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Public Consultation on the Treatment of Tough Legacy Contracts in Japan

September 2021

The Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks

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1. Introduction

(1) Background

(Initiatives taken by the Committee)

Since its establishment in August 2018, the Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks (hereinafter referred to as the "Committee") has been developing the basic concept of appropriate choice and usage of Japanese yen (JPY) alternative interest rate benchmarks, as well as identifying specific issues and measures based on the basic concept, in preparation for the permanent cessation of JPY LIBOR at the end of December 2021.

During this period, in order to solicit opinions from a wide range of relevant parties, the Committee held its first public consultation in July 2019 to discuss options for alternative interest rate benchmarks for JPY LIBOR and the introduction of an active conversion or fallback provisions. Thereafter, in August 2020, it held the second public consultation to discuss practical measures including those necessary for the adoption of fallbacks. The Committee has also been providing support for an orderly transition away from JPY LIBOR. For example, it formulated the "Roadmap to Prepare for the Discontinuation of Japanese Yen LIBOR" (Appendix 1, hereinafter referred to as the "Roadmap"), which indicates the approximate timing of the orderly transition to alternative interest rate benchmarks.[1]

(Developments surrounding the cessation of LIBOR)

In March 2021, the U.K. Financial Conduct Authority (FCA), the supervisor of LIBOR, clarified its intention to cease the publication of LIBOR based on the current methodology of referencing rates provided by panel banks (panel-based LIBOR) immediately after end-2021, except for certain U.S. dollar LIBOR settings.

At the same time, the FCA announced its intention to exercise its authority to establish synthetic LIBOR calculated using market data for certain tenors of GBP LIBOR and JPY LIBOR as a response to existing contracts that cannot feasibly be

[1] Please refer to Appendix 2 for the main initiatives taken after the second public consultation.

transitioned to alternative interest rate benchmarks.[2] However, it has also suggested that synthetic LIBOR does not appropriately represent the underlying markets and economic conditions.

(Developments in Japan)

In response to the announcement by the FCA, the Financial Services Agency of Japan (FSA) and the Bank of Japan (BOJ) released "Response to the announcement on the end date of LIBOR panel publication and the announcement on the intention to consult on the publication of synthetic yen LIBOR."[3] The statement states that it is important to explain to clients and negotiate with customers for the revision of contracts in order to introduce an active conversion or fallback provisions in a timely manner in accordance with the Roadmap in Japan and the transition plan developed by each financial institution. In addition, synthetic yen LIBOR should be considered as a potential "safety net" and used only for legacy contracts that cannot feasibly be transitioned away from JPY LIBOR (i.e. so-called tough legacy contracts) even after necessary actions are taken.

Based on the content of the statement, the Committee has been examining risks and uncertainties over unavoidable delays in the transition of some existing contracts, mainly in the Sub-Group on Loans and the Sub-Group on Bonds.

(2) Purpose and structure of the public consultation

The purpose of this public consultation is to summarize the results of the discussions held by the Committee to date, and to solicit opinions on that summary from a wide range of market participants.

The subject of consideration in this public consultation is existing contracts for loans and bonds that reference JPY LIBOR under the governing Japanese law.[4] The structure of this document is as follows. First, in "2. Items to consider," section (1)

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[2] The Committee expressed its appreciation to the FCA for this statement of intent, as it is in line with the intent of the comment letter issued by the Committee during the prior public consultations. For more information, please refer to the link below. https://www.boj.or.jp/en/paym/market/jpy_cmte/cmt210311c.pdf

[3] Financial Services Agency https://www.fsa.go.jp/en/policy/libor/syntheticlibor202102.pdf
Bank of Japan https://www.boj.or.jp/en/announcements/release_2021/data/rel210308a.pdf

[4] For transactions referencing U.S. dollar LIBOR, GBP LIBOR, CHF LIBOR, and EURO LIBOR, responses must be based on the timelines and guidance provided by the home authorities of each currency. In addition, it is expected that products that reference JPY LIBOR and are based on laws in other countries and regions will be subject to review in each jurisdiction.

organizes the objectives of this discussion. Next, in section (2), the Committee's views are presented with regard to contracts that fall under the category of tough legacy contracts and for which the use of synthetic yen LIBOR may be considered, and section (3) summarizes matters that contracting parties should keep in mind when they actually consider using synthetic yen LIBOR. Finally, "3. Items subject to public comments" summarizes the opinions sought.

