR is announced through public release pages of information providers selected by JBATA.

[1] Section 1 of the current Code of Conduct (as of the date of this memorandum)

Reforms of JBA TIBOR

(d) In July 2013, the International Organization of Securities Commissions ("**IOSCO**") issued the Principles for Financial Benchmarks ("**IOSCO Principles**"),[2] to be observed by financial benchmarks, including JBA TIBOR, and their administrators. Thereafter, IOSCO issued reports in July 2014[3] and February 2016[4] on the implementation of the IOSCO Principles by the administrators of major financial benchmarks, including JBATA.

The Financial Stability Board (the "**FSB**") also issued *Reforming Major Interest Rate Benchmarks*[5] in July 2014, on the FSB recommendations to develop and introduce alternative benchmarks which are more anchored to actual transactions.

(e) JBATA has been considering reforms to JBA TIBOR in light of the FSB's recommendations in *Reforming Major Interest Rate Benchmarks*. JBATA published the first Consultative Document[6] in December 2014 and the second Consultative Document[7] in August 2015, and received comments on the direction of JBA TIBOR reforms from users and stakeholders.

In the report on the second review of the implementation of the IOSCO Principles published in December 2016, IOSCO recommended that the JBA TIBOR reforms proposed in the second Consultative Document be implemented as early as possible, requiring JBATA to implement specific measures for the JBA TIBOR reforms to fully comply with the IOSCO Principles.

JBATA then published the third Consultative Document[8] in November 2016 towards the implementation of JBA TIBOR reform, and received comments on the proposed revision of the Code of Conduct.

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2 "Principles for Financial Benchmarks Final Report" (http://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf)

3 "Review of the Implementation of IOSCO's Principles for Financial Benchmarks by Administrators of Euribor, Libor and Tibor" (http://www.iosco.org/library/pubdocs/pdf/IOSCOPD444.pdf)

4 "Second Review of the Implementation of IOSCO's Principles for Financial Benchmarks by Administrators of EURIBOR, LIBOR and TIBOR" (http://www.iosco.org/library/pubdocs/pdf/IOSCOPD526.pdf)

5 "Reforming Major Interest Rate Benchmarks" (http://www.fsb.org/wp-content/uploads/r_140722.pdf)

6 "Promoting the JBA Tokyo Inter Bank Offered Rate ("JBA TIBOR") Reforms following reports by Financial Stability Board ("FSB") and International Organization of Securities Commissions ("IOSCO")" (http://www.jbatibor.or.jp/Consultation_Paper.pdf)

7 "Promoting the JBA Tokyo Inter Bank Offered Rate ("JBA TIBOR") Reforms" (http://www.jbatibor.or.jp/2nd_Conlultative_Document_J.pdf)

8 "Revision to the "JBA TIBOR Code of Conduct", etc. for Implementing the JBA Tokyo Inter Bank Offered Rate ("JBA TIBOR") Reforms" (http://www.jbatibor.or.jp/161130_3rd_Consultative_Document_J.pdf)

(f) JBATA revised the Code of Conduct and other rules, taking into consideration the comments received during the three public consultations. The reforms consist of (i) improving transparency by standardizing and clarifying the process of calculating and determining the Reference Rates (Revision Point No. 1); (ii) changing the timing of the JBA TIBOR publication (Revision Point No. 2); (iii) discontinuing the two-month tenor (Revision Point No. 3); and (iv) discontinuing simultaneous publication of individual Reference Rates submitted by the reference banks (Revision Point No. 4). Details of the revised Code of Conduct are provided in the attached *Code of Conduct Revision* (the "**Revision**").

(g) The definitions and names of Japanese Yen TIBOR and Euroyen TIBOR were not changed in the revised Code of Conduct.

In view of the amendment, we refer to JBA TIBOR before and after the effectivity of the amendment as "**Current TIBOR**" and "**TIBOR+**," respectively.

2. Questions

(1) Where there is a provision that refers to JBA TIBOR as the Base Rate (an "**Existing Reference Provision**") in an Existing Agreement, can the Existing Reference Provision be treated as referencing TIBOR+ following the revision of the Code of Conduct even without any specific amendment of the Existing Agreement?

(2) Where there is an Existing Reference Provision in an Existing Agreement, can the Existing Agreement be interpreted as void or voidable on the grounds that the interest rate benchmark referred to in the Existing Reference Provision no longer exists?

3. Conclusions

(1) A reasonable interpretation of the Existing Agreements would lead to the conclusion that the Existing Reference Provisions operate with reference to TIBOR+ following the revision of the Code of Conduct even without any specific amendment to Existing Agreements, unless there is an agreement to the contrary.

