CSA ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 25-309
Matters Relating to Cessation of CDOR and Expected Cessation of Bankers' Acceptances

February 23, 2023

Introduction

Staff of the Canadian Securities Administrators (**we**) are publishing this notice to help ensure that market participants are aware of certain developments and transition issues regarding the upcoming cessation of the Canadian Dollar Offered Rate (**CDOR**) and the expected related cessation of the issuance of Bankers' Acceptances (**BAs**).

Part A: June 2024 cessation of CDOR and replacement rates

CDOR is a domestically important interest rate benchmark that is currently published in tenors of 1, 2 and 3 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,
- determine interest payments on certain floating-rate notes (**FRNs**) and other securities, and
- determine the base interest rate on certain loan agreements between corporate borrowers and banks.

In 2021, the Ontario Securities Commission (**OSC**)[1] and the Autorité des marchés financiers (**AMF**)[2] designated CDOR as a critical benchmark and an interest rate benchmark, and Refinitiv Benchmark Services (UK) Limited (**RBSL**) as its designated benchmark administrator, for purposes of Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* (**MI 25-102**).

On May 16, 2022, RBSL announced that CDOR will cease to be published after a final publication on Friday, June 28, 2024 (the **CDOR Cessation Date**).[3] On the same day, the OSC[4] and the AMF[5] authorised RBSL to cease providing CDOR on the CDOR Cessation Date as provided for in a cessation plan submitted by RBSL and following a two-stage transition period.

[1] See OSC decision dated September 15, 2021 at https://www.osc.ca/en/securities-law/orders-rulings-decisions/canadian-dollar-offered-rate-and-refinitiv-benchmark-services-uk-limited-0
[2] See AMF decision dated September 15, 2021 at https://lautorite.qc.ca/fileadmin/lautorite/professionnels/structures-marche/indice-reference/7-5a.pdf
[3] See RBSL announcement at https://www.refinitiv.com/en/media-center/press-releases/2022/may/rbsl-issues-canadian-dollar-offered-rate-cessation-notice
[4] See OSC decision dated May 16, 2022 at https://www.osc.ca/en/securities-law/orders-rulings-decisions/canadian-dollar-offered-rate-and-refinitiv-benchmark-services-uk-limited-1
[5] See AMF decision dated May 16, 2022 at https://lautorite.qc.ca/fileadmin/lautorite/professionnels/structures-marche/indice-reference/2022-PDG-0032-cessation-CEDOR.pdf

Two-stage transition period

The May 16, 2022 announcement of RBSL followed the issuance of a white paper dated December 16, 2021 by the Canadian Alternative Reference Rate working group (**CARR**).[6] Among other things, the CARR white paper recommended that CDOR be discontinued over a two-stage transition period as follows:

- the first stage would run until the end of June 2023, and the second stage would run until the end of June 2024,
- by the end of the first stage, all new derivative contracts and securities would be expected to transition to using an alternative rate like the Canadian Overnight Repo Rate Average (**CORRA**),[7] with no new CDOR exposure after that date with limited exceptions,
- those exceptions would include derivatives that hedge or reduce CDOR exposures of derivatives or securities transacted before the end of June 2023 or in loan agreements transacted before the end of June 2024, and
- the second stage to June 30, 2024 would provide market partcipants with additional time to transition their loan agreements and deal with potential issues related to the redocumentation of "legacy" securities.

Alternative rates: CORRA and potential Term CORRA

It is expected that market participants will use CORRA as the alternative rate for most instruments that currently reference CDOR. CARR has published:

- recommended conventions for FRNs and loan agreements that use CORRA as a reference rate, and
- a methodology for calculating CORRA in arrears.[8]

However, on January 11, 2023, CARR provided an update[9] on its plans for a new forward-looking "Term CORRA" benchmark to replace CDOR for certain instruments or, when appropriate, for related derivatives. In particular,

- CARR confirmed that efforts are underway to develop a 1-month and 3-month Term CORRA benchmark, with the objective of making such a benchmark available for use by the end of Q3 2023,
- we understand that CARR is taking steps to ensure that Term CORRA will be a robust benchmark that complies with the International Organization of Securities Commissions *Principles for Financial Benchmarks* and MI 25-102,
- CARR indicated that a prior consultation with market participants clearly indicates that there is a strong demand from Canadian companies for a forward-looking Term CORRA benchmark,

[6] See CARR white paper at https://www.bankofcanada.ca/2021/12/carr-publishes-white-paper-recommended-future-cdor