Based on the opinions received in response to this public consultation, the Committee plans to publish the results in November 2021.

2. Items to consider

(1) Purpose of the consideration

In the deliberations at the Committee so far, the transition progress made thus far is considered to be in line with the Roadmap owing to efforts made by individual market participants in Japan. At this moment, the Committee is yet to confirm any specific contracts and instruments that cannot practicably be transitioned away from JPY LIBOR by actions or agreements between the contract counterparties themselves. The Committee believes that it is important that market participants continue to proceed with transition in line with the Roadmap.

However, there is a possibility that some of the contracts remain without being transitioned before the end of 2021. Synthetic yen LIBOR may be used as a "safety net" for these contracts which are considered as tough legacy contracts. Nonetheless, there are some points to note when using synthetic yen LIBOR, such as the likelihood that synthetic yen LIBOR will be available only for one year and the calculation method is different from panel-based LIBOR. Therefore, the Committee considers that it would be able to contribute to an orderly transition in Japan by summarizing and sharing, with a wide range of market participants, the views of individual contracting parties on how to determine the use of synthetic yen LIBOR in tough legacy contracts, as well as the issues that need to be discussed when actually considering the use of synthetic yen LIBOR.

The FCA is currently examining the calculation method and publication of synthetic yen LIBOR,[5] as well as the scope permitted for regulated entities in the United Kingdom. This public consultation assumes that synthetic yen LIBOR will be released and be available on and after January 1, 2022, but the scope of its use is expected to be relatively limited in Japan, given the progress made in the transition in the market.[6]

The Committee expects the results of this consideration to be regarded as a standard in Japanese markets and a wide range of market participants in Japan to proceed with their preparations for the transition in line with the results. Please note, however, that these results will not preclude contracting parties from reaching an agreement that differs from what is presented in the results.

(2) Tough legacy contracts that could consider using synthetic yen LIBOR

The Committee, mainly the Sub-Group on Loans and the Sub-Group on Bonds, has been considering the basic idea and requirements for specifying tough legacy contracts that could be considered using synthetic yen LIBOR. The following sections describe the details of the discussions.

A. Basic concept

(Loans)

Loan contracts are considered negotiable in terms of making changes because it is easy to specify the contracting parties. That being said, it would be important that contracting parties take into account the limited time left before the cessation of panel-based JPY LIBOR and conduct negotiations in good faith when they make changes to their contracts.

[5] The synthetic yen LIBOR indicated in the FCA's public consultations is calculated as "TORF + ISDA spread (median of past 5 years)". Synthetic yen LIBOR is also expected to be released by the ICE Benchmark Administration (IBA). The decision on the scope of the use of synthetic LIBOR is expected to be made after future public consultations mainly based on the U.K. legal system.

[6] Please refer to the link below for the Committee's comment letter on the FCA's public consultations on synthetic yen LIBOR.
https://www.boj.or.jp/en/paym/market/jpy_cmte/cmt210203c.htm/
https://www.boj.or.jp/en/paym/market/jpy_cmte/cmt210826a.htm/

On the other hand, it is also possible that there are contracts that cannot be agreed upon even after such negotiations. For this reason, it has been deemed appropriate to consider contracts that fulfill the following conditions as tough legacy contracts.

Tough legacy contracts are contracts in which the relevant parties are unable to reach an agreement through either an active conversion to alternative reference rates or an insertion of robust fallback provisions[7] by the end of 2021, despite financial institutions providing explanations and discussions in good faith being held among the parties involved to transition away from JPY LIBOR.[8,9]

However, in the above discussion, the contracting parties should pay particular attention to the following points with a view to promoting smooth discussions.[10]

Lenders	: to communicate with clients in good faith and in a careful manner to prevent conduct risks
Borrowers	: to respond to the explanations and contract negotiations with financial institutions in good faith, taking market practices into account

(Bonds)

In many cases, bond contracts have procedures for amending the contracts specified by law.[11] That being said, it would be important for issuers to take into account the limited time left before the cessation of panel-based LIBOR and to work on the transition either through a convocation of bondholders' meetings or by obtaining

