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CARR releases anticipated CDOR loan fallback language

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On August 3, 2022, the Canadian Alternative Reference Rate working group (CARR) published the highly anticipated [recommended fallback language for loan agreements](#) [PDF] (the Recommended Language) that use the Canadian Dollar Offered Rate (CDOR) as the interest rate benchmark, together with a white paper that provides an overview of the language (the White Paper). The Recommended Language was based on language published by the Alternative Reference Rates Committee (ARRC) and the Loan Syndications & Trading Association (LSTA), both of which are related to the replacement of LIBOR with the Secured Overnight Financing Rate (SOFR), which market participants will be familiar with.

Overview

This Recommended Language provides for an automatic transition from CDOR to the Canadian Overnight Repo Rate Average (CORRA) on the date that CDOR ceases to be published by Refinitiv in June 2024. It also provides the Administrative Agent with the ability to make any technical, administrative or operational changes (referred to as “Conforming Changes”) that it decides are appropriate to reflect the adoption and implementation of CORRA and to permit the administration of CORRA.

The Recommended Language provides for a two-step waterfall to determine the successor rate to be used to replace CDOR. The first rate in the waterfall is Term CORRA, plus a hardcoded credit spread adjustment. Term CORRA is not yet available in the market, but it is subject to a consultation that closed recently. The results are expected to be released shortly. The second rate in the waterfall is Daily Compounded CORRA, plus a hardcoded credit spread adjustment.

Climb the waterfall

One feature of the Recommended Language that was not included in the ARRC language is a “climb the waterfall” mechanism that is relevant where Daily Compounded CORRA has been implemented as the fallback to CDOR because Term CORRA was not available at the time of CDOR cessation. The “climb the waterfall” mechanism would, following the availability of Term CORRA, give the Administrative Agent the ability to provide notice to the Borrower and Lenders, resulting in Term CORRA replacing Daily Compounded CORRA.

Credit spread adjustments

Credit spread adjustments (CSAs) are included in the replacement rate waterfall to account for the economic difference between CDOR and CORRA. The CSAs that are included in the replacement rate waterfall were published by Bloomberg Index Services Limited (namely, for use in ISDA Agreements). They crystallized as of the date of the announcement on May 16, 2022, by Refinitiv, the administrator for CDOR, in which it stated that it would cease publication of CDOR in June 2024.

Bankers' acceptances

Many Canadian credit facilities contain a Bankers' Acceptance (BA) funding mechanic. However, as CARR notes in the White Paper, there is a strong indication that many Canadian banks will move away from this BA lending model upon CDOR's discontinuation. To address this, the Recommended Language provides the Administrative Agent with the option to cease BA funding when CDOR ceases, by providing notice to the Lenders and Borrower. If the "Required Lenders" (which is usually the lenders representing more than 50% or 66 2/3% of the total commitments under the facility) do not object within 5 business days, (1) the BA mechanic is to be replaced by "CORRA Loans"; (2) any requests to rollover or convert a loan to a BA will be ineffective; and (3) any requests for a new BA will be deemed to be a request for a "CORRA Loan". BAs that are already outstanding would continue to maturity, since the rate is set at the issuance of the BA.

While this addresses the cessation of CDOR and cessation of BAs, there is one further step that parties need to take, which involves incorporating a CORRA Loan mechanism into the credit agreement. The Recommended Language does not provide such CORRA Loan mechanic, and it will be up to the parties to the agreement to include such language.

Further questions

If you have any questions about the cessation of CDOR or the transition to CORRA, please reach out to Lisa Mantello and Jasmyn Lee, who have been actively involved with CARR in this process. Lisa and Jasmyn are members of the CARR Loan Fallback Language working group, and spearheaded the efforts to draft the Recommended Language and accompanying white paper. Lisa is also the co-Chair, and Jasmyn is the co-Secretary, of the CARR Accounting, Tax and Regulatory working group.

Lisa and Jasmyn have also spoken at two recent webinars, moderated by Joyce Bernasek, a partner in the Financial Services group at Osler. They are available on demand at the links below and are all accredited for CLE/CPD in Ontario, Québec and British Columbia.

[Session 1 – June 2, 2022](#)

[Session 2 – August 9, 2022](#)

Resources

For more information, please visit the following links:

[CARR Recommended Fallback Language for Loans \[PDF\]](#)

[CARR White Paper – December 16, 2022 \[PDF\]](#)

[CARR statement regarding RBSL announcement – May 16, 2022](#)

[RBSL – Announcement of Cessation of CDOR in June 2024 – May 16, 2022 \[PDF\]](#)

[RBSL – Consultation on Potential Cessation of CDOR – January 31, 2022 \[PDF\]](#)

[RBSL – Outcome Statement Following Consultation on Potential Cessation of CDOR – May 16, 2022 \[PDF\]](#)

[OSC Authorization Notice – May 16, 2022 \[PDF\]](#)

[AMF Authorization Notice – May 16, 2022](#)

[ISDA Statement on RBSL CDOR Announcement – May 16, 2022](#)

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