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Results of Public Consultation on fallback issues for JBA TIBOR

March 15, 2023

JBA TIBOR Administration

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1. Introduction

(1) Executive summary

To fully be compliant with *Principles for Financial Benchmarks – Final report –* ("IOSCO Principles")[1] published by the International Organization of Securities Commissions, JBA TIBOR Administration ("JBATA") (the Chairperson: Satoshi INOUE) has launched an initiative[2] called "Second Phase of JBA TIBOR Reform".

In August 2022, with a primary focus on the recognized issues for IOSCO Principle 13 (Transition), JBATA published *Public Consultation on fallback issues for JBA TIBOR* (the "Public Consultation")[3] to seek to solicit comments from a wide range of market participants on appropriate benchmark replacement to be referenced as an alternative to JBA TIBOR.[4]

In principle, for cash products (loans and bonds) referencing Japanese Yen TIBOR or Euroyen TIBOR subject to applicable laws in Japan,[5] the Public Consultation provided JBATA's proposal with respect to (i) conditions on which fallback provisions are activated (triggers), (ii) options of fallback rates, and (iii) methodologies of the spread adjustment between JBA TIBOR and the fallback rate, and invited market participants' views.

Through this consultation, JBATA received feedback from 11 respondents (10 financial institutions and 1 trade association[6]) by the end of the consultation period (the end of September 2022). In summary, respondents expressed broad support for JBATA's proposal with respect to almost all consultation questions. The following section provides a summary of the consultation results.

(i) Potential trigger events
a. Permanent Cessation Triggers

All respondents supported JBATA's following proposal: "one option would be to assume an announcement stating that JBATA has ceased or will cease to provide JBA TIBOR permanently or indefinitely as a potential trigger event, and at least include that trigger event in the fallback provisions". Almost all respondents supported the sample fallback language proposed by JBATA while one respondent suggested to make some modifications to sample

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[1] *Principles for Financial Benchmarks -Final report-* (https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf)
[2] See the following URL. (https://www.jbatibor.or.jp/english/reform/)
[3] Public Consultation on fallback issues for JBA TIBOR (https://www.jbatibor.or.jp/english/Public%20Consultation%20on%20fallback%20issues%20for%20JBA%20TIBOR.pdf)
[4] "JBA TIBOR" in the Results of the Public Consultation collectively means "Japanese Yen TIBOR and Euroyen TIBOR."
[5] Since fallbacks for derivative transactions have been already discussed by ISDA, these transactions are not addressed in the Public Consultation (see footnote 44 of the Public Consultation).
[6] The trade association whose members are primarily financial institutions.

fallback language in Japanese with a view to clarifying the timing of the trigger.

All respondents also supported JBATA's following proposal: "the contracting parties may also seek to ensure consistency with the triggers included for derivatives governed by the ISDA Master Agreement". Majority of respondents supported the sample fallback language presented by JBATA while one of the two remaining respondents suggested to make some modifications to sample fallback language in Japanese with a view to clarifying the timing of the trigger.

b. Pre-cessation triggers related to the loss of benchmark's representativeness

All respondents supported JBATA's proposal: "it is not necessarily required to include the loss of representativeness of JBA TIBOR in the fallback provisions".

c. Other triggers

All respondents supported JBATA's following proposal: "All of these other triggers are not considered necessary to be included in the fallback provisions".

(ii) Benchmark replacement for Japanese Yen TIBOR

a. Fallback rate options and setting priority options for fallback rates

Almost all respondents supported JBATA's proposal: "the fallback rate options for cash products referencing Japanese Yen TIBOR would be compounded TONA (fixing in arrears) and term RFR[7]". All respondents supported JBATA's proposal: "it is considered appropriate not to include Euroyen TIBOR in the fallback rate options".

All respondents supported Option 1 (Compounded TONA (fixing in arrears)) as a setting priority option. Majority of the respondents also supported Option 2 (the waterfall methodology which sets term RFR as the first priority and compounded TONA (fixing in arrears) as the second priority).

b. Calculation methodology for adjustment spread

All respondents supported JBATA's proposal: "In the case where compounded TONA (fixing in arrears) or term RFR is selected as the fallback rate, it would be an option to use the historical five-year median spread adjustment methodology to calculate the adjustment spread".

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7 Same as the Public Consultation, unless otherwise specified in the Results of the Public Consultation, term RFR represents TORF.

(iii) Benchmark replacement for Euroyen TIBOR

a. Fallback rate options and setting priority options for fallback rates

Almost all respondents supported JBATA's proposal: "the fallback rate options for cash products referencing Euroyen TIBOR would be compounded TONA (fixing in arrears), term RFR and Japanese Yen TIBOR".

All respondents supported Option 1 (Compounded TONA (fixing in arrears)) as a setting priority option. Majority of the respondents also supported Option 2 (the waterfall methodology which sets term RFR as the first priority and compounded TONA (fixing in arrears) as the second priority).

Responses were evenly split between support and opposition for the waterfall methodology which sets Japanese Yen TIBOR as the first priority, term RFR as the second priority, and compounded TONA (fixing in arrears) as the third priority.

b. Calculation methodology for adjustment spread

All respondents supported JBATA's proposal: "In the case where compounded TONA (fixing in arrears) or term RFR is selected as the fallback rate, "it would be an option to use the historical five-year median spread adjustment methodology to calculate the adjustment spread".

All respondents supported JBATA's proposal: "with respect to spread adjustments arising from using Japanese Yen TIBOR as the fallback rate, at this stage, it would be difficult to provide a specific spread adjustment methodology". No comment was received regarding a particular spread adjustment methodology for the option of using Japanese Yen TIBOR as the fallback rate.

(iv) Comments on other issues

Taking into consideration that JBATA is engaging in discussions on the possibility of permanent cessation of Euroyen TIBOR which is currently deemed as the most likely option, some respondents requested to provide relevant information in advance. Some respondents also commented on the procedures for incorporating fallback provisions into contracts referencing Japanese Yen TIBOR and associated practical issues (burdens).

Details of feedback, JBATA's position and other related topics are described in section 2 onwards.

With the publication of this document as Results of Public Consultation on fallback issues for JBA TIBOR (the "Results of the Public Consultation") and the subsequent revision of Policy on Material Changes in the Definition or Calculation Method and Permanent

Cessation of JBA TIBOR[8] reflecting the Public Consultation results, JBATA will evaluate that the issues recognized for IOSCO Principle 13 (Transition) have been resolved.[9]

The users of JBA TIBOR are expected to use the Results of the Public Consultation as a reference and work on the introduction of fallback provision for contracts referencing JBA TIBOR and further enhance the robustness of contracts.

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8 As described later in 5.(1), JBATA plans to revise relevant rules and guidelines without delay in consideration of the Results of the Public Consultation. The revised title of this policy to be applied after the revision is used.
(Reference: Previous title)
"Policy on Material Changes in the Definition or Calculation Method and Continuous Suspension of the JBA TIBOR Publication"

9 "Compliance with 'IOSCO Principles for Financial Benchmarks (19 principles)' " for the fiscal year 2022 will be published on our website in the near term.

(2) Disclaimer

As stated in Reminders for Using JBA TIBOR and “Policy on Material Changes in the Definition or Calculation Method and Permanent Cessation of JBA TIBOR”, it is preferable that alternative benchmarks selected in preparation for a material change and permanent cessation of JBA TIBOR shall align with the elements considered as significant by the contracting parties (e.g. consistency with related transactions and compatibility with current practices). The users of JBA TIBOR are recommended to reach an agreement related to alternative benchmarks between the contracting parties in advance.

While JBATA’s position on fallback issues is described in the Results of the Public Consultation based on responses to the Public Consultation, it will not have any binding effects on individual contracts referencing JBA TIBOR, and JBATA does not recommend any particular rates and methodologies. In addition, it does not intend to preclude the contracting parties from reaching an agreement on the terms and conditions that are different from this document.

Please note that the terms and conditions of a contract should be determined through negotiation in good faith between the parties in consideration of their intention.

JBATA is not responsible for any damages or losses resulting directly or indirectly from the Public Consultation and its results.