[7] In the Committee's first and second public consultations, the hardwired approach, which falls back to the replacement rate determined upon the introduction of fallback provisions, had gained support from market participants. In addition, regarding the conditions on which fallback provisions (triggers) are activated, it was recommended by the Committee to introduce both permanent cessation triggers and pre-cessation triggers, and this recommendation has gained support from market participants.
[8] Tough legacy contracts in syndicated loans point to the contracts in which the relevant parties are unable to reach an agreement, after the agent bank and each participant bank have decided on the guidelines and the participant bank and the borrowers have discussed such guidelines.
[9] The Committee recommends reaching an agreement by the end of 2021, when the cessation of panel-based JPY LIBOR will take place. If contracting parties are unable to reach an agreement by the end of 2021, it is considered preferable to continue with discussions until the day of the first revision of interest rates on and after January 1, 2022, and reach an agreement as early as possible.
[10] As for structured loans used as investment products, there are cases where the borrowers (including securities companies and trust banks) need to consider conduct risks and act on their own initiatives.
[11] Structured bonds and securitized instruments are included in the bonds that have procedures to modify contracts specified by law; however, this public consultation uses the terms "corporate bonds" and "bondholders" unless otherwise specified, taking account of corporate bonds under the Companies Act. With regard to bonds that do not fall under the category of corporate bonds under the Companies Act, the terms "corporate bonds" and "bondholders" in the text should be read as terms equivalent to "corporate bonds" and "bondholders" in the relevant laws and regulations.

the consent from all of the bondholders.

On the other hand, despite these efforts, there may be contracts for which the transition cannot be completed before the end of 2021. For this reason, it has been deemed appropriate to consider the contracts that fulfill the following conditions as tough legacy contracts.

Tough legacy contracts are contracts in which the parties involved are unable to reach an agreement designated by law and to transition away from JPY LIBOR (an active conversion to alternative reference rates or an insertion of robust fallback provisions[12]) by the end of 2021, despite the issuer's efforts to amend the contracts either through a convocation of bondholders' meetings or by obtaining the consent from all of the bondholders as specified by law.[13,14]

However, the contracting parties should pay particular attention to the following points, with a view to facilitating the above procedures.[15]

Issuers	: to try to provide explanation to the bondholders in good faith and in a careful manner
Bondholders	: to respond to the explanations provided by the issuers in good faith

(Points in common to loans and bonds)

In discussions and modification procedures between contracting parties, the following information should be explained to the borrower by the lender or to the

[12] Please refer to the footnote 7.
[13] In case of a transition away from JPY LIBOR through a convocation of bondholders' meetings, it refers to calling such meetings in accordance with the law.
[14] The committee recommends completing the transition by the end of 2021, when the cessation of panel-based JPY LIBOR will take place. If an agreement cannot be reached before December 31, 2021, the relevant parties will not be prevented from continuing with discussions until the next revision of interest rates.
[15] Securities companies can provide the explanations as sales companies, on behalf of the issuers. In case of discretionary fallback provisions, the relevant entities, issuers, and bondholders could communicate, with a view to exercising the discretionary power smoothly.

bondholder by the issuer, for example, so that there is no misunderstanding about the purpose and content of the discussions and modifications.[16,17]

- ✓ A summary of the permanent cessation of LIBOR, as well as risks and impact posed by the cessation
- ✓ Pros and cons of adopting each of the alternative interest rate benchmarks (fallback rates) and the spread adjustment methodologies recommended and presented in the results of the public consultations held by the Committee with regard to the options of alternative interest rate benchmarks in the active conversion and fallback provisions
- ✓ Risks of delays in interest payments, because there would be no interest rate benchmarks to reference if neither an active conversion nor robust fallback provisions is introduced before the cessation

When discussing the above in the context of loans, financial institutions should explain that future transactions will not be affected by whether there is an agreement or not on the introduction of an active conversion/fallback language and should pay careful attention to, for example, the fact that this may be considered abuse of dominant bargaining position under the Banking Act.

B. Consideration of the use of synthetic yen LIBOR

For contracts that fall under the above basic concept, since there will be no interest rate benchmarks to rely on, due to the cessation of panel-based JPY LIBOR, the use of synthetic yen LIBOR may be considered as a "safety net."