[7] CORRA is an existing interest rate benchmark administered by the Bank of Canada. CORRA measures the cost of overnight general collateral funding in Canadian dollars using Government of Canada treasury bills and bonds as collateral for repurchase transactions. For more information on how CORRA is calculated, see https://www.bankofcanada.ca/rates/interest-rates/corra/
The Bank of Canada also publishes the CORRA Compounded Index, which is a measure of the cumulative impact of CORRA compounding over time, starting from a base value of 100 on June 12, 2020. The index can be used to calculate CORRA compounded between any two dates. For more information on the CORRA Compounded Index, see https://www.bankofcanada.ca/rates/interest-rates/corra/#index

[8] See latest version of these documents on CARR's website at https://www.bankofcanada.ca/markets/canadian-alternative-reference-rate-working-group/

[9] See CARR update at https://www.bankofcanada.ca/2023/01/carr-announces-development-term-corra-benchmark/

- Term CORRA's use will be limited through its licensing agreement to only certain instruments (i.e., trade finance, loans and derivatives associated with loans), and
- when Term CORRA is launched, any market participants referencing Term CORRA in their instruments are expected to have robust fallback language[10] in place, in most cases specifying CORRA as an alternative rate should Term CORRA cease to be published in the future.

Transition arrangements

New instruments

When preparing contractual provisions for new instruments, we encourage market participants to consider the use of a replacement rate if they were planning to use CDOR. If a market participant still wishes to use CDOR in a new instrument, we encourage the market participant to include robust fallback language in any new instrument that references CDOR and that will extend, or might extend, past the CDOR Cessation Date.

Existing instruments

We encourage appropriate action by market participants that have issued or hold securities, or that are parties to derivatives[11] or loan agreements, which:

- use CDOR as a reference rate, and
- extend, or might extend, past the CDOR Cessation Date.

In particular, we encourage these market participants to make plans for appropriate transition arrangements well in advance of the CDOR Cessation Date. These transition arrangements might involve:

- the adoption of a replacement rate,
- changes to information technology systems,
- reviewing the existing fallback language in the relevant contractual provisions for these securities, derivatives and loan agreements that would apply when CDOR ceases to be published,[12] and
- 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 CDOR Cessation Date.

CARR has published a "roadmap" on CDOR transition issues and regularly updates it. We encourage market participants to review that roadmap.[13]

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[10] "Fallback language" refers to the contractual provisions in an instrument that set out the process by which a replacement rate is to be used if a benchmark is not available for use.

[11] For derivatives, see the discussion in this notice under the heading "ISDA IBOR fallbacks".

[12] In the absence of appropriate fallback language, issuers or market participants may need to take actions to mitigate risk, such as renegotiating a contractual provision in an instrument or amending the instrument to include robust fallback language.

[13] See latest roadmap on CDOR transition issues on CARR's website at https://www.bankofcanada.ca/markets/canadian-alternative-reference-rate-working-group/

Fallback language

CARR recommended fallbacks
CARR has published recommended fallback language for:

- FRNs and loan agreements that use CDOR as a reference rate, and
- FRNs that use CORRA as a reference rate.[14]

ISDA IBOR fallbacks
On May 16, 2022, the International Swaps and Derivatives Association, Inc. (**ISDA**) published a notice[15] indicating that:

- RBSL's announcement on May 16, 2022 of the cessation of CDOR on the CDOR Cessation Date constitutes an "index cessation event" under the ISDA 2020 IBOR Fallbacks Supplement, the 2021 ISDA Interest Rate Derivatives Definitions and the ISDA 2020 IBOR Fallbacks Protocol,
- as a result, the fallback spread adjustment published by Bloomberg is fixed as of May 16, 2022 for all remaining CDOR settings, and
- the fallbacks (i.e., to the adjusted risk-free rate plus spread) will automatically occur after June 28, 2024 for outstanding derivatives contracts that incorporate the ISDA 2020 IBOR Fallbacks Supplement, including as a result of both parties adhering to the ISDA 2020 IBOR Fallbacks Protocol or the 2021 ISDA Interest Rate Derivatives Definitions.