2. Results of the Public Consultation

(1) Potential trigger events

Triggers are categorized into the following three types: (i) “Permanent Cessation Triggers” which assume the permanent cessation of interest rate benchmarks, (ii) “Pre-cessation Triggers” which relate to the loss of representativeness, and (iii) Other triggers.[10]

(i) Permanent Cessation Triggers

The following consultation questions were made with respect to Permanent Cessation Triggers given that (a)these triggers are applicable to JBA TIBOR in derivatives governed by the ISDA Master Agreement (“ISDA Derivatives”), (b)the working groups of respective jurisdictions working on LIBOR 5 currencies and EURIBOR have recommended to include these triggers in the fallback provisions for cash products referencing JBA TIBOR, and (c)it is also highly likely that an entity announcing that JBA TIBOR has been or will be ceased to be provided permanently or indefinitely would be JBATA.

> [Consultation question 1]
> Do you support JBATA’s view that, at this stage, one option would be to assume an announcement stating that JBATA has ceased or will cease to provide JBA TIBOR permanently or indefinitely as a potential trigger event, and at least include that trigger event in the fallback provisions?

Response	Number of respondents
Yes	11
No	0
No opinion	0

As a result, all respondents[11] supported JBATA’s proposal. Some of respondents provided following reasons for their response.

- It is necessary to at least include Permanent Cessation Triggers, consistent with the result of consideration for cash products referencing LIBOR or EURIBOR or with ISDA’s determinations for derivatives. Given the JBA TIBOR Operational Rules and applicable laws in Japan, it is highly likely that an entity announcing that JBA TIBOR has been or will be ceased to be provided permanently or indefinitely would be JBATA.

[10] It is necessary to note that trigger events covered in the Public Consultation are those that are applicable only to “permanent cessation” of “all” JBA TIBOR tenors, and the permanent cessation of certain tenors at the discretion of JBATA does not constitute the trigger event relating to all tenors covered in the Public Consultation (see footnote 47 of the Public Consultation).

[11] Respondents answering “Yes” or “No”. The same shall apply hereinafter.

- Since the trigger event is an important element to determine the conditions for transition to benchmark replacement, it needs to be dependent on published events, and be objectively drafted in precise terms in the fallback provisions.

[Consultation question 2]
If your answer to Question 1 is “Yes,” do you support the following language illustrated as sample by JBATA?

[Sample language]
A public statement or publication of information by JBATA (or an organization acting on its behalf), stating that JBATA has ceased or will cease to provide JBA TIBOR permanently or indefinitely (provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide.)

Response	Number of respondents
Yes	9
No	1
No opinion	1

As a result, almost all respondents supported sample fallback language proposed by JBATA. Some of respondents provided following reasons for their response.

- It is consistent with the result of consideration for cash products referencing LIBOR or EURIBOR or with ISDA’s determinations for derivatives.
- It is objectively drafted in precise terms and meets the purpose of the language related to trigger events.

One of the respondents who chose “No” provided the modified sample fallback language in Japanese with a view to clarifying the timing of the trigger. Given that this would help clarify its intent, JBATA partially modified sample fallback language only in Japanese.

[Consultation question 3]
Do you support JBATA’s view that, if the contracting parties, in particular, focus on ensuring consistency with the triggers included for derivatives transacted based on the ISDA Master Agreement?

Response	Number of respondents
Yes	11
No	0
No opinion	0

As a result, all respondents supported JBATA's proposal. Some of respondents provided following reasons for their response.

- The 2021 ISDA Interest Rate Derivatives Definitions stipulates Permanent Cessation Triggers that are based on the announcement by non-administrator entities. Given the characteristics of contracts, types of contracting parties, and other relevant factors, ensuring consistency with such triggers would be also important.
- Since derivative transactions based on the ISDA Master Agreement may be used to hedge cash products referencing JBA TIBOR, it is also important to ensure consistency with the triggers included for ISDA derivative transactions .
- Since the triggers included for derivatives transacted based on the ISDA Master Agreement are widely recognized and market participants are well versed in such triggers, it is reasonable to ensure consistency with such triggers.

[Consultation question 4]
If your answer to Question 3 is "Yes," do you support the following language illustrated as sample by JBATA?

[Sample language]
A public statement or publication of information by the regulatory supervisor of JBATA, central banks with jurisdiction over JBA TIBOR currencies, a resolution agency of JBATA, a competent court of jurisdiction with insolvency or resolution authority over JBATA, a bankruptcy trustee with jurisdiction over JBATA, or other organizations with similar authority stating that JBATA has ceased or will cease to provide JBA TIBOR permanently or indefinitely (provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide JBA TIBOR.)

Response	Number of respondents
Yes	8
No	2
No opinion	1

As a result, the majority of the respondents supported sample fallback language proposed by JBATA. One of respondents provided following reason for their response.

- The sample fallback language is in line with the trigger events defined in the 2021 ISDA Interest Rate Derivatives Definitions.

Two respondents who chose "No" provided the following comments.

As with the comment on sample fallback language in Question 2, the first comment is provided with a view to clarifying the timing of the trigger. Since this would help clarify the intent of the language, JBATA partially modified sample fallback language only in Japanese.

- We generally support sample fallback language in Japanese proposed by JBATA. However, it can be interpreted that the trigger is at the time of a "publication of information that JBATA will announce that JBATA has ceased or will cease to provide JBA TIBOR," making the timeline unclear.

As for the second comment, ensuring consistency with the triggers included for derivatives transacted based on the ISDA Master Agreement that are used for hedging cash products would lead to facilitating fallbacks.

- The disproportionate wide range of entities announcing the cessation may cause confusion and uncertainty. We feel that it is sufficient and clear to designate either the administrator or the supervisor of the administrator as an entity announcing the cessation.

(ii) Pre-cessation Triggers which relate to the loss of representativeness

The following consultation question was made with respect to Pre-cessation Triggers which relate to the loss of representativeness by primarily taking into consideration that (a) JBA TIBOR is regarded as a third-country benchmark and is not a critical benchmark under the Benchmark Regulation (BMR[12]) and a circumstance in which Financial Services Agency (JFSA) makes an assessment of benchmark's representativeness of JBA TIBOR under the BMR would not be expected, and that (b) with regard to derivatives governed by the ISDA Master Agreement, the index cessation events defined in the 2021 ISDA Interest Rate Derivatives Definitions do not specify a non-representativeness trigger as a trigger for JBA TIBOR.

[12] This refers to both UK BMR and EU BMR.

[Consultation question 5]
Do you support JBATA's view that, at this stage, it would not be necessarily required to assume an event in which JFSA, which is JBATA's supervisory regulator, (or an organization acting on its behalf) determines that JBA TIBOR is no longer representative and issues a public statement thereof, and include this event in the fallback provisions for cash products referencing JBA TIBOR? (see below for specific sample language).

[Sample language]
In the case that the regulatory supervisor (or an organization acting on its behalf) of the JBA TIBOR administrator has issued a public statement announcing that, in its view, JBA TIBOR is no longer representative, or will no longer be representative of the underlying market it purports to measure, and does not reflect the underlying market or economic reality (or, in the designated point in the future), and such representativeness will not be restored.

Response	Number of respondents
Yes	9
No	0
No opinion	2

As a result, all respondents supported JBATA's proposal. Some of respondents provided following reasons for their response.

- It is not necessary to include this event in the fallback provisions because JBA TIBOR is not a critical benchmark under the BMR and the 2021 ISDA Interest Rate Derivatives Definitions does not include a non-representativeness event as a trigger for JBA TIBOR.
- It is not necessarily required to include the event in the fallback provisions for cash products but pros and cons should be discussed.

(iii) Other triggers
As for other triggers, the working groups of each jurisdiction working on LIBOR 5 currencies and EURIBOR do not recommend including in the fallback provisions (or recommend that they should not be included). JBATA, therefore, proposed that all of these other triggers are not considered necessary to be included in the fallback provisions as trigger events for cash products referencing JBA TIBOR, and made the following consultation questions.

[Consultation question 6]
Do you support JBATA's view that it would not be necessary to include the potential event specified below in the fallback provisions as a trigger event for cash products

referencing JBA TIBOR?

[Potential trigger event]
In the case that the administrator of JBA TIBOR has determined to calculate JBA TIBOR based on any of a policy or arrangement related to a. a reduction in the number of reference banks, b. other contingency measures, and c. fallback, and JBA TIBOR is calculated based on that policy or arrangement in either of the following: (a) a situation or an event triggering such a determination is not temporary, or (b) JBA TIBOR is calculated under that policy or arrangement at least for a period longer than [one month].