In such cases, there are no laws and regulations in Japan that regulate the use of specific interest rate benchmarks, and in many tough legacy contracts, individual

[16] Each financial institution can change their explanations depending on factors including the level of understanding among clients and the progress in preparation by financial institutions. Moreover, if bondholders' meetings are to be held, matters including the content indicated herein should be included in the reference documents for the meeting of bondholders and voting documents to be delivered to bondholders in accordance with the Companies Act, with a view to providing information to all bondholders in advance.

[17] It is desirable for entities including financial institutions and issuers to consult with, for example, lawyers, as necessary, and to be able to explain the reasonableness of the extent of such explanation after the fact.

contracting parties need to decide on whether or not to use synthetic yen LIBOR, based on the content of the contracts and intentions of the parties concerned, taking into account the points to be noted in (3) below.[18]

C. Special circumstances

As mentioned above, the Committee considers that progress has been made in the transition in line with the Roadmap in Japan. However, there is a possibility that contracts with special circumstances may arise that would make the transition difficult, especially in contracts that the Committee is not aware of. It is possible that there are existing contracts that do not fall under the above basic concept, but have special circumstances that prevent the transition, for example, where it is not appropriate to proceed with the transition with a view to protecting clients and ensuring the soundness of the Japanese financial markets and financial system.

Therefore, it was proposed at the meetings of the Sub-Group on Loans and the Sub-Group on Bonds to broadly solicit opinions of the relevant parties on whether there are any special circumstances that make transition difficult and details of such specific circumstances.

(3) Points to note on the use of synthetic yen LIBOR

Consider the following points on the use of synthetic yen LIBOR, (1) it will be available only for one year and (2) it will be calculated on a methodology different from the one used for panel-based JPY LIBOR as described in Section 2.(1). In the section below, the Committee's understanding on these points is organized.

A. Litigation risks

The Committee considers that, in general, the transition to synthetic yen LIBOR would not be made unconditionally, without an agreement between contracting parties,

[18] The FSA and the BOJ have indicated that they will check the status of the use of synthetic yen LIBOR and customer support as necessary. For more information, please refer to the following links.
https://www.fsa.go.jp/en/policy/libor/syntheticlibor202102.pdf
https://www.fsa.go.jp/news/r3/20210831/20210831.html (available only in Japanese)
https://www.boj.or.jp/en/announcements/release_2021/data/rel210308a.pdf

for contracts referencing LIBOR in Japan after the cessation. There is a risk of disputes arising to the contract if synthetic yen LIBOR is used without agreement between the parties, because the economic value of a contract referencing panel-based LIBOR and synthetic yen LIBOR may change.[19]

B. Sharing understanding between contracting parties

The Committee has discussed measures to mitigate litigation risks.

To avoid such risks, it is necessary for the contracting parties to agree on the use of synthetic yen LIBOR, or to agree through procedures to change contracts as stipulated by law in the case of bonds. However, under the circumstances where no agreement has been reached based on the negotiations and modification procedures as described in (2) A. above, it may be difficult to agree on the use of synthetic yen LIBOR. In this case, in order to mitigate litigation risks regarding the use of synthetic yen LIBOR, measures to share understanding among contracting parties may be considered, even if they do not reach an agreement.[20,21]

The following are some of the details of the understanding that should be shared.[22]

- ✓ Adopting a synthetic yen LIBOR instead of the current yen LIBOR (panel-based LIBOR)
- ✓ Adopting a synthetic yen LIBOR on the date of the first revision of interest rates after the cessation of the panel-based LIBOR
- ✓ The fact that it will not be feasible for synthetic yen LIBOR to replicate precisely the economic value of contracts referencing panel-based LIBOR, as synthetic yen LIBOR will be produced using a different methodology not reliant on panel

[19] In Japan, it is assumed that there are no safe harbor provisions (exemption clauses) aimed at minimizing material risks and uncertainties in the interpretation and operation of contracts that reference synthetic yen LIBOR.

[20] The joint statement by the FSA and the BOJ also states that "it is necessary for all parties concerned to share an understanding of the fact that economic values can change." Please refer to the link in footnote 3 for details.

