

June 16th, 2022

Mr. Christopher Kirkpatrick  
 Secretary of the Commission  
 Commodity Futures Trading Commission  
 Three Lafayette Centre  
 1155 21st Street, NW  
 Washington, DC 20581

**Re: Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps To Account for the Transition From LIBOR and Other IBORs to Alternative Reference Rates (RIN 3038–AF18)**

Dear Mr. Kirkpatrick:

Japan Securities Clearing Corporation (“JSCC”) hereby respectfully submits comments in response to the proposed rule issued by the Commodity Futures Trading Commission (“CFTC”) - **Clearing Requirement Determination for Interest Rate Swaps to Account for the Transition from LIBOR and Other IBORs to Alternative Reference Rates (RIN 3038–AF18)**<sup>1</sup>.

**Background**

JSCC received an order of exemption from registration as a derivative clearing organization (“DCO”) from the CFTC<sup>2</sup> under the U.S. Commodity Exchange Act and CFTC Regulation 39.6. This exemption permits JSCC to clear for U.S. clearing members and their affiliates, but not for U.S. customers. As of the date of this letter, JSCC clears the following interest rate swaps denominated in Japanese Yen (“JPY IRS”), including TONA OIS which is a risk-free reference rate in JPY, for its clearing members, their affiliates and non-U.S. customers.

**Fixed to Floating Swap Class**

Floating rate indexes	JPY-TONA-OIS-COMPOUND or JPY-TONA-OIS Compound (“OIS”)	JPY-TIBOR-ZTIBOR or JPY-Euroyen TIBOR (“Z TIBOR”) (1M,3M,6M)	JPY-TIBOR-17097 or JPY-TIBOR (“D TIBOR”) (1M,3M,6M)
Termination date range	3 days – 14623 days	3days – 10971 days	3days – 10971 days

<sup>1</sup> <https://www.cftc.gov/sites/default/files/2022/05/2022-10490a.pdf>

<sup>2</sup> AMENDED ORDER OF EXEMPTION FROM REGISTRATION (15<sup>th</sup> May 2017):  
<https://www.cftc.gov/sites/default/files/idc/groups/public/@otherif/documents/ifdocs/jscdcoexemptamorder5-15-17.pdf>

**Basis Swap Class (Tenor)**

Floating rate indexes	Z TIBOR (1M,3M,6M)	D TIBOR (1M,3M,6M)	OIS
Termination date range	3days — 10971 days	3days — 10971 days	3 days – 14623 days

**Basis Swap Class (Curve)**

Floating rate indexes	OIS vs Z TIBOR	OIS vs D TIBOR	Z TIBOR vs D TIBOR
Termination date range	3days — 10971 days	3days — 10971 days	3days — 10971 days

Based on discussions with market participants and following a public consultation, in December 2021 JSCC completed the conversion of JPY IRS referencing Libor to TONA OIS<sup>3</sup>. Since the end of 2021, JSCC has ceased to accept for clearing any new JPY IRS referencing Libor.

**Request for Comments by the CFTC**

In general, the migration of swaps from Libor to the alternative reference rates has now largely been completed for non-USD currencies. The conversion of JPY IRS referencing Libor, which is included in the current Clearing Requirement, to TONA OIS was completed without any issue. Market liquidity has now completely shifted from JPY Libor IRS to TONA OIS.

Therefore, we commend the Commission’s inclusion of JPY TONA OIS in the proposed modifications to regulation 50.4(a), as this proposal would harmonise the CFTC’s Clearing Requirement with other jurisdictions that have already mandated, or are soon to mandate, the clearing of swaps referencing alternative reference rates. This harmonisation would lower the operational and compliance burden for market participants of complying with differing clearing mandates, where they are active across multiple jurisdictions.

Additionally, JSCC would like to take the opportunity to specifically respond to some of the CFTC’s requests for comments as below, in relation to the inclusion of JPY TONA OIS in the proposed modifications to regulation 50.4(a).

<sup>3</sup> On the weekend of 4th December 2021, existing cleared JPY LIBOR IRS were converted to TONA OIS, except for those Libor swaps for which the last rate reset was prior to the end of 2021. Also, Libor swaps generated by a swaption exercise were cleared until the end of 2021 and were subject to a second conversion to OIS at the end of 2021.