Response	Number of respondents
Yes	9
No	0
No opinion	2

As a result, all respondents supported JBATA's proposal. Some of respondents provided following reasons for their response.

- It is not necessary to include this kind of potential trigger event given that the result of consideration for cash products referencing LIBOR or EURIBOR does not recommend including it in the fallback provisions (or recommends that it should not be included) as a trigger event.
- From the perspective of focusing on ensuring consistency with ISDA Derivatives, it is preferable to not include any events that are not included in the fallback provisions for ISDA Derivatives.
- Given that trigger events need to be dependent on published events and be objectively drafted in precise terms in the fallback provisions, it is likely that this event which requires negotiation and agreement on the definition of "a certain period" would not be appropriate as a trigger event.
- There is not an industry consensus on the conditions of these kind of trigger events (particularly, details from quantitative perspectives). The event should not be included in the fallback provisions for cash products unless clear conditions that can be decided objectively based on publicly available information, are introduced.

[Consultation question 7]
Do you support JBATA's view that it would not be necessary to include the potential event specified below in the fallback provisions as a trigger event for cash products referencing JBA TIBOR?

[Potential trigger event]
In the case that JBA TIBOR has become unlawful for any reasons under the laws and regulations applicable to the contracting parties.

Response	Number of respondents
Yes	9
No	0
No opinion	2

As a result, all respondents supported JBATA's proposal. Some of respondents provided following reasons for their response.

- It is not necessary to include the event given that the result of consideration for cash products referencing LIBOR or EURIBOR does not recommend including it in the fallback provisions (or recommends that it should not be included) as a trigger event.
- From the perspective of focusing on ensuring consistency with ISDA Derivatives, it is preferable to not include any events that are not included in the fallback provisions for ISDA Derivatives.
- It is not necessarily required to include the event in the fallback provisions for cash products. However, given that, in many cases, it is included in the fallback provisions for products mainly in the derivatives market and the bond market, pros and cons of introducing it should be discussed, as necessary.

[Consultation question 8]
Do you support JBATA's view that it would not be necessary to include the potential event specified below in the fallback provisions as a trigger event for cash products referencing JBA TIBOR?

[Potential trigger event]
In the case that JBA TIBOR is permanently no longer published, without any previous official announcement by the regulatory supervisor or JBATA.

Response	Number of respondents
Yes	9
No	0
No opinion	2

As a result, all respondents supported JBATA's proposal. Some of respondents provided following reasons for their response.

- It is not necessary to include the event given that the result of consideration for cash products referencing LIBOR or EURIBOR does not recommend including it in the fallback provisions (or recommends that it should not be included) as a trigger event.
- It is not necessary to include the event because JBATA currently does not expect any circumstances in which JBA TIBOR is permanently no longer published without any previous official announcement, and therefore this event is expected to be highly unlikely to occur.
- From the perspective of focusing on ensuring consistency with ISDA Derivatives, it is preferable to not include any events that are not included in the fallback provisions for ISDA Derivatives.
- It is difficult to objectively determine whether the event has occurred and a certain level of judgement by the party designated by the contract would be required. It is therefore not necessary to include the event.

[Consultation question 9]
Do you support JBATA's view that it would not be necessary to include the potential event specified below in the fallback provisions as a trigger event for cash products referencing JBA TIBOR?

[Potential trigger event]
In the case that a material change in the JBA TIBOR methodology has occurred.

Response	Number of respondents
Yes	8
No	0
No opinion	3

As a result, all respondents supported JBATA's proposal. Some of respondents provided following reasons for their response.

- It is not necessary to include the event given that the result of consideration for cash products referencing LIBOR or EURIBOR does not recommend including it in the fallback provisions (or recommends that it should not be included) as a trigger event.
- Under the 2021 ISDA Interest Rate Derivatives Definitions, a material change in a financial benchmark is not included as a trigger event, and therefore the contracting parties will continue to reference a changed financial benchmark unless otherwise

agreed on between those contracting parties. From the perspective of ensuring consistency with ISDA Derivatives, it is not necessary to include the event.

- The contract should stipulate that “even if the event has occurred, the contracting parties shall continue to reference a changed financial benchmark unless otherwise agreed on between them”.

[Consultation question 10]
Do you support JBATA’s view that it would not be necessary to include the potential event specified below in the fallback provisions as a trigger event for cash products referencing JBA TIBOR?

[Potential trigger event]
In the case that the contracting parties choose to activate a fallback prior to the cessation of JBA TIBOR or losing the representativeness without relying on objective circumstances.

Response	Number of respondents
Yes	7
No	0
No opinion	4

As a result, all respondents supported JBATA’s proposal. Some of respondents provided following reasons for their response.

- It is not necessary to include the event given that the result of consideration for cash products referencing LIBOR or EURIBOR does not recommend including it in the fallback provisions (or recommends that it should not be included) as a trigger event.

- From the perspective of focusing on ensuring consistency with ISDA Derivatives, it is preferable to not include any events that are not included in the fallback provisions for ISDA Derivatives.

- The provision is often referred to as the Early Opt-in Election in contracts. The Early Opt-in Election is not a “trigger” that will be automatically activated by the decision made based on external objective facts but is a provision that specifies the contracting parties’ right to elect to transition to alternative benchmarks at their discretion. Whether to include the Early Opt-in Election in the contract for cash products should be considered by the contracting parties.

JBATA's position

Based on responses to the Public Consultation, it would be appropriate to at least include in the fallback provisions the Permanent Cessation Triggers that assume an announcement stating that JBATA has ceased or will cease to provide JBA TIBOR permanently or indefinitely.

When including the trigger in the fallback provisions, the sample language set forth below could be referenced. This sample language was presented in the Public Consultation and was supported by the respondents.

- ✓ A public statement or publication of information by JBATA (or an organization acting on its behalf), stating that JBATA has ceased or will cease to provide JBA TIBOR permanently or indefinitely (provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide.)

If the contracting parties focus on ensuring consistency with ISDA Derivatives when including the Permanent Cessation Triggers, it is recommended that its inclusion in the fallback provisions in reference to the following sample fallback language be considered in addition to the sample fallback language provided above. This sample fallback language was presented in the Public Consultation and was supported by the respondents.

- ✓ A public statement or publication of information by the regulatory supervisor of JBATA, central banks with jurisdiction over JBA TIBOR currencies, a resolution agency of JBATA, a competent court of jurisdiction with insolvency or resolution authority over JBATA, a bankruptcy trustee with jurisdiction over JBATA, or other organizations with similar authority stating that JBATA has ceased or will cease to provide JBA TIBOR permanently or indefinitely (provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide JBA TIBOR.)

With respect to Pre-cessation Triggers which relate to the loss of representativeness, it would not be necessarily required to include them in the fallback provisions. It would therefore be appropriate for the contracting parties to discuss optionally on whether to include such triggers.

With respect to other triggers, it would not be necessary to include them in the fallback provisions.

(2) Benchmark replacement for Japanese Yen TIBOR

JBATA conducted the following consultation questions with respect to the fallback rate options, setting priority options, and spread adjustment methodology related to cash products (loans and bonds) referencing Japanese Yen TIBOR in light of the results of international discussions.

(i) Fallback rate options

[Consultation question 11]
Do you support JBATA's view that it is considered appropriate not to include Euroyen TIBOR for which the discontinuation by the end of December 2024 has been discussed in the fallback rate options for the cash products referencing Japanese Yen TIBOR?

Response	Number of respondents
Yes	10
No	0
No opinion	1

As a result, all respondents supported JBATA's proposal. Some of respondents provided following reasons for their response.

- From the perspectives of the stability and robustness of fallbacks, it would be appropriate to not include in the fallback rate options Euroyen TIBOR for which the discontinuation is being discussed as the most likely option.
- Including less liquid benchmark clearly into the fallback rate options would give rise to potential uncertainty.

[Consultation question 12]
Do you support JBATA's view that, in light of the results of discussions made globally, the fallback rate options for cash products referencing Japanese Yen TIBOR would be compounded TONA (fixing in arrears) and term RFRs?

Response	Number of respondents
Yes	10
No	1
No opinion	0

As a result, almost all respondents supported JBATA's proposal. Some of respondents provided following reasons for their response.