[21] When sharing understanding in loan contracts, financial institutions should be aware of "abuse of dominant bargaining position" and other issues. In the case of bonds, if an issuer entrusts an agent with operations including interest payments and the confirmation of interest rates, and the agent uses synthetic yen LIBOR, the policy for using synthetic yen LIBOR should be shared with the entrusted agent in advance, and the agent should use synthetic yen LIBOR based on a request from the issuer afterwards.

[22] Since the content that needs to be shared may vary depending on, for example, the content of the contract, this public consultation provides a typical example. In practice, details of the recognition to be shared should be considered according to the content of each contract and intentions of the contracting parties. It would also be desirable to keep record of the evidences used in negotiations such as the circumstances where an agreement could not be reached via either an active conversion or fallback provisions, the contents shared among the contracting parties, and additional efforts made to reduce risks.

bank submissions

- ✓ The fact that synthetic yen LIBOR will be available only for one year from January to December 2022 and that the contracts set to expire on and after January 1, 2023, will need to be negotiated again regarding the interest conversion in good faith and an agreement must be reached with regard to the alternative reference rate within a year (excluding contracts for which the interest rates referenced will not be revised on and after January 1, 2023)

As for the means of sharing understanding, parties involved in loan contracts can negotiate on the points above and the lender, for example, can keep record of the negotiation in the form of a memorandum.

In the case of certain types of bonds including publicly offered bonds, where there are an unspecified number of bondholders, it is assumed that it may be difficult to negotiate between the contracting parties. In this case, the following measures can be considered as a means of sharing understanding: (i) issuing a notice that includes the "negative consent" procedure, (ii) issuing a notice in the form of a written notice to convene a bondholders' meeting, and (iii) receiving the acknowledgement of receipt from the bondholders in addition to issuing a notice to them.

C. Different measures according to the content of contracts

Litigation risks will remain, even if the above-mentioned measures to share understanding are taken, as long as an agreement is not reached between the parties concerned. Moreover, the specific details and extent of risks will vary depending on the content of each individual contract and intentions of the contracting parties.

Therefore, it is desirable for contracting parties who are considering the use of synthetic yen LIBOR to take effective measures to mitigate litigation risks by, for example, consulting with lawyers as necessary.

In addition to litigation risks, there is a possibility that the use of synthetic yen LIBOR will require to address hedge accounting and tax-related issues. The Committee expects that these points will be deliberated by the relevant parties and that necessary measures will be taken by individual contracting parties.

Nonetheless, taking into account the deliberations by the Committee thus far, it is considered desirable to shift from synthetic yen LIBOR to an alternative interest rate benchmark as early as possible, on the assumption that synthetic yen LIBOR is expected to be published only for one year.

D. Other risks and countermeasures

The Sub-Group on Loans and the Sub-Group on Bonds proposed to broadly listen to the opinions of the parties on the content of litigation risks, the significance of sharing understanding and whether there is anything missing in the content and measures.

At the same time, the Committee would like to hear opinions from a broad range of respondents on whether there are other potential risks when using synthetic yen LIBOR, in addition to what is described in this public consultation, and if so, what kind of countermeasures there may be when addressing such risks.

3. Items subject to public comments

As described at the beginning, this public consultation is intended to outline the outcome of the deliberations in the Committee, and then seek comments from a wide range of relevant parties on (1) the basic concept on specifying tough legacy contracts for which the adoption of synthetic yen LIBOR may be considered and (2) points to note when adopting the synthetic yen LIBOR. The Committee has decided to solicit comments on various issues mentioned in this public consultation from a wide range of respondents in Japan and abroad, and based on the results of this solicitation, publish the deliverables as the Committee.

Specific questions are shown in Appendix 3-a. Please provide your answers in accordance with (1) and (2) below.

(1) Answering method

Answer format is provided in Appendix 3-b; please answer using it as appropriate.

Please note the following points when answering:

- Please answer assuming JPY as the denominated currency and Japanese law as the applicable law.

- Please base your answers on the external conditions (i.e., status of international discussions and the status of deliberation on hedge accounting) at the time.

(2) Submission guideline

A. Submission deadline

October 19, 2021

B. Submission address

Please send your comments and inquiries to the following address by email.

