

CSA Staff Notice 25-302

Matters Relating to CDOR, LIBOR and Other Interest Rate Benchmarks

November 26, 2020

Introduction

Staff of the securities regulatory authorities in each jurisdiction of Canada (**we**) are publishing this notice to help ensure that market participants are aware of certain developments regarding interest rate benchmarks and can consider their impact.

Upcoming changes to CDOR

The Canadian Dollar Offered Rate (**CDOR**) is a domestically important interest rate benchmark that is currently published in tenors of 1, 2, 3, 6 and 12 months. CDOR is used for a variety of purposes, including to

- calculate the floating-rate component of certain over-the-counter and exchange-traded derivatives,¹
- determine interest payments on certain floating-rate notes and other securities, and
- determine the base interest rate on certain loan agreements between corporate borrowers and banks.

On November 12, 2020, Refinitiv Benchmark Services (UK) Limited (**RBSL**), the administrator of CDOR, announced that the 6 and 12 month tenors of CDOR will cease to be published effective May 17, 2021 (the **effective date**).² The 1, 2 and 3 month tenors of CDOR will continue to be published after the effective date.

Use of 6 and 12 month tenors of CDOR and transition arrangements

According to a 2018 publication of the Bank of Canada³, the vast majority of instruments that use CDOR as a reference rate specify the 1 and 3 month tenors of CDOR, rather than the other tenors.

New instruments

When preparing contractual provisions for new instruments that will extend, or might extend, past the effective date, we encourage market participants to consider the use of a replacement rate if they were planning to use the 6 or 12 month tenors of CDOR.

¹ For example, the Montréal Exchange offers 3 month Canadian bankers' acceptance futures (**BAX**) that reflect the 3 month tenor of CDOR and options on 3 month BAX.

² See RBSL announcement at

https://www.refinitiv.com/content/dam/marketing/en_us/documents/policies/cdor-change-consultation.pdf

³ See *CDOR & CORRA in Financial Markets – Size and Scope* at <https://www.bankofcanada.ca/wp-content/uploads/2018/10/cdor-corra-financial-markets-size-scope-september-17-2018.pdf>

Existing instruments

We encourage appropriate action by persons or companies that have issued or hold securities, or that are parties to derivatives⁴ or loan agreements, which

- reference the 6 or 12 month tenors of CDOR, and
- extend, or might extend, past the effective date.

In particular, we encourage these persons or companies to make plans for appropriate transition arrangements well in advance of the effective date. These transition arrangements might involve:

- the adoption of a replacement rate;
- changes to information technology systems;
- reviewing the contractual provisions for these securities, derivatives and loan agreements that would apply when the 6 and 12 month tenors of CDOR cease to be published (**fallback language**),⁵
- in the case of issuers of securities, the disclosure of any replacement rate or other key transition arrangements to investors.

We encourage market participants to focus on these transition issues now to avoid business and market disruptions after the effective date.

LIBOR and other interest rate benchmarks

We note that various jurisdictions are pursuing plans to reform major interest rate benchmarks, including plans to replace key inter-bank offered rates (**IBORs**) with nearly risk-free reference rates (**RFRs**).⁶ In particular, the United Kingdom, the United States and other countries are currently working to replace the London inter-bank offered rate (**LIBOR**) with alternative RFRs before the end of 2021.⁷

New instruments

When preparing contractual provisions for new instruments that will extend, or might extend, past 2021, we encourage market participants to consider the use of a replacement rate if they

⁴ On November 17, 2020, the International Swaps and Derivatives Association, Inc. (**ISDA**) published guidance for parties to over-the-counter derivative transactions that are affected by the RBSL announcement on the 6 and 12 month tenors of CDOR. A copy of the ISDA guidance is available at https://www.isda.org/a/rwNTE/CDOR-tenor-cessation_ISDA-guidance_17.11.2020_PDF.pdf

⁵ Fallback language might specify a replacement rate (a **fallback**) or how a replacement rate is to be selected. Alternatively, the applicable contractual provisions might not have contemplated that the 6 and 12 month tenors of CDOR would cease to be published. In the absence of appropriate fallback language, issuers may need to take actions to mitigate risk, such as renegotiating a contractual provision.

