

September 02, 2021

**VIA ELECTRONIC SUBMISSION**  
**European Securities and Markets Authority**  
**201-203 Rue de Bercy**  
**CS 80910**  
**75589 Paris Cedex 12**  
**France**

**Re: Consultation Paper on the clearing and derivative trading obligations in view of the benchmark transition**

**I. Responses to specific Questions in the Consultation Paper**

**Question 1: Are there any general comments you would need to raise?**

The Global Association of Central Counterparties (“CCP12”) appreciates the opportunity to comment on the European Securities Markets Authority’s (“ESMA”) Consultation Paper on the clearing and derivative trading obligations in view of the benchmark transition (“the Consultation Paper”).<sup>1</sup>

CCP12 is the global association for CCPs, representing 38 members who operate more than 60 individual central counterparties (CCPs) globally across the Americas, EMEA and the Asia-Pacific region.

CCP12 generally supports ESMA’s proposals to adapt the clearing mandates to reflect the transition to the new Risk-Free Rates preparing for the cessation of the GBP and JPY LIBORs and EONIA.

CCP12 would like to emphasize in this context the importance of clearing and is supportive of a smooth transition, which is aligned between global standard setting bodies.

**Question 2: Are there any other aspects of the transition that need to be taken into account? Please share any data that would help qualify further the progress with the transition or any other aspects that you think should be considered.**

CCP12 acknowledges that at the time ESMA was preparing this Consultation Paper, the future direction of JPY interest rate markets was not sufficiently clear, because the shift of JPY IRS liquidity to the RFR swap, TONA (Tokyo Overnight Average Rate) OIS, was not clearly evident. This uncertainty was stated in section 3.2.2.4 JPY, paragraph 39 of the Consultation Paper as “(t)he transition to RFR for JPY is the least advanced compared to the other major currencies discussed in the CP. JPY LIBOR is due to cease at the end of the year, but it remains uncertain which index will be used instead...”

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<sup>1</sup> ESMA, Consultation Paper, clearing and derivative trading obligations in view of the benchmark transition (Jul. 2021), available at <https://www.esma.europa.eu/press-news/consultations/public-consultation-clearing-and-derivative-trading-obligations-in-view>.

However, recently, market liquidity has been migrating away from JPY LIBOR, to the TONA RFR. The reasons for this migration are detailed below.

a. Conversion of JPY IRS by CCPs from Libor to TONA

As highlighted by ESMA in the Consultation Paper, all of the major CCPs clearing JPY LIBOR IRS plan to fully transition JPY LIBOR IRS cleared at each of their CCPs to JPY TONA OIS on the weekend of December 04, 2021. On that weekend, existing cleared JPY LIBOR IRS will undergo a conversion to JPY TONA IRS. It is expected that this migration will concentrate market trading and liquidity on TONA OIS as the replacement for JPY LIBOR.

b. General Support for Conversion to TONA on IRS with “TONA FIRST”

Secondly, the report published by the Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks, an industry forum organized by the Bank of Japan with a view to providing market views on the transition of interest rate benchmark for JPY, stated that a large majority of respondents supported TONA as a desirable alternative benchmark to JPY LIBOR, with a view to maintaining consistency with global discussions<sup>2</sup>.

On July 26, 2021, the Sub-Group for the Development of Term Reference Rates reached a consensus on “TONA First”<sup>3</sup>, an initiative to recommend liquidity providers to change their quoting conventions from JPY LIBOR to TONA in the JPY IRS market, after the market close on July 30, 2021.

c. Accelerating Shift of Cleared Volume from Libor IRS to OIS

Thirdly, now that most of the CCPs clearing JPY IRS have finalized, or almost finalized, drafting of their conversion plans, the market is beginning to organically migrate away from JPY LIBOR. It is becoming clear that the market is favoring TONA OIS as the replacement for JPY LIBOR<sup>4</sup>.

d. More than one CCP is available for clearing TONA OIS

Clearing of TONA OIS is available in JSCC, Eurex, LCH, and CME. Thus, there would be little, if any, concern on the availability of clearing service for those entities subject to a clearing mandate for JPY TONA OIS.