- Secretariat of the "Committee on Japanese Yen Interest Rate Benchmarks" (Market Infrastructure Group, Market Infrastructure Division, Financial Markets

Department, Bank of Japan)

- post.fmd33@boj.or.jp

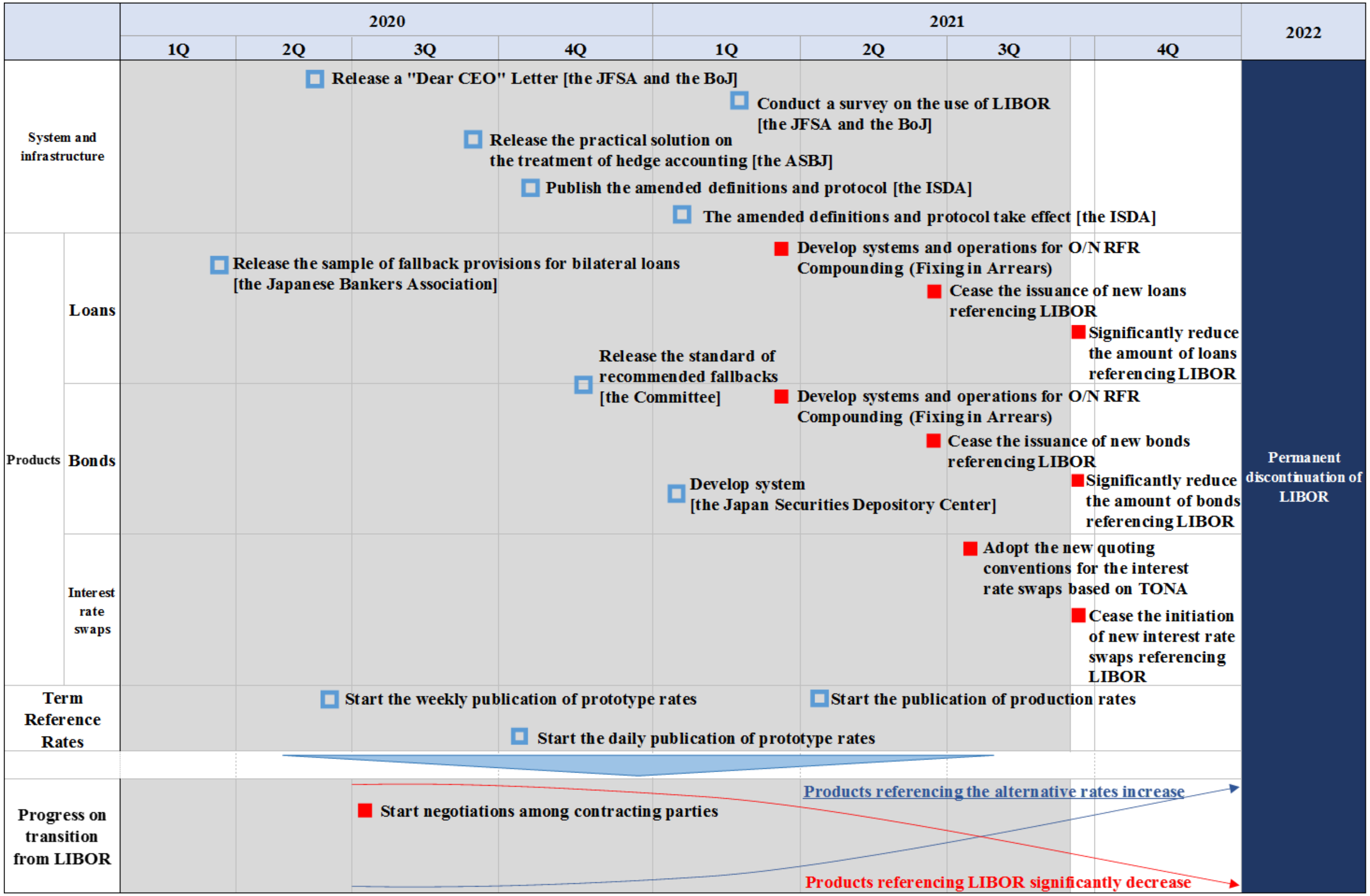
C. Required information

- Your name (or the name of your organization)
- Contact information (telephone number and email address)
- Name of your organization (only if you belong to a corporate or any other type of organization)

D. Notes

Information submitted, such as name, contact address, and other personal information, may be used to contact you to clarify and confirm information provided. Your comments may be published with your affiliation, unless specifically requested otherwise.