- Given the discussions on the transition away from Japanese Yen LIBOR by the Cross-

Industry Committee on Japanese Yen Interest Rate Benchmarks as well as the discussions to date regarding LIBOR or EURIBOR by respective jurisdictions, including RFR-based benchmarks in the option would be consistent with them.

- Since compounded TONA (fixing in arrears) is not necessarily available to a broad range of corporates, JBATA is requested to not define as the only option.
- The liquidity and transaction volume of the underlying markets of TORF are extremely low, resulting in a significantly limited amount of market data for the rate calculation. In many cases, TORF continues to rely on the previous day's data, instead of the market data of current day. As long as such situation continues, uncertainty as a benchmark in terms of the reliability and robustness remains for Japanese yen term RFR. Therefore, the contracting parties should carefully assess and consider whether it is appropriate to determine Japanese yen term RFR as a fallback rate for cash products referencing Japanese Yen TIBOR.

The one respondent who chose "No" provided the following comment.

- Assuming the cases of bonds, instead of the waterfall methodology, it is preferable to take a discretionary approach whereby the benchmark selected by the issuer, etc. is used as a fallback rate. The application of waterfall methodology has no benefits because it requires explanations for customers on a complicate definition of bonds . We therefore suggest an approach that will room for flexibility and determine a fallback rate according to the customer's request provided that the customer's consent is obtained.

The Public Consultation only discussed benchmark replacement in the hardwired approach, while JBATA does not intend to preclude contracting parties from taking an approach to select fallback rates at the discretion of the issuer, etc. (the same shall apply to the consultation questions 16, 21 and 26).

(ii) Setting priority options for fallback rates

[Consultation question 13] If your answer to Question 12 is "Yes," do you support JBATA's following view on Option 1 related to the fallback rates for cash products referencing Japanese Yen TIBOR? [Option 1] Compounded TONA (fixing in arrears) * Option 1 sets liquid and robust compounded TONA (fixing arrears) as the fallback rate.

Response	Number of respondents
Yes	8
No	0
No opinion	3

As a result, all respondents supported JBATA's proposal. Some of respondents provided following reasons for their response.

- We support JBATA's proposal because taking into consideration that compounded TONA (fixing in arrears) is liquid and robust and it is consistent with the fallback for derivatives governed by the ISDA Master Agreement, setting compounded TONA (fixing arrears) as the fallback rate would be appropriate.
- Since compounded TONA (fixing in arrears) cannot necessarily be available by a broad range of corporates, JBATA is requested to not provide Option 1 as the only option.
- Option 1 would be appropriate for bonds and structured products for which ensuring consistency with derivatives is more focused on.

[Consultation question 14]
If the answer to Question 12 is "Yes," do you support JBATA's following view on Option 2 in relation to the fallback rates for cash products referencing Japanese Yen TIBOR?
[Option 2]
1^{st} priority: Term RFRs
2^{nd} priority: Compounded TONA (fixing in arrears)
* Option 2 assumes specific cases where the use of term RFRs is preferred. Term RFRs are set as the first priority, and if term RFRs cannot be used, the second priority rate, i.e. compounded TONA (fixing in arrears), functions as the backstop.

Response	Number of respondents
Yes	8
No	2
No opinion	1

As a result, the majority of the respondents supported JBATA's proposal. Some of respondents provided following reasons for their response.

- Setting compounded TONA (fixing in arrears) as the second priority rate would ensure the robustness of fallbacks.
- It is likely that issuers other than financial institutions (e.g. corporates) would seek to set term RFR as the first priority because the benchmark does not involve operations such as the calculation based on "compounding" or "fixing in arrears".

Two respondents who chose "No" provided the following comments.

- Option 2 undermines consistency between derivatives and loans.
- Some borrowers will prefer the use of term RFR because of unavailability of

compounded TONA (fixing in arrears). JBATA therefore could set those rates to be fixed in advance, such as compounded rate (fixing in advance), as the second priority.

As mentioned in the Public Consultation's footnote 67, when setting term RFR as the first priority, compounded TONA (fixing in advance) could be set as the second priority, but it should be noted that it differs from ISDA Derivatives' standard fallbacks.

[Consultation question 15]
In relation to questions 13 and 14, do you support JBATA's view that, if the waterfall methodology is applied to loans referencing Japanese Yen TIBOR, the "rate deemed as suitable (after appropriately considering recommendations by the regulatory supervisor, etc. or market convention) and notified by the lender to the borrower" can be added to the subordinate priority level of each setting priority option as specified in the footnote 63?

Response	Number of respondents
Yes	8
No	0
No opinions	3

As a result, all respondents supported JBATA's proposal. Some of respondents provided following reasons for their response.

- It is consistent with the waterfall methodology of fallback rates recommended as the fallback for loans by the Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks in their discussions on the transition away from Japanese Yen LIBOR.
- We consider that the consistency with the fallback for loans referencing Japanese Yen LIBOR should be ensured. However, there are some cases (e.g. structured loans) where the borrower takes the initiative for determination, and therefore the rate would not be always notified by the "lender".

While the Public Consultation assumes normal loans, the levels subordinate to the priority may be changed according to the product's characteristics obviously.

[Consultation question 16]
In relation to questions 13 and 14, do you support JBATA's view that, if the waterfall methodology is applied to bonds, the "benchmark recommended by relevant committees convened by authorities," the "fallback rate for the benchmark to be replaced as defined in the ISDA Definitions," and the "benchmark selected by the issuer, etc." can be added to the subordinate priority levels of each setting priority option as specified in the footnote 64?

Response	Number of respondents
Yes	7
No	1
No opinion	3

As a result, almost all respondents supported JBATA's proposal. One of respondents provided following reason for their response.

- It is consistent with the waterfall methodology of fallback rates recommended as the fallback for bonds by the Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks in their discussions on the transition away from Japanese Yen LIBOR.

The one respondent who chose "No" provided the following comment.[13]

- We consider that the benchmark selected by the issuer, etc. (discretionary approach) can be set as the first priority. The waterfall methodology has no benefits as applying this methodology will complicate the definition of bonds which will be explained to customers. We suggest an approach that will allow us to have some leeway and determine a fallback rate according to the customer's request provided that the customer's consent is obtained.

(iii) Calculation method of the adjustment spread and transition period

[Consultation question 17]
In the case where compounded TONA (fixing in arrears) is selected as the fallback rate for cash products referencing Japanese Yen TIBOR, do you support JBATA's view that it would be an option to use the historical five-year median spread adjustment methodology to calculate the adjustment spread between Japanese Yen TIBOR and compounded TONA (fixing in arrears)?

Response	Number of respondents
Yes	10
No	0
No opinion	1

As a result, all respondents supported JBATA's proposal. Some of respondents provided following reasons for their response.

- In light of the recommendations for Japanese Yen LIBOR by the Cross-Industry

[13] Also refer to the result of the consultation question 12.

Committee on Japanese Yen Interest Rate Benchmarks as well as the consistency with ISDA Derivatives, it would be appropriate to use the historical five-year median spread adjustment methodology.

- As it is already an established approach for LIBOR fallbacks, it would be easier to obtain an agreement. It might be also a positive factor that a sufficient period of time has passed since the termination of LIBOR fallbacks, including USD, and the level of the historical median of the spread is expected to stabilize, which is expected to minimize confusion in the markets.

[Consultation question 18]
In the case where term RFRs are selected as the fallback rates for cash products referencing Japanese Yen TIBOR, do you support JBATA's view that it would be an option to use the historical five-year median spread adjustment methodology to calculate the adjustment spread between Japanese Yen TIBOR and term RFRs?

Response	Number of respondents
Yes	10
No	0
No opinion	1

As a result, all respondents supported JBATA's proposal. Some of respondents provided following reasons for their response.

- It would be appropriate to use the historical five-year median spread adjustment methodology to calculate the adjustment spread between Japanese Yen TIBOR and compounded TONA (fixing in arrears) because: (a) there is little difference between the historical five-year median of Japanese Yen TIBOR and that of term RFR/compounded TONA (fixing in arrears); (b) in view of ensuring consistency with ISDA Derivatives; and (c) the adjustment spread between Japanese Yen TIBOR and term RFR calculated using the historical five-year median spread adjustment methodology is not expected to be officially published.

- Given term RFRs are based on OIS, the spread adjustment methodology should be the same as the one used in the case of compounded TONA (fixing in arrears).