(2) Unless there is an agreement to the contrary, Existing Agreements would not become void or voidable on the grounds that the interest rate benchmark referred to in Existing Reference Provisions no longer exists following the revision of the Code of Conduct.

4. Analysis

(1) Response to Question (1)

We considered your question from the perspectives of form and substance.

In terms of form, the definitions and names of the JBA TIBOR rates will not change even after the revised Code of Conduct becomes effective. From this perspective, there is nothing to prevent the parties from considering the Existing Reference Provisions as references to TIBOR+ after the effectivity of the amendment of the Code of Conduct in the absence of any specific amendment to the Existing Agreements.

In terms of substance, while the definitions and names of the JBA TIBOR rates will not change, if TIBOR+ has such significantly different attributes from the Current TIBOR that the purpose of Existing Reference Provisions would not be achieved with TIBOR+, then one can argue that Existing Reference Provisions should not be interpreted to refer to TIBOR+. However, we do not consider the difference between Current TIBOR and TIBOR+ to be so significant as to give rise to this issue for the following reasons:

(a) The revision of the Code of Conduct to standardize and clarify the calculation and determination of Reference Rates (Revision Point No. 1) aims to make JBA TIBOR more anchored to actual transactions, following the request by FSB, and merely provides for certain rules on the order of transactions and figures used by reference banks to calculate their own Reference Rates. This does not change the reference transactions and figures used, or cause significant changes to the Reference Rates; neither does it substantially change or remove the existing standards to be followed by reference banks in calculating Reference Rates under the current Code of Conduct.

(b) The revision of the Code of Conduct to change to the timing of the JBA TIBOR publication (Revision Point No. 2) merely accounts for the time required to handle the information to publish TIBOR+ in accordance with the revised Code of Conduct. The reference banks are still required to submit to JBATA the "rates which reference banks deem as prevailing market rates assuming transactions between prime banks on the Japan unsecured call market (or the Japan Offshore Market in the case of Euroyen TIBOR) as of 11:00 a.m., Tokyo time."[9] This does not affect the actual benchmark to be published, or change the nature of JBA TIBOR as a benchmark.[10]

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9 Sections 1(1) and (2) of the Attached Code of Conduct

10 Some Existing Agreements contain a provision which defines the Base Rate such as "JBA TIBOR (corresponding to the interest rate calculation period) published by JBATA at 11:00 a.m., or if after 11:00 a.m., then as close as possible to 11:00 am" on the base rate determination date. Revision Point No.2 only changes the publication time from noon to 1:00

(c) The discontinuation of the two-month tenor (Revision Point No. 3)[11] does not affect the existence or nature of JBA TIBOR as a benchmark. While parties to Existing Agreements using a two-month tenor would have to determine how to calculate the Base Rate when the two-month tenor is discontinued, whether by interpreting the Existing Agreements or separate agreements, this is merely due to the abolition of one of the tenors of JBA TIBOR, and not because of a change in the nature of JBA TIBOR as a benchmark.

(d) The discontinuation of the simultaneous publication of individual Reference Rates submitted by reference banks (Revision Point No. 4) does not affect the calculation of the Reference Rate itself.

Thus, in the absence of an agreement to the contrary, it would be reasonable to consider that Existing Reference Provisions operate with reference to TIBOR+ following the revision of the Code of Conduct even without any specific amendment to Existing Agreements.

(2) Response to Question (2)

Assuming there is no agreement to the contrary, since it would be generally reasonable to consider that Existing Reference Provisions operate with reference to TIBOR+ after the revision of Code of Conduct takes effect even without any specific amendment to Existing Agreements, we do not believe Existing Agreements will be deemed void or voidable on the grounds that the interest rate benchmark referred to in Existing Reference Provisions no longer exists as a result of the revision of Code of Conduct.

Note:

This Memorandum has been prepared at the request of JBA TIBOR Administration for the reference of JBA TIBOR Administration and market participants only. This memorandum must not be used for any other purpose. Market participants should make decisions based on their own judgment upon consultation with attorneys as necessary with respect to any specific matter. The authors are not liable to any person other than JBA TIBOR Administration in relation to this Memorandum.

p.m. and, considering that the rate will only be published once per day, the benchmark will not change on any given date under such definition of the Base Rate.

11 Based on the details of the revision, interim measures are in place for the discontinuation of the two-month tenor, which will continue to be published until the last business day of March 2019.

Attachment: Code of Conduct Revision

(The Attachment is omitted)