Appendix 1: Roadmap to Prepare for the Discontinuation of Japanese Yen LIBOR (as of September 2021)



Notes:1. ■ indicates measures to be taken by each firm.

2. In this roadmap, "LIBOR" refers to the conventional one based on a methodology in which the rate is calculated using the rates submitted by the panel banks.

3. "Cease the initiation of new interest rate swaps referencing LIBOR" shall be applied to transactions except those intended for risk management of existing positions. In addition, the sub-group shall not preclude financial institutions from executing those transactions which would result in increasing LIBOR exposure for their customers and not require financial institutions to confirm their customers' purposes of trade before and after selling financial instruments or executing transactions. (See "Report from the Sub-Group for the Development of Term Reference Rates," material for the Mar. 26, 2021 meeting.)

Appendix 2: Recent initiatives taken by the Committee

This appendix describes major initiatives taken by the Committee since the second public consultation.

(Initiatives for the publication of production rates and improvement in robustness of Term Reference Rates)

On April 26, 2021, QUICK Benchmarks, Inc. started to publish production rates of the Tokyo Term Risk Free Rate (TORF), which received the most support as an alternative interest rate benchmark to JPY LIBOR in the Committee's public consultation.[23] The Committee has supported the establishment of governance and the enhancement and improvement of transparency of the calculation method in preparation for the release of production rates of TORF. With the publication of productions rates of TORF, all three alternative interest rate benchmarks (TORF, O/N RFR Compounding [Fixing in Arrears], and TIBOR) for JPY LIBOR are now available. Moreover, the Committee has been supporting market-wide initiatives to revitalize Japanese yen overnight index swap (OIS) transactions, which are the underlying transactions of Term Reference Rates, in order to improve robustness of Term Reference Rates.

(Promoting transactions using O/N RFR Compounding [Fixing in Arrears])

On December 25, 2020, the Committee released the "TONA (Fixing in Arrears) Conventions to Use in Loans,"[24] based on the results of consultation by the Sub-Group on Loans, and indicated that it would continue its deliberations, focusing on the "Lookback without Observation Shift" approach.[25] In addition, on September 10, 2021, the Committee published the "Convention Tools for Calculating Interest on TONA Compounding (Fixing in Arrears)" to promote understanding of the Convention.[26] The increase in cash products referencing the compounded rate (fixing in arrears) has been contributing to revitalizing the OIS transactions mentioned above through an increase in the need for hedging.

[23] https://www.boj.or.jp/en/paym/market/jpy_cmte/cmt210426a.htm/
[24] https://www.boj.or.jp/en/paym/market/jpy_cmte/cmt201225c.pdf
[25] A method in which the interest rate reference period is slid (brought forward) several business days before the interest rate calculation period, and in which the number of days for interest rate calculation matches the number of days in the interest rate calculation period.
[26] https://www.boj.or.jp/paym/market/jpy_cmte/cmt210910a.htm/ (available only in Japanese)

(Encouraging the transition away from LIBOR in the JPY interest rate swaps market)

On March 26, 2021, the Committee released the "Preparations for the discontinuation of LIBOR in the JPY interest rate swaps market"[27] based on the results of the consultation by Sub-Group for the Development of Term Reference Rates. With this statement, the Committee recommended market participants to cease the initiation of new transactions of interest rate swaps referencing JPY LIBOR by the end of September 2021 at the latest, that TONA should be the main alternative interest rate benchmark for transactions in the JPY interest rate swaps market ("TONA First"), and that the quoting conventions should be changed from JPY LIBOR to TONA at the end of July 2021 at the latest. In addition, on July 26, the Committee released "Transition of Quoting Conventions in the JPY interest rate swaps market ("TONA First")," and clarified the details for the transition.[28]

(Promotion of LIBOR transition in the currency swap market)

On August 13, 2021, the Committee released the "Transition of Quoting Conventions in the Cross-Currency Swap Market,"[29] based on the results of the consultation by the Working Group on Currency Swaps. With this statement, the Committee recommended market participants to change the quoting conventions in the inter-dealer currency swaps market from LIBOR to risk-free rates (RFRs, TONA for the yen) on September 21, in coordination with the working groups and relevant authorities in other countries.