A summary of JSCC's conversion plans is available on JSCC's website:

[https://www.jpx.co.jp/jsc/en/cimh100000001ri-att/Outlines\\_concerning\\_Handling\\_of\\_Conversion\\_of\\_LIBOR\\_Referencing\\_Swaps\\_to\\_OIS\\_etc\\_EN.pdf](https://www.jpx.co.jp/jsc/en/cimh100000001ri-att/Outlines_concerning_Handling_of_Conversion_of_LIBOR_Referencing_Swaps_to_OIS_etc_EN.pdf)

## **B. Consistency with DCO Core Principles**

*The Commission requests comment as to whether the proposed determination would adversely affect any DCO's ability to comply with the DCO core principles.*

The JPY swap market liquidity has already fully transitioned from IRS referencing LIBOR to TONA OIS. Therefore, there would be no concern for DCOs to accept TONA OIS swaps for clearing.

Including JPY TONA OIS in the CFTC's Clearing Requirement would not affect the ability of DCOs to comply with the CEA or the relevant legal and regulatory regime in any other jurisdiction. Indeed, the CFTC has already determined that the Japanese regulatory regime for DCOs is comparable and comprehensive, as a condition of JSCC's DCO exemption under section 5b(h) of the Commodity Exchange Act.

## **C. Consideration of the Five Statutory Factors**

### **1. Factor (I) – Outstanding notional exposures and trading liquidity**

*The Commission requests comment and any relevant market analysis regarding the sufficiency of outstanding notional exposures and trading liquidity in USD SOFR, GBP SONIA, EUR ESTR, CHF SARON, JPY TONA, and SGD SORA OIS, including for the proposed termination date ranges, to support a clearing requirement.*

As discussed above, the JPY swaps market has now fully transitioned away from JPY LIBOR IRS.

As of the end of April 2022, TONA OIS accounted for 97% of the DV01 traded (>2yr tenor) in the interest rate derivatives market.<sup>4</sup>

*The Commission requests comment and any relevant market analysis regarding whether there is adequate pricing data for DCO risk and default management of the products subject to this proposal, including with regard to the proposed stated termination date ranges. The Commission also requests comment regarding whether DCOs offering clearing for RFR OIS markets would be able to risk manage these products during stressed market conditions. The Commission requests comments concerning all aspects of this factor, including whether commenters agree that DCOs offering to clear the RFR OIS subject to this proposed clearing requirement determination can satisfy the factor's requirements.*

As discussed above, the JPY swaps market has fully migrated from JPY LIBOR IRS to TONA OIS. Therefore, JSCC believes there is adequate pricing data in a liquid market across different tenors for DCO risk and default management of JPY TONA OIS. In addition, JSCC regularly holds default management fire drills to verify that

<sup>4</sup> ISDA-Clarus RFR Adoption Indicator (April 2022), available at: <https://www.isda.org/a/XQVgE/ISDA-Clarus-RFR-Adoption-Indicator-2022-04-April-2022.pdf>

its default management process is robust and would be capable of managing a default in stressed market conditions.

### **3. Factor (III) – Effect on the mitigation of systemic risk**

*The Commission requests comments concerning the proposal to add these RFR OIS to the clearing requirement, with regard to the possible reduction of systemic risk.*

Amendments to the current Clearing Requirement to include swaps with alternative reference rates would maintain the current momentum in the shift of swaps from bilateral to cleared markets, which would enhance safety and transparency, and ultimately result in a reduction of systemic risk.

### **5. Factor (V) – Legal certainty in the event of insolvency**

*The Commission requests comment regarding legal certainty with respect to an event of an insolvency for an exempt DCO, such as JSCC or HKEX, particularly with regard to the treatment of swap counterparty positions, funds, and property.*

As the proposal correctly points out, Exempt DCOs, including HKEX and JSCC, continue to observe the Principles for Financial Market Infrastructures. The CFTC’s DCO registration requirements are exempted only where the home country regulations of the relevant DCO are comparable to the relevant U.S. regulations and consistent with the Principles for Financial Market Infrastructures<sup>5</sup>.

Thus, the treatment of swap counterparty positions, funds and property with respect to the insolvency of an Exempt DCO, or one of its clearing members, should follow the Exempt DCO’s home country regulations, reasonable legal certainty of which was confirmed by the CFTC at the time of exemption.

As the proposal highlights, JSCC’s business rules<sup>6</sup> provide details of the fair treatment of counterparties (for both clearing members and their customers) in the default management process, which includes rules covering tools for resolution.