⁶ On November 20, 2020, the Financial Stability Board (**FSB**) published a report on the status of plans in various jurisdictions to replace IBORs with RFRs. A copy of the FSB report is available at <https://www.fsb.org/wp-content/uploads/P191120.pdf>

⁷ On October 16, 2020, the FSB published a global transition roadmap for LIBOR. The roadmap sets out a timetable of actions for financial and non-financial sector firms to take in order to ensure a smooth LIBOR transition by the end of 2021. A copy of the FSB roadmap is available at <https://www.fsb.org/2020/10/global-transition-roadmap-for-libor/>

were planning to use LIBOR (given that LIBOR is expected to be discontinued at the end of 2021).⁸

We also encourage market participants to include appropriate fallback language in any new instrument that references CDOR or other IBORs that may be replaced in the future.

Existing instruments

We encourage appropriate action by persons or companies that have issued or hold securities, or that are parties to derivatives or loan agreements, which reference LIBOR, CDOR or other IBORs that may be replaced in the future. In particular, we encourage market participants to:

- identify any existing instruments that reference LIBOR, CDOR or other IBORs and ascertain whether they have appropriate fallback language;
- consider appropriate transition arrangements for any existing or legacy contracts that reference LIBOR and that will continue to be in force past 2021 (given that LIBOR is expected to be discontinued at the end of 2021).

ISDA IBOR fallbacks

On October 23, 2020, ISDA launched the IBOR fallbacks supplement (the **IBOR Fallbacks Supplement**) and IBOR fallbacks protocol (the **IBOR Fallbacks Protocol**).⁹

- The IBOR Fallbacks Supplement¹⁰ will amend ISDA's standard definitions for interest rate derivatives to incorporate fallbacks for derivatives linked to certain IBORs, with the changes coming into effect on January 25, 2021. From that date, all new cleared and non-cleared derivatives that reference the definitions will include the fallbacks.
- The IBOR Fallbacks Protocol¹¹ will enable market participants to incorporate the revisions into their legacy non-cleared derivatives trades with other counterparties that choose to adhere to the IBOR Fallbacks Protocol. The IBOR Fallbacks Protocol has been open for adherence since October 23, 2020 and will become effective on the same date as the IBOR Fallbacks Supplement (January 25, 2021).

The FSB previously indicated on October 9, 2020 that it strongly encourages widespread and early adherence to the IBOR Fallbacks Protocol.¹²

⁸ On November 18, 2020, ICE Benchmark Administration Limited (**IBA**), the administrator of LIBOR, announced that it will consult on its intention to cease publication of the euro, U.K. sterling, Swiss franc and Japanese yen tenors of LIBOR at the end of 2021. The IBA indicated that discussions involving the IBA, the U.K. Financial Conduct Authority, other official sector bodies and panel banks are continuing regarding the future of the U.S. dollar tenors of LIBOR. A copy of the IBA announcement is available at https://s2.q4cdn.com/154085107/files/doc_news/ICE-Benchmark-Administration-to-Consult-On-Its-Intention-to-Cease-the-Publication-of-GBP-EUR-CHF-and-JPY-LIBOR-2020.pdf

⁹ A copy of the October 23, 2020 ISDA announcement is available at

<https://www.isda.org/2020/10/23/isda-launches-ibor-fallbacks-supplement-and-protocol/>

¹⁰ A copy of the IBOR Fallbacks Supplement is available at

<http://assets.isda.org/media/3062e7b4/23aa1658-pdf/>

¹¹ A copy of the IBOR Fallbacks Protocol is available at <http://assets.isda.org/media/3062e7b4/08268161-pdf/>

¹² A copy of the October 9, 2020 FSB announcement is available at <https://www.fsb.org/2020/10/fsb-encourages-broad-and-timely-adherence-to-the-isda-ibor-fallbacks-protocol/>

Questions

Please refer your questions to any of the following:

Michael Bennett
Senior Legal Counsel, Corporate Finance
Ontario Securities Commission
416-593-8079
mbennett@osc.gov.on.ca

Melissa Taylor
Legal Counsel, Corporate Finance
Ontario Securities Commission
416-596-4295
mtaylor@osc.gov.on.ca

Serge Boisvert
Senior Policy Advisor
Autorité des marchés financiers
514-395-0337 poste 4358
serge.boisvert@lautorite.qc.ca

Roland Geiling
Derivatives Product Analyst
Autorité des marchés financiers
514-395-0337 poste 4323
roland.geiling@lautorite.qc.ca

Eniko Molnar
Senior Legal Counsel, Market Regulation
Alberta Securities Commission
403-297-4890
eniko.molnar@asc.ca

Michael Brady
Manager, Derivatives
British Columbia Securities Commission
604-899-6561
mbrady@bcsc.bc.ca