(Follow up on the Tokyo Swap Reference Rate)

On August 26, 2021, the Sub-Group for the Development of Term Reference Rates of the Committee conducted an evaluation of the results of the market consultation on the fallback of the Tokyo Swap Rate (TSR)[30] announced by Refinitiv, and reported to the Committee that the members of the sub-group had reached a consensus.[31]

[27] https://www.boj.or.jp/en/paym/market/jpy_cmte/cmt210326c.pdf
[28] https://www.boj.or.jp/en/paym/market/jpy_cmte/cmt210726b.htm/
[29] https://www.boj.or.jp/en/announcements/release_2021/rel210813b.pdf
[30] https://www.refinitiv.com/content/dam/marketing/ja_jp/documents/white-papers/tokyo-swap-rate-methodology-consultation-summary.pdf
[31] https://www.boj.or.jp/en/paym/market/jpy_cmte/cmt210826c.zip

Appendix 3-a: Items subject to public comments

Number	Relevant chapter	Subsection	Page	Question
1	2.(2) A. (Loans)	Tough legacy contracts that could consider using synthetic yen LIBOR Basic concept (Loans)	5	This question is about the basic concept of tough legacy contracts in lending. The Committee organized the concept of loan contracts that are considered to fall under the category of tough legacy contracts. <u>Please describe whether you agree or disagree and explain why.</u>
2	2.(2) A. (Bonds)	Tough legacy contracts that could consider using synthetic yen LIBOR Basic concept (Bonds)	6	This question is about the basic concept of tough legacy contracts in bonds. The Committee organized the concept of bond contracts that are considered to fall under the category of tough legacy contracts. <u>Please describe whether you agree or disagree and explain why.</u>
3	2.(2) B.	Tough legacy contracts that could consider using synthetic yen LIBOR Consideration of using synthetic yen LIBOR	8	This question is about the use of synthetic yen LIBOR for loans and bonds. The Committee concluded that the use of synthetic yen LIBOR could be considered for contracts that fall under the category of tough legacy contracts, after taking into account the content of the contract, litigation risks, and other considerations. <u>Please describe whether you agree or disagree and explain why.</u>
4	2.(2) C.	Tough legacy contracts that could consider using synthetic yen LIBOR Special circumstances	9	This question is about exceptions to tough legacy contracts in loans and bonds. If there are any circumstances that do not fall under the category of tough legacy contracts as outlined by the Committee, but for which the transition cannot be proceeded with -- for example, as it is not appropriate to proceed with the transition, with a view to protecting clients and ensuring the soundness of the Japanese financial markets and financial system -- <u>please let us know the specific circumstances.</u>
5	2.(3) A.	Points to note on the use of synthetic yen LIBOR Litigation risks	9	This question is about the considerations when using synthetic yen LIBOR. The Committee summarized that there are litigation risks when synthetic yen LIBOR is used. <u>Please let us know if you have any comments on this arrangement.</u>
6	2.(3) B.C.	Points to note on the use of synthetic yen LIBOR Sharing recognition, different measures according to the content of contracts, etc.	10 11	This question is about the considerations when using synthetic yen LIBOR. As a measure to mitigate litigation risks, the Committee organized the significance of sharing understanding between contracting parties, the content and measures for sharing, and the necessity of other measures according to the content of the contract. <u>Please tell us if there are any excesses or deficiencies in this arrangement, and if so, what the specifics are.</u>

Number	Relevant chapter	Subsection	Page	Question
7	2.(3) D.	Points to note on the use of synthetic yen LIBOR Other risks and countermeasures	12	This question is about the risks and measures to be taken when using synthetic yen LIBOR. Please tell us whether there are any measures other than the measures to mitigate litigation risks organized by the Committee, and whether there are any risks not organized in this consultation, and if so, what the specifics of each are.
8	2.	Issues to consider	-	This question is about the way of thinking in transition away from LIBOR in Japan. It is considered important that market participants continue to proceed with preparations for transition in line with the Roadmap, given that progress has been already made in line with the Roadmap in Japan and that there are points to note when using synthetic yen LIBOR. Please describe whether you agree or disagree and explain why.
9	-	-	-	If you have any comments or requests on issues other than the above questions, please let us know.