With respect to swaps clearing, JSCC has implemented a trust scheme for the bankruptcy remote custody of deposited collateral, which provides JSCC’s clearing members and customers with legal certainty in the case of the insolvency of a clearing member or JSCC.<sup>7</sup>

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<sup>5</sup> CFTC Regulation § 39.6 Exemption from derivatives clearing organization registration, (a)(1)

<sup>6</sup> Interest Rate Swap Clearing Business Rules, available at: [https://www.jpx.co.jp/jsc/en/rule/rule\\_irs.html](https://www.jpx.co.jp/jsc/en/rule/rule_irs.html)

<sup>7</sup> On its website, JSCC provides a summary of its trust scheme and a comparison of the customer protections provided under Japanese and U.S. bankruptcy laws. Please see “4. Management of Collateral Posted to JSCC - Trust Scheme”, available at: <https://www.jpx.co.jp/jsc/en/otc/client.html>

Therefore, due to the legally binding measures implemented by JSCC, there is reasonable legal certainty in the event of the insolvency of either JSCC or one of its clearing members.

## **VI. Proposed Implementation Schedule and Compliance Dates**

*The Commission requests comment on whether setting a compliance date 30 days after publication of the final rule in the Federal Register provides market participants with sufficient notice and opportunity to comply with this proposed determination.*

As JPY Libor has already fully transitioned to TONA OIS, JSCC is in agreement with the CFTC's proposal to adopt a single compliance date that would be 30 days after the publication of the final rule in the Federal Register.

## **VII. Cost Benefit Considerations**

*The Commission requests comment concerning the costs of clearing described above for various market participants and the extent to which they are already being incurred. The Commission requests comment from both U.S. and non-U.S. swap counterparties that may be affected by the proposed determination.*

TONA OIS is accepted for clearing at 3 registered DCOs (CME Clearing, Eurex Clearing, & LCH Ltd) and one DCO exempted from registration (JSCC). Therefore, we believe that replacing JPY-LIBOR with TONA OIS would not change the cost of clearing services, in any regard.

*The Commission requests comment on whether benefits will result from the proposed rule, and, if so, the expected magnitude of such benefits. The Commission also requests comment on whether the proposed rule would provide benefits by furthering international harmonization of clearing requirements.*

As discussed above, this proposal would harmonise the CFTC's Clearing Requirement with other jurisdictions that have already mandated, or are soon to mandate, the clearing of swaps referencing alternative reference rates. This harmonisation would lower the operational and compliance burden for market participants of complying with differing clearing mandates, where they are active across multiple jurisdictions.

Furthermore, we would like to note that the benefits of this proposal would be significantly enhanced if the CFTC's swap customer clearing regime, which currently limits clearing to DCOs registered with the CFTC through the CFTC-registered FCMs, is reviewed with an eye toward giving U.S. customers expanded access to non-U.S. swap markets cleared by DCOs exempted from registration with the CFTC ("Exempt DCOs"). As explained above, under the current CFTC regime, these non-U.S. Exempt DCOs are subject to comparable and comprehensive supervision and regulation by their home country regulators. However, U.S. customers are not able to access clearing services provided by Exempt DCOs because, for example, the registration with the CFTC

would require the application of the U.S. Bankruptcy Code and the relevant CFTC rules, such as part 22, 39, and 190, to the local operations of these non-U.S. Exempt DCOs, creating legal conflicts in some jurisdictions<sup>8</sup>. We recommend that the Commission prioritize a review of these current restrictions for U.S. customers, with a view to allowing U.S. customers to access non-U.S. swap markets.

### **Conclusion**

We are at your disposal to address any questions or requests for additional information. Should you have any questions or any other requests, please do not hesitate to contact Tetsuo Otashiro, Senior Head of Global Policy and Regulation, at +81-50-3361-0928 or by email to [t-otashiro@jpx.co.jp](mailto:t-otashiro@jpx.co.jp).

Yours sincerely,



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Mr. Masaki SHIZUKA  
President & CEO  
Japan Securities Clearing Corporation

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<sup>8</sup> For details, please see the following comment letters:

Exemption From Derivatives Clearing Organization Registration, 84 Fed. Reg. 35456 (Jul. 23, 2019).

Comments from Japan Securities Clearing Corporation, available at :

<https://comments.cftc.gov/Handlers/PdfHandler.ashx?id=28995>

Registration With Alternative Compliance for Non-U.S. Derivatives Clearing Organizations, 84 Fed.

Reg. 34819 (Jul. 19, 2019).

Comments jointly from ASX Clear (Futures) Pty Limited, Japan Securities Clearing Corporation, Korea Exchange, Inc. and OTC Clearing Hong Kong Limited, available at:

<https://comments.cftc.gov/Handlers/PdfHandler.ashx?id=29015>