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<sup>2</sup> Report from the Sub-Group for the Development of Term Reference Rates on 26.03.2021 is available in the following link (See “2. Alternative benchmark in the JPY interest rate swaps market”): [Link](#)

<sup>3</sup> “TONA First” is available in the following link: [Link](#)

<sup>4</sup> According to ISDA-Clarus RFR Adoption Indicator (July 2021), the percentage of IRD DV01 traded as an RFR in JPY was 23.4%, which was higher than for both USD (7.4%) and EUR (2.1%). The percentage of RFR-linked IRD DV01 traded with a tenor longer than 2 years in JPY was 93.9%, which was also the highest among the currencies covered in the report - USD (40.5%), EUR (65.1%), GBP (57.8%), AUD (1.2%), and CHF (74.3%).

ISDA-Clarus RFR Adoption Indicator (July 2021) is available in the website link: [Link](#)

**Question 3: Are there any other aspects that you think that ESMA should take into account or that might justify a different approach?**

CCP12 appreciates that ESMA is coordinating the transition to the new rates with regulators in other jurisdictions to the extent possible. However, we would like to emphasize the importance of international cooperation and coordination to ensure a harmonized transition. Please also refer to our answer to Question 6.

**Question 4: Do you agree with the assessment of the EMIR criteria and with the proposed classes (except for USD which is dealt with in a dedicated Question 5)? If not please detail how the assessment could differ and please also provide data and information to justify a different assessment.**

CCP12 agrees with the majority of the assessment of the EMIR criteria stated in paragraph 85 and with the proposed classes. However, as detailed in our response to Question 2, the data for the assessment on JPY OIS, including those listed in “3.2.2.4 JPY” of the Consultation Paper, does not reflect the current situation. Therefore, CCP12 recommends that a JPY RFR swap, JPY TONA OIS, should be included in the modified IRS clearing obligation, as a replacement for JPY LIBOR swap.

**Question 5: Will the transition regarding USD have made sufficient progress by this Autumn to decide on whether to maintain or remove USD LIBOR classes. Will there be sufficient liquidity to introduce SOFR OIS to the CO and for which maturity range? Please provide the relevant data and information to explain your assessment, in accordance with the EMIR framework.**

We encourage ESMA to closely monitor the developments in the US and await any action from the primary regulator before adapting the EU clearing mandate in relation to the USD LIBOR and SOFR.

**Question 6: Do you agree with the proposed implementation of the changes? if not please provide details that could justify a different implementation.**

CCP12 agrees with ESMA’s proposed approach to modify the annex of the current Commission Delegated Regulation, instead of a new RTS that could lead to a brand-new Commission Delegated Regulation.

However, in terms of timing, CCP12 believes the modifications could reasonably come into force on dates that coincide with the contractual conversion of contracts referencing soon-to-be discontinued LIBOR benchmarks by a number of CCPs. To be specific, the timing of entry into force could be set on Monday October 18, 2021 for the removal of the contract types referencing EONIA, Monday December 06, 2021 for the removal of the contract types referencing JPY Libor, and it should be Monday December 20, 2021 for the removal of the contract types referencing GBP Libor. As noted in the Consultation Paper, it is expected that liquidity of EONIA (EUR), GBP LIBOR, and JPY LIBOR “would sharply decrease” after the CCP transition has been completed.

Furthermore, as explained in our responses to previous questions, CCP12 would recommend the removal should be implemented in conjunction with the inclusion of RFR swaps, including JPY TONA OIS, in the scope of the clearing mandate.

It would be desirable for regulators to harmonize the timing globally, as this would significantly reduce further complexity for the industry, which is already working hard to ensure a smooth transition.

**Question 7: Do you agree with the proposal to not include OIS referencing €STR, SONIA nor SOFR to the DTO at this point in time? In case you disagree with ESMA's proposal, please justify and support your assessment with qualitative and quantitative data.**

No comment.

**Question 8: Do you consider that IRS referencing USD LIBOR should continue to be subject to the DTO? Please explain.**

No comment.

**Question 9: Are there other elements that should be taken into account and that would impact the outcome of the cost-benefit analysis? Please provide quantitative and qualitative details.**

No comment.

## II. About CCP12

CCP12 is the global association for CCPs, representing 38 members who operate more than 60 individual central counterparties (CCPs) globally across the Americas, EMEA and the Asia-Pacific region.

CCP12 promotes effective, practical and appropriate risk management and operational standards for CCPs to ensure the safety and efficiency of the financial markets it represents. CCP12 leads and assesses global regulatory and industry initiatives that concern CCPs to form consensus views, while also actively engaging with regulatory agencies and industry constituents through consultation responses, forum discussions and position papers.

For more information please contact the office by e-mail at [office@ccp12global.com](mailto:office@ccp12global.com) or through our website by visiting [ccp12.org](http://ccp12.org).

## III. CCP12 Members