[Consultation question 19]
In the case where term RFR-based benchmarks are used as the fallback rates for cash products referencing Japanese Yen TIBOR, do you support JBATA's view that it would be unnecessary to include a "transition period" for the spread adjustment?

Response	Number of respondents
Yes	9
No	0
No opinion	2

As a result, all respondents supported JBATA's proposal. One of respondents provided following reason for their response.

- It is unnecessary to include a "transition period" because: (a) it is consistent with the recommendations made for Japanese Yen LIBOR by the Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks as well as the consideration by the ISDA; (b) such phased adjustments would complicate operations; and (c) recent spread adjustment values calculated based on the five-year historical median difference are just small.

[Consultation question 20]
Do you support JBATA's view that, in terms of spread adjustments values to be used in contracts, it would be appropriate to use ISDA spread adjustments published by Bloomberg[14] (that is, same spread value to be used by ISDA Derivatives)?

Response	Number of respondents
Yes	9
No	0
No opinion	2

As a result, all respondents supported JBATA's proposal. Some of respondents provided following reasons for their response.

- It would be appropriate to use official spread adjustments published by Bloomberg, which are used in the fallbacks for ISDA Derivatives, from the perspectives of aligning with LIBOR related determinations and ISDA Derivatives and also ensuring fairness and objectivity.
- It needs to be noted that the use of spread adjustment values based on the historical five-year median spread adjustment methodology (ISDA spread) is one of the

[14] Refers to Bloomberg Index Services Limited ("BISL"). The same shall apply hereinafter.

approaches proposed by JBATA and is not a necessary and sufficient condition for ensuring that the economic value is identical (e.g. the level of interest rates) pre and post fallback. This point should be considered also in negotiations between contracting parties.

- It is clarified that ISDA spread adjustments published by Bloomberg comply with the calculation method of the LIBOR Fallback Spread published by ISDA/Bloomberg/Linklaters. They would be convenient from a practical perspective in relation to the most widely-used vendor tool in the markets. In this view, we support JBATA's proposal.

JBATA's position

Compounded TONA (fixing in arrears) and term RFR were supported as the fallback rate options for Japanese Yen TIBOR whose permanent cessation is not currently considered while the option to not include Euroyen TIBOR for which the discontinuation by the end of December 2024 has been discussed in the fallback rate options was also supported.

JBATA's position regarding benchmark replacement based on responses to the Public Consultation is as described below.

As for the setting priority options in the fallback provisions, the following approaches are considered to be appropriate: liquid and robust compounded TONA (fixing in arrears); or if a term RFR is selected, apply the waterfall methodology which sets the term RFR as the first priority and compounded TONA (fixing in arrears) as the second priority from the perspective of ensuring robustness and considering the preference for term RFR (fixing in advance) due to factors such as operational constraints and other factors.

In terms of the spread adjustment methodology, it would be preferable to use the historical five-year median spread adjustment methodology to calculate the adjustment spread between Japanese Yen TIBOR and compounded TONA (fixing in arrears), and to apply that spread published by ISDA (no transition period), regardless of whether compounded TONA (fixing in arrears) or term RFR is used.

The combination of above fallback rates and spread adjustment were supported as benchmark replacement by a wide range of respondents.

For other issues, it would be also appropriate to take approaches in accordance with JBATA's proposal supported by the respondents.

(3) Benchmark replacement for Euroyen TIBOR

JBATA conducted the following consultation questions with respect to the fallback rate options, setting priority options, and spread adjustment methodology related to cash products (loans and bonds) referencing Euroyen Yen TIBOR in light of the results of international discussions.

(i) Fallback rate options

[Consultation question 21]
Do you support JBATA's view that the fallback rate options for cash products referencing Euroyen TIBOR would be compounded TONA (fixing in arrears), term RFRs and Japanese Yen TIBOR?

Response	Number of respondents
Yes	10
No	1
No opinion	0

As a result, almost all respondents supported JBATA's proposal. Some of respondents provided following reasons for their response.

- Based on the results of international discussions and from the perspective of the convenience of users of financial benchmarks, the three fallback rate options are considered to be appropriate.
- Since compounded TONA (fixing in arrears) is not necessarily be available by a broad range of corporates, JBATA is requested to not define as the only option.
- It is necessary to thoroughly assess risks arising from using Japanese Yen TIBOR as a fallback rate, such as failing to reach an agreement on a value transfer issue or spread adjustment. Therefore, JBATA, as a benchmark administrator, should not recommend this option. JBATA is also requested to disseminate that it is preferable to use compounded TONA (fixing in arrears) as a fallback rate for those products closely related to derivatives (e.g. structured bonds) in order to ensure consistency with ISDA's approach.

The one respondent who chose "No" provided the following comment.[15]

- Assuming the cases of bonds, instead of the waterfall methodology, it is preferable to take a discretionary approach whereby the benchmark selected by the issuer, etc. is used as a fallback rate. The application of waterfall structure has no benefits because

[15] Also refer to the result of the consultation question 12.

it requires explanations for customers on a complicate definition of bonds. We therefore suggest an approach that will room for flexibility and determine a fallback rate according to the customer's request provided that the customer's consent is obtained.

(ii) Setting priority options for fallback rates

[Consultation question 22]
In the case where compounded TONA (fixing in arrears) is used as the fallback rates for cash products referencing Euroyen TIBOR, do you support JBATA's following view on Option 1 in relation to the fallback rates for cash products referencing Euroyen TIBOR?

[Option 1]
Compounded TONA (fixing in arrears)

Response	Number of respondents
Yes	8
No	0
No opinion	3

As a result, all respondents supported JBATA's proposal. Some of respondents provided following reasons for their response.

- From the perspectives of the stability, robustness of fallbacks, liquid and robust compounded TONA (fixing arrears) is appropriate as a fallback rate.
- It would be the most appropriate option given consistency with ISDA Derivatives transactions.
- Since compounded TONA (fixing in arrears) is not necessarily available to a broad range of corporates, JBATA is requested to not provide Option 1 as the only option.

[Consultation question 23]
In the case where RFR-based benchmarks are used as the fallback rates, do you support JBATA's following view on Option 2 in relation to the fallback rates for cash products referencing Euroyen TIBOR?

[Option 2]
1st priority: Term RFRs
2nd priority: Compounded TONA (fixing in arrears)

Response	Number of respondents
Yes	7
No	2
No opinion	2

As a result, most of the respondents supported JBATA's proposal. Some of respondents provided following reasons for their response.

- Cases for the use of term RFRs, which are "fixing in advance" rates, is preferred by the contracting parties are assumed. The robustness of fallbacks would be ensured by setting compounded TONA (fixing in arrears) as the second priority rate.
- From the perspectives of the stability, robustness of fallbacks, liquid and robust compounded TONA (fixing arrears) or a financial benchmark based thereon is considered appropriate as a fallback rate.

Two respondents who chose "No" provided the following comments.

- Option 2 undermines consistency between derivatives and loans.
- Some borrowers will prefer the use of term RFR because of the unavailability of compounded TONA (fixing in arrears). JBATA therefore could set those rates to be fixed in advance, such as compounded rates (fixing in advance) as the second priority.

[Consultation question 24]
In the case where Japanese Yen TIBOR is used as the fallback rate for cash products referencing Euroyen TIBOR, do you support JBATA's view that an option would be to set the term RFRs and compounded TONA (fixing in arrears) in the second and third priorities, respectively, as specified in the foot note 75?

[Option]
1st priority: Japanese Yen TIBOR
2nd priority: Term RFR
3rd priority: Compounded TONA (fixing in arrears)

Response	Number of respondents
Yes	4
No	4
No opinion	3

As a result, responses were evenly split on support and opposition. Four respondents who chose “Yes” provided the following comments.

- While the use of IBOR as a fallback rate for another IBOR is not necessarily a standard approach on a global basis, there would be no issue in setting Japanese Yen TIBOR, whose permanent cessation is not currently considered, as the first priority in the waterfall methodology based on the agreement between the contracting parties from the perspective of the convenience of users or other factors.
- It would be reasonable to set RFR-based benchmarks as the second or subordinate priorities from the perspective of enhancing the robustness of contracts if Japanese Yen TIBOR is selected as fallback rate.

Four respondents who chose “No” provided the following comments.