Previously, on October 23, 2020, ISDA launched:[16]

- the ISDA 2020 IBOR Fallbacks Supplement,[17] which amended ISDA's standard definitions for interest rate derivatives to incorporate fallbacks for derivatives linked to certain interbank offered rates (**IBORs**), including CDOR, with the changes coming into effect on January 25, 2021 (from that date, all new cleared and non-cleared derivatives that reference the definitions included the fallbacks), and
- the ISDA 2020 IBOR Fallbacks Protocol,[18] which enables market participants to incorporate the revisions into their legacy non-cleared derivatives trades with other counterparties that choose to adhere to the ISDA 2020 IBOR Fallbacks Protocol.

The ISDA 2020 IBOR Fallbacks Protocol has been open for adherence since October 23, 2020 and became effective on the same date as the ISDA 2020 IBOR Fallbacks Supplement (January 25, 2021).

For those market participants that are parties to legacy non-cleared derivatives that reference CDOR but have not yet adhered to the ISDA 2020 IBOR Fallbacks Protocol for those derivatives, we suggest that they now do so.

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[14] See the latest version of these documents on CARR's website at: https://www.bankofcanada.ca/markets/canadian-alternative-reference-rate-working-group/
[15] See May 16, 2022 ISDA announcement at https://www.isda.org/2022/05/16/isda-statement-on-rbsl-cdor-announcement/
[16] See October 23, 2020 ISDA announcement at https://www.isda.org/2020/10/23/isda-launches-ibor-fallbacks-supplement-and-protocol/
[17] See IBOR Fallbacks Supplement at http://assets.isda.org/media/3062e7b4/23aa1658-pdf/
[18] See IBOR Fallbacks Protocol at http://assets.isda.org/media/3062e7b4/08268161-pdf/

Written transition plans for certain market participants

Subsection 21(1) of MI 25-102 provides that if certain specified market participants use a designated benchmark like CDOR, and if the cessation of the benchmark could have a significant impact on the market participant, a security issued by the market participant or a derivative to which the market participant is a party, the market participant must establish and maintain a written plan setting out the actions that the market participant will take in the event of the cessation of the designated benchmark.[19]

Subsection 21(1) of MI 25-102 only applies to a market participant that is a registrant, a reporting issuer, a recognized exchange, a recognized quotation and trade reporting system or a recognized clearing agency within the meaning of National Instrument 24-102 *Clearing Agency Requirements*.[20]

Prospectuses

If an issuer files a prospectus with a securities regulatory authority for an offering of debt securities that use CDOR as a reference rate, we would expect the following:

- the relevant trust indenture (or other contractual document) to include robust fallback language in contemplation of CDOR ceasing to be available while the debt securities are outstanding, and
- the prospectus, or the applicable supplement to a base shelf prospectus, to include disclosure on the fallback language and risks related to the fallback language and CDOR ceasing to be available while the debt securities are outstanding.

<u>Part B: Expected cessation of the issuance of BAs and replacement products</u>

On January 16, 2023, the Canadian Fixed-Income Forum (**CFIF**) published a white paper noting that the cessation of CDOR is also expected to result in the cessation of the issuance of BAs and that certain institutional investors may need to consider the use of alternative investment products to BAs.[21]

In particular, the CFIF white paper indicated that:

- money market mutual funds seeking to use alternative short term investment products to BAs may need exemptive relief from certain provisions in National Instrument 81-102 *Investment Funds*,
- other market participants seeking to issue or use alternative investment products to BAs should consider whether they need exemptive relief from any other provisions of applicable securities legislation, and

[19] See the full text of section 21 of MI 25-102 for additional requirements that apply in respect of the written plan.
[20] In Ontario, there is a similar requirement in section 21 of OSC Rule 25-501 (Commodity Futures Act) *Designated Benchmarks and Benchmark Administrators* (**OSC Rule 25-501**) that applies to a market participant that is registrant, a recognized commodity futures exchange, a registered commodity futures exchange or a recognized clearing house under Ontario commodity futures law. OSC Rule 25-501 was enacted in Ontario because MI 25-102 would not apply to Ontario commodity futures law. The OSC has designated CDOR as a designated benchmark for purposes of OSC Rule 25-501.
[21] See CFIF white paper at https://www.bankofcanada.ca/2023/01/cfif-cdor-cessation-bankers-acceptance-market/

- to facilitate an orderly transition away from BAs, market participants are encouraged to retain legal counsel, if necessary, and file applications for exemptive relief with the applicable securities regulators as early as possible.

We remind market participants that novel applications for exemptive relief take longer to process than routine applications and there is no assurance that exemptive relief will be granted.

Questions

Please refer your questions to any of the following:

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