- If Japanese Yen TIBOR is used, the contracting parties may have difficulties in agreeing on the applied spread. It should therefore not be recommended actively. If there is a technical issue related to rates fixing in arrears, term RFR should be set as the first priority, Japanese Yen TIBOR as the second priority, and compounded TONA (fixing in arrears) as the third priority.
- There are issues related to Japanese Yen TIBOR, such as the value transfer and the agreement on the spread adjustment. While its use based on the agreement between the contracting parties should not be prevented, term RFR or compounded TONA (fixing in arrears) should be given higher priority over Japanese Yen TIBOR.
- Because this would undermine consistency between derivatives and loans.

[Consultation question 25]
Do you support JBATA’s view that, if the waterfall methodology is applied to loans referencing Euroyen TIBOR, the “rate deemed as suitable (after appropriately considering recommendations by the regulatory supervisor, etc. or market convention) and notified by the lender to the borrower” can be added to the subordinate priority level of each setting priority option as specified in the footnote 63?

Response	Number of respondents
Yes	7
No	0
No opinion	4

As a result, all respondents supported JBATA's proposal. One of respondents provided following reason for their response.

- It is consistent with the waterfall methodology of fallback rates recommended as the fallback for loans by the Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks in their discussions on the transition away from Japanese Yen LIBOR.

[Consultation question 26] Do you support JBATA's view that, if the waterfall methodology is applied to bonds, the "benchmark recommended by relevant committees convened by authorities," the "fallback rate for the benchmark to be replaced as defined in the ISDA Definitions," and the "benchmark selected by the issuer, etc." can be added to the subordinate priority levels of each setting priority option as specified in the footnote 64?

Response	Number of respondents
Yes	7
No	1
No opinion	3

As a result, almost all respondents supported JBATA's proposal. One of respondents provided following reason for their response.

- It is consistent with the waterfall methodology of fallback rates recommended as the fallback for bonds by the Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks in their discussions on the transition away from Japanese Yen LIBOR.

The one respondent who chose "No" provided the following comment.[16]

- Assuming the cases of bonds, instead of the waterfall methodology, it is preferable to take a discretionary approach whereby the benchmark selected by the issuer, etc. is used as a fallback rate. The application of waterfall methodology has no benefits because it requires explanations for customers on a complicate definition of bonds. We therefore suggest an approach that will room for flexibility and determine a fallback rate according to the customer's request provided that the customer's consent is obtained.

[16] Also refer to the result of the question 12.

(iii) Calculation method of the adjustment spread and transition period

a. Option to select RFR-based benchmarks as the fallback rate

[Consultation question 27]
In the case where compounded TONA (fixing in arrears) is selected as the fallback rate for cash products referencing Euroyen TIBOR, do you support JBATA's view that it would be an option to use the historical five-year median spread adjustment methodology to calculate the adjustment spread between Euroyen TIBOR and compounded TONA (fixing in arrears)?

Response	Number of respondents
Yes	9
No	0
No opinion	2

As a result, all respondents supported JBATA's proposal. One of respondents provided following reason for their response.

- In light of the recommendations for Japanese Yen LIBOR made by the Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks as well as the consistency with ISDA Derivatives, it would be an option to use the historical five-year median spread adjustment methodology to calculate the adjustment spread between Euroyen TIBOR and compounded TONA (fixing in arrears).

[Consultation question 28]
In the case where term RFRs are selected as the fallback rates for cash products referencing Euroyen TIBOR, do you support JBATA's view that it would be an option to use the historical five-year median spread adjustment methodology to calculate the adjustment spread between Euroyen TIBOR and term RFRs?

Response	Number of respondents
Yes	9
No	0
No opinion	2

As a result, all respondents supported JBATA's proposal. Some of respondents provided following reasons for their response.

- It is consistent with the recommendations made for Japanese Yen LIBOR by the Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks.
- It would be appropriate to use the historical five-year median spread adjustment

methodology to calculate the adjustment spread between Euroyen TIBOR and compounded TONA (fixing in arrears) because: (a) there is little difference between the historical five-year median of Euroyen TIBOR and that of term RFR/compounded TONA (fixing in arrears); (b) in view of ensuring consistency with ISDA Derivatives; and (c) the adjustment spread between Euroyen TIBOR and term RFR calculated using the historical five-year median spread adjustment methodology is not expected to be officially published.

[Consultation question 29]
In the case where RFR-based benchmarks are used as the fallback rates for cash products referencing Euroyen TIBOR, do you support JBATA's view that it would be unnecessary to include a "transition period" for the spread adjustment?

Response	Number of respondents
Yes	9
No	0
No opinion	2

As a result, all respondents supported JBATA's proposal. One of respondents provided following reason for their response.

- It is unnecessary to include a "transition period" because: (a) it is consistent with the recommendations made for Japanese Yen LIBOR by the Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks as well as the consideration by the ISDA; (b) such phased adjustments would complicate operations; and (c) recent spread adjustment values calculated based on the five-year historical median difference are just small.

[Consultation question 30]
Do you support JBATA's view that, in terms of spread adjustment values to be used in actual contracts, it would be appropriate to use official spreads published by Bloomberg (that is, to use the same values as ISDA Derivatives)?

Response	Number of respondents
Yes	9
No	0
No opinion	2

As a result, all respondents supported JBATA's proposal. Some of respondents provided following reasons for their response.

- It would be appropriate to use official spreads published by Bloomberg, which are used in the fallbacks for ISDA Derivatives, from the perspectives of aligning with LIBOR related determinations and ISDA Derivatives and also ensuring fairness and objectivity.

- It needs to be noted that the use of spread adjustment values based on the historical five-year median spread adjustment methodology (ISDA spread) is one of the approaches proposed by JBATA and is not a necessary and sufficient condition for ensuring that the economic value is identical (e.g. the level of interest rates) pre and post fallback. This point should be considered also in negotiations between contracting parties.

b. Option to select Japanese Yen TIBOR as the fallback rate

[Consultation question 31]
With respect to spread adjustments arising from using Japanese Yen TIBOR as the fallback for cash products referencing Euroyen TIBOR, do you support JBATA's view that, at this stage, it would be difficult to provide a specific spread adjustment methodology in light of a) through c) below.

a) If the "historical five-year median spread adjustment methodology" is selected, currently, there is no reasonable grounds proving that values would reflect prevailing market values in the future, and hence value transfer would not necessarily be minimized from the perspective of economic value.
b) Currently, spread adjustment values calculated using the "historical five-year median spread adjustment methodology" are not expected to be officially published.
c) Currently, there is no other methodology that is considered to be more appropriate than the "historical five-year median spread adjustment methodology."

Response	Number of respondents
Yes	7
No	0
No opinion	4

As a result, all respondents supported JBATA's proposal. Some of respondents provided following reasons for their response.

- When spread adjustments are calculated by taking the historical five-year median spread adjustment methodology in fallbacks to Japanese Yen TIBOR, it is necessary to note the factors a) to c) presented by JBATA and that it is difficult to provide alternative options of reasonable spread adjustment methodologies.

  As minimizing the value transfer is difficult, instead of recommending a specific spread adjustment methodology, it would be appropriate to allow the contracting parties to respective contracts to agree on the timing of transition, spread adjustment methodology, and other relevant matters at their discretion.

[Consultation question 32]
If your answer to question 31 is “No,” please provide a specific spread adjustment methodology if Japanese Yen TIBOR is used as the fallback rate, and the reason thereof.

As mentioned previously, there were no respondents who chose “No” and no comment has been received with respect to a specific spread adjustment methodology to be applied if Japanese Yen TIBOR is used as the fallback rate.

JBATA's position

Compounded TONA (fixing in arrears), term RFR, and Japanese Yen TIBOR were supported as the fallback rate options for Euroyen TIBOR for which its discontinuation is currently being deemed and discussed as the most likely option.

JBATA's position regarding RFR-based benchmarks and Japanese Yen TIBOR based on responses to the Public Consultation is as described below, respectively.

In the case of the option to select RFR-based benchmarks (compounded TONA (fixing in arrears) and term RFR) as the fallback rate, the following approaches are considered to be appropriate for setting priority options in the fallback provisions: liquid and robust compounded TONA (fixing in arrears); or if a term RFR is selected, apply the waterfall methodology which sets the term RFR as the first priority and compounded TONA (fixing in arrears) as the second priority from the perspective of ensuring robustness and considering the preference for term RFR (fixing in advance) due to factors such as operational constraints and other factors.

In terms of the spread adjustment methodology, it would be preferable to use the historical five-year median spread adjustment methodology to calculate the adjustment spread between Euroyen TIBOR and compounded TONA (fixing in arrears), and to apply that spread published by ISDA (no transition period), regardless of whether compounded TONA (fixing in arrears) or term RFR is used.

The combination of above fallback rates and spread adjustment were supported as benchmark replacement by a wide range of respondents.

For other issues, it would also be appropriate to take approaches in accordance with JBATA's proposal supported by the respondents.

With respect to the option to set Japanese Yen TIBOR as the first priority in the waterfall methodology, responses to the Public Consultation were evenly split on support and opposition.

As for the spread adjustment methodology, the following considerations from a) to c) regarding the historical five-year median spread adjustment methodology were supported by all respondents and no other specific methodologies were suggested.

a) If the "historical five-year median spread adjustment methodology" is selected, currently, there is no reasonable grounds proving that values would reflect prevailing market values in the future, and hence value transfer would not necessarily be minimized from the perspective of economic value.

b) Currently, spread adjustment values calculated using the "historical five-year median spread adjustment methodology" are not expected to be officially published.

c) Currently, there is no other methodology that is considered to be more appropriate than the “historical five-year median spread adjustment methodology.”

For Japanese Yen TIBOR, its permanent cessation has not been discussed and there are no restrictions in selecting it as a fallback rate. Therefore, when selecting the option to use it as a fallback rate, it will be necessary to reach an agreement between the contracting parties on the benchmark replacement in the absence of consensus among respondents on the specific spread adjustment methodology. For example, in the case of loans, the lender would need to take actions in consideration of conduct and dispute risks.

The use of Japanese Yen TIBOR through the active transition would also be considered, instead of in the fallback approach. In that case, the approach to spread adjustments would be determined based on the bilateral agreement between the contracting parties.

(4) Comments on other issues

With respect to the consultation question 33 (i.e. question on any issues other than those addressed in the consultation questions 1 to 32), we received the following comments. JBATA's feedbacks on respective comments are described after the arrow ("⇒").

[Requests and questions to JBATA]

- We understand that there are various practical issues with respect to the discontinuation of Euroyen TIBOR, and therefore expect JBATA to work on these issues in coordination with related regulatory supervisors and agencies within the extent of JBATA's responsibilities.

  ⇒ For the practical issues described in "6. Other issues" in the Public Consultation, we will continue to pay attention to the development of discussions by related stakeholders and plan to appropriately coordinate with related regulatory supervisors and agencies.[17]

- With respect to the implementation of a public consultation on whether to permanently cease to publish Euroyen TIBOR and an announcement that constitutes a trigger, from the perspectives of providing market participants with a sufficient preparation period and realizing the orderly discontinuation, we hope that JBATA will take actions that allow market participants to foresee future developments such as providing information in advance.

  ⇒ For another pubic consultation on whether to permanently cease to publish Euroyen TIBOR and an announcement that constitutes a trigger, we will strive to communicate relevant information actively via our website in coordination with appropriate parties.

- Please confirm whether the following understanding is correct: If the recommendations that reflect the Results of Public Consultation are made, those recommendations will be applied only to those contracts that are newly executed after

[17] There have been some developments in relation to Euroyen TIBOR since the release of the Public Consultation. Refinitiv announced that it will cease calculation and publication of Tokyo Swap Rate referencing Euroyen TIBOR for all tenors, and the final publication will be at 15:30 (Tokyo time) on March 31, 2023.

TFX announced that commencing at the beginning of the day session of March 20 2023 Monday, it will suspend the trades in the following contracts of the products.
・Contracts in the far-distant terms (meaning the last trading day of which falls in January 2025 and beyond) of Three-month Euroyen Futures
・Whole contracts of Options on Three-month Euroyen Futures

their publication and not to legacy contracts. In other words, it is unnecessary to amend legacy contracts that were entered into before the publication of the recommendations.

⇒ As described in "1.(2) Disclaimer," the Results of the Public Consultation will not have any binding effects on individual contracts referencing JBA TIBOR, and JBATA does not recommend any particular rates and methodologies. JBATA underscores that the terms and conditions of contracts, including the fallback provisions, should be determined between the contracting parties at their discretion, and JBATA does not intend to preclude them from reaching an agreement on the terms and conditions that are different from the Results of the Public Consultation.

- Please confirm whether the following understating is correct: the trigger events covered in the Public Consultation are those that are applicable only to "permanent cessation" of "all" JBA TIBOR tenors, and the permanent cessation of certain tenors does not constitute the trigger event.

⇒ Your understanding is correct. As described in the footnote 10, the trigger events covered in the Public Consultation are those that are applicable only to "permanent cessation" of "all" JBA TIBOR tenors.[18]

[18] If certain tenors cease to be published, approaches to be taken will be agreed between the contracting parties. The 2021 ISDA Interest Rate Derivatives Definitions specify approaches to be taken in such a case (e.g. section 6.11 (Discontinued Rates Maturities), which could be also referenced in considering the treatment of cash products.

[Other comments]

- We expect that, using the Results of the Public Consultation as a reference, the parties to transactions using JBA TIBOR in their contracts will take steps to agree to incorporate the fallback provisions in those contracts. Japanese Yen TIBOR, for which permanent cessation has not been discussed, is used widely in loans and derivatives and the number of contracts referencing Japanese Yen TIBOR is very large, according to the Key Results of the Survey on JBA TIBOR Exposures. In light of these facts and other relevant factors, it would be important to take feasible actions in consideration of operational burdens both for financial institutions and corporates. Particularly for “legacy” contracts, it would be more challenging to reach an agreement on the incorporation of the fallback provisions given their large number and wide-ranging contracting parties. It would therefore be preferable to incorporate them only into “new” contracts. Of the approaches for including the fallback provisions, we consider that reaching an agreement on the use of the “hardwired approach” that identifies a benchmark replacement when entering into a contract would be challenging because the permanent cessation of Japanese Yen TIBOR has not been discussed and the recommendations on its benchmark replacements will not be made. We therefore understand that the use of the “amendment approach” that does not identify a benchmark replacement when entering into a contract should also be sufficiently considered as a practicable option, in addition to the use of the “hardwired approach”.

3. Summary of Key points of JBATA's position

This section summarizes "JBATA's position" for respective fallback issues specified in the previous section 2. for each benchmark.[19]

[Figure 1] JBATA's position on fallback issues for Japanese Yen TIBOR

<table>
<tr><th>Issues</th><th>JBATA's position (Key points)</th></tr>
<tr><td>Trigger</td><td>At least include in the fallback provisions the "Permanent Cessation Trigger" that assumes an announcement stating that JBATA has ceased or will cease to provide Japanese Yen TIBOR permanently or indefinitely.

If the contracting parties focus on ensuring consistency with ISDA Derivatives, include in the fallback provisions the language that assumes an announcement by the regulatory supervisory of JBATA (i.e. JFSA), etc., stating that JBATA has ceased or will cease to provide JBA TIBOR permanently or indefinitely.</td></tr>
<tr><td>Benchmark replacement</td><td>Fallback rates (Options and setting priorities in the fallback provisions)
<table>
<tr><td colspan="3">Options *1</td></tr>
<tr><td colspan="3">Compounded TONA (fixing in arrears)[20], Term RFR</td></tr>
<tr><td>Setting priorities - Option 1</td><td colspan="2">Setting priorities - Option 2</td></tr>
<tr><td rowspan="2">Compounded TONA (fixing in arrears)</td><td>1st priority</td><td>Term RFR</td></tr>
<tr><td>2nd priority</td><td>Compounded TONA (fixing in arrears)</td></tr>
<tr><td colspan="3">If the waterfall methodology is applied, the following can be added to the subordinate priority level of each setting priority.

[Loans] "Rate deemed as suitable (after appropriately considering recommendations by the regulatory supervisor, etc. or market convention) and notified by the lender to the borrower"

[Bonds] "Benchmark recommended by relevant committees convened by authorities"
"Fallback rate for the benchmark to be replaced as defined in the ISDA Definitions"
"Benchmark selected by the issuer, etc."</td></tr>
</table>
Spread adjustment
<table>
<tr><td>Fallback rate</td><td>Compounded TONA (fixing in arrears)</td><td>Term RFR</td></tr>
</table>
</td></tr>
</table>

[19] For details, see section 2. of the Results of the Public Consultation and also the Public Consultation.

[20] In addition to the triggers and benchmark replacements, it would be an option to agree between the contracting parties on the conventions (interest rate calculation methodologies, such as "Lookback" and "Observation Period Shift") for compounded TONA (fixing in arrears) and any contractual changes arising from its use (conforming changes).
The Sub-Group of Loans of the Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks reported on TONA (Fixing in Arrears) conventions to use in loans (interest calculation methodology). (https://www.boj.or.jp/en/paym/market/jpy_cmte/cmt201225b.pdf)
The Japanese Bankers Association published sample texts for the rules specifying compounded TONA (fixing in arrears) rates(available in Japanese only).

		Spread adjustment methodology	Historical five-year median spread adjustment methodology*2	
		Historical data of term RFRs	- (No consideration required)	Use data of compounded TONA (fixing in arrears)
		Transition period for the spread adjustment	No transition period to be set	
		The officially published spread adjustment	ISDA spread adjustments published by Bloomberg	

*1 The respondents supported the proposal to not include Euroyen TIBOR in the fallback rate options.

*2 The contracting parties should note that this methodology may give rise to a certain “difference” in a level of spread adjustments compared to the case of adopting a methodology based only on the latest market trends.

[Figure 2] JBATA's position on fallback issues for <u>Euroyen TIBOR</u>

<table>
<tr><th>Issues</th><th colspan="4">JBATA's position (Key points)</th></tr>
<tr><td>Trigger</td><td colspan="4">At least include in the fallback provisions the "Permanent Cessation Trigger" that assumes an announcement stating that JBATA has ceased or will cease to provide Euroyen TIBOR permanently or indefinitely.

If the contracting parties focus on ensuring consistency with ISDA Derivatives, include in the fallback provisions the language that assumes an announcement by the regulatory supervisory of JBATA (i.e. JFSA), etc., stating that JBATA has ceased or will cease to provide Euroyen TIBOR permanently or indefinitely.</td></tr>
<tr><td rowspan="15">Benchmark replacement
*3</td><td colspan="4">Fallback rates (Options and setting priorities in the fallback provisions)</td></tr>
<tr><td rowspan="6"></td><td colspan="3">Options</td></tr>
<tr><td colspan="3">Compounded TONA (fixing in arrears),[21]Term RFR, Japanese Yen TIBOR</td></tr>
<tr><td>Setting priorities - Option 1</td><td colspan="2">Setting priorities - Option 2 *1</td></tr>
<tr><td>Compounded TONA (fixing in arrears)</td><td>1st priority
2nd priority</td><td>Term RFR
Compounded TONA (fixing in arrears)</td></tr>
<tr><td colspan="3">If the waterfall methodology is applied, the following can be added to the subordinate priority level of each setting priority.

[Loans] "Rate deemed as suitable (after appropriately considering recommendations by the regulatory supervisor, etc. or market convention) and notified by the lender to the borrower"

[Bonds] "Benchmark recommended by relevant committees convened by authorities"
"Fallback rate for the benchmark to be replaced as defined in the ISDA Definitions"
"Benchmark selected by the issuer, etc."</td></tr>
<tr><td colspan="3"></td></tr>
<tr><td colspan="4">Spread adjustment *2</td></tr>
<tr><td rowspan="6"></td><td>Fallback rate</td><td>Compounded TONA (fixing in arrears)</td><td>Term RFR</td></tr>
<tr><td>Spread adjustment methodology</td><td colspan="2">Historical five-year median spread adjustment methodology*4</td></tr>
<tr><td>Historical data of term RFRs</td><td>- (No consideration required)</td><td>Use data of compounded TONA (fixing in arrears)</td></tr>
<tr><td>Transition period for the spread adjustment</td><td colspan="2">No transition period to be set</td></tr>
<tr><td>The officially published spread adjustment</td><td colspan="2">ISDA spread adjustments published by Bloomberg</td></tr>
</table>

*1 Responses were evenly split between support and opposition for JBATA's proposal on setting Japanese Yen TIBOR as the first priority fallback rate in the waterfall methodology.

[21] See footnote 20.

*2 For the option to use Japanese Yen TIBOR as a fallback rate, there were no specific spread adjustment methodologies supported by the respondents.

The permanent cessation of Japanese Yen TIBOR has not been discussed and there are no restrictions in selecting it as a fallback rate. Therefore, when selecting the option to use it as a fallback rate, it will be necessary to reach an agreement between the contracting parties on the benchmark replacement in the absence of consensus among respondents on the specific spread adjustment methodology. For example, in the case of loans, the lender would need to take actions in consideration of conduct and dispute risks.

The use of Japanese Yen TIBOR through the active transition could also be considered, instead of in the fallback approach. In that case, the approach to spread adjustments would be determined based on the bilateral agreement between the contracting parties.

*3 There is a difference in day count convention between Euroyen TIBOR (act/360) and fallback rate options (act/365). Therefore, when calculating the fallback rate for Euroyen TIBOR, the ratio of the Euroyen TIBOR day count over the fallback rate day count would be 360/365 (ISDA spread adjustments calculated by Bloomberg have accommodated the different day count convention).

*4 The contracting parties should note that the historical five-year median spread adjustment methodology may give rise to a certain “difference” in a level of spread adjustments compared to the case of adopting a methodology based only on the latest market trends.

4. Introduction of fallback provisions in contracts referencing JBA TIBOR

In the Policy on Material Changes in the Definition or Calculation Method and Permanent Cessation of JBA TIBOR and other relevant materials, JBATA recommends the contracting parities to reach an agreement on alternative benchmarks in advance. The users may introduce fallback provisions in contracts referencing JBA TIBOR taking account into the main fallback issues described in the Results of the Public Consultation.

The views on the introduction of fallback provisions in contracts referencing JBA TIBOR are as provided below for each benchmark based on the comments received for the Public Consultation.

(1) Introduction of fallback provisions in contracts referencing Euroyen TIBOR

Given that the permanent cessation at the end of December 2024 is under consideration for Euroyen TIBOR (also refer to the subsequent section 5.(2)), its users should promptly consider, as an option, the introduction of fallback provisions for Euroyen TIBOR contracts that will mature after the end of December 2024.

(2) Introduction of fallback provisions in contracts referencing Japanese Yen TIBOR

While the permanent cessation of Japanese Yen TIBOR has not been discussed, its users should consider the introduction of fallback provisions for those contracts referencing Japanese Yen TIBOR from the perspective of enhancing the stability and robustness of contracts.

However, given some feedback which raised a concern about operational burdens for incorporation of fallback provisions into a large amount outstanding and number of contracts referencing Japanese Yen TIBOR, we also consider that its users take a practicable approach such as starting first from “new” Japanese Yen TIBOR contracts.

5. Next steps

(1) Amendments to the JBA TIBOR Operational Rules and other relevant rules and guidelines

Based on the Results of the Public Consultation, JBATA intends to amend and publish without delay the JBA TIBOR Operational Rules, the Policy on Material Changes in the Definition or Calculation Method and Permanent Cessation of JBA TIBOR, and other relevant rules and guidelines.

(2) Publication of another consultation on whether to permanently cease to publish Euroyen TIBOR

To resolve remaining issue recognized for IOSCO Principle 7 (Data Sufficiency), JBATA discusses the possibility of permanent cessation of Euroyen TIBOR, which is currently deemed as the most likely option and expects that the timing, if adopted, would be at the end of December 2024.

As mentioned in the Public Consultation, JBATA intends to publish another consultation on whether to permanently cease to publish Euroyen TIBOR. In light of the recent progress of relevant discussions and other factors, its timing will be in the first half of the fiscal year ending March 31, 2024, while its results are expected to be published in the second half of the fiscal year.[22]

End

[22] Publishing the results of the consultation (specifically, determining whether and when to discontinue Euroyen TIBOR) and announcing that JBATA has ceased or will cease to provide Euroyen TIBOR permanently would be intended to constitute a "Permanent Cessation Trigger". When issuing this announcement, JBATA will appropriately coordinate with related stakeholders including the regulatory supervisor and related associations/organizations to ensure that market participants will be furnished with appropriate information.