

Recommended fallback language for FRNs referencing CDOR

This note describes fallback language that CARR recommends for inclusion in floating rate notes (FRNs) that reference CDOR. This suggested language is intended to help promote the development of a market convention for fallback language. The language effectively mirrors the language developed by the International Swaps and Derivatives Association ("ISDA") (with some small modifications to make them applicable for FRNs and to extract language meant for other jurisdictions). Alignment between FRN fallback languages and swap fallback language will facilitate the effective hedging of interest rate risk, which CARR believes will in turn promote a vibrant market for Canadian FRNs.

CARR's suggested fallback language would be applicable if CDOR was discontinued as a reference rate. While there is no immediate expectation that this will happen, the global experience with benchmark transition, particularly LIBOR's "tough legacy" problem,² suggests a need to prepare early for any eventuality.

This language can be voluntarily included in the documentation of newly issued FRNs. Firms seeking to use this fallback language for legacy contracts would need to negotiate its use with their counterparties. Firms are free to modify the suggested fallback language or to draft their own language. For greater certainty, firms are not obliged to follow these recommendations. This note should not be construed and is not intended to be legal advice and market participants should consult their legal advisors as appropriate.

The first section of this note provides a brief overview of the fallback language, while the second section provides the actual fallback language for inclusion in CDOR FRNs.

² Contracts without robust fallback language that could prove unable to amend ahead of LIBOR's discontinuation.

¹ ISDA, whose registered trademark is "ISDA®," is not affiliated with the CARR working group and did not participate in drafting or reviewing this recommendation. While this recommendation is intended to be compatible with fallback language developed by ISDA and therefore includes similar language and concepts, ISDA takes no position as to and makes no representations or warranty, express or implied, concerning this instrument's suitability for use in any particular transaction, and bears no responsibility or liability, whether in tort or in contract, for any use

of information contained in this recommendation.



Section 1: Overview of fallback language

There are two main components to the fallback language: triggers and replacement rates (including the relevant replacement rate spreads). If the fallback language is triggered, FRNs with the recommended fallback language would fallback to the next applicable rate on the replacement rate waterfall, plus the relevant replacement rate spread.

1.1 Triggers

The fallback language includes two trigger events (referred to as either "Index Cessation Events" or "Fallback Index Cessation Events"). If either of these trigger events occur for CDOR, the interest rate applicable to the FRN will move to the first replacement rate on the replacement rate waterfall plus the applicable spread. If a trigger events then occurs for the first rate on the replacement rate waterfall, the FRN's reference rate will be the second replacement rate on the waterfall, and so on. The fallback language would be triggered if *either* of these two triggers occur. The two triggers are:

	Triggers		
Trigger 1	A public statement or publication of information on or on behalf of CDOR's administrator (or the applicable replacement rate's administrator) announcing a permanent cessation, provided that there is no successor administrator that will continue to provide CDOR (or the applicable replacement rate).		
Trigger 2	A public statement by one of a number of public authorities (including the administrator's supervisor) stating that CDOR's administrator (or the applicable replacement rate's administrator) has or will cease to publish the rate, if there is no successor administrator that will continue to provide CDOR (or the applicable replacement rate).		

After a trigger event occurs, the move to the next rate on the replacement rate waterfall occurs on a prespecified date (either the "Index Cessation Effective Date" or the "Fallback Index Cessation Effective Date"). This is either the first date on which the applicable rate is no longer provided or, depending on the terms of the FRN, the next day on which the rate would ordinarily have been published.

1.2 Replacement rates

The replacement rate waterfall describes the succession of interest rates the FRN would move to, should trigger events occur for each successive rate. A replacement rate spread would be added to each of these rates to help account for the economic difference between them and CDOR. The waterfall for replacement rates and spreads is as follows:



	Replacement rate and replacement spread waterfall			
	<u>Previous Rate</u>	Replacement Rate	<u>Description</u>	
Step 1	CDOR	Fallback Rate (CORRA)	Term-adjusted CORRA compounded-in-arrears rate provided by Bloomberg, plus the spread relating to CDOR	
Step 2	Fallback Rate (CORRA)	CORRA	Term-adjusted CORRA compounded-in-arrears plus the spread relating to CDOR	
Step 3	CORRA	CAD Recommended Rate	Rate set by a committee officially endorsed or convened by the Bank of Canada (with term adjustment if not part of recommendation)	
Step 4	CAD Recommended Rate	BOC Target Rate	Bank of Canada policy rate plus the Fallback Rate (CORRA) to CDOR spread, adjusted to account for any differences between the term structures or tenors of the BOC Target Rate and Fallback Rate (CORRA)	

The difference between the first two rates is that "Fallback Rate (CORRA)" is a benchmark provided by Bloomberg, while "CORRA" (i.e., Term-adjusted CORRA compounded-in-arrears) is a rate determined by the FRN's calculation agent using the same methodology as Bloomberg. In other words, they are economically the same, but differ in who calculates them (Bloomberg versus the FRN's calculation agent).

The "CAD Recommended Rate" is a rate determined by a committee officially endorsed or convened by the Bank of Canada. Since the replacement rate waterfall is identical to ISDA's replacement rate waterfall, this step in the waterfall would occur at the same time as it did under ISDA's fallback language. The same committee would thus determine the CAD Recommended Rate for swaps referencing ISDA's documentation and FRNs using CARR's recommended CDOR FRN fallback language.



Section 2: Recommended Fallback Language

Section 1: Fallback Language Regarding Reference Rate Cessation

(a) CDOR

(i) No Index Cessation Effective Date with respect to CDOR. If, by 10:15 a.m., Toronto time (or the amended publication time for CDOR, if any, as specified by the CDOR benchmark administrator in the CDOR benchmark methodology), on the first Business Day of the [relevant interest period (NTD: Match underlying agreement)] (each a "Reset Date"), CDOR for a [relevant interest period] in respect of such day has not been published on the Reuters Screen CDOR Page and an Index Cessation Effective Date has not occurred, then the rate for that Reset Date will be CDOR for a [relevant interest period] in respect of such day, as provided by the administrator of CDOR and published by an authorized distributor or by the administrator of CDOR itself. If by noon, Toronto time (or one hour and forty-five minutes after the amended publication time for CDOR), on that Reset Date, neither the administrator of CDOR nor an authorized distributor has provided or published CDOR for a [relevant interest period] in respect of such day and an Index Cessation Effective Date has not occurred, then the rate for that Reset Date will be a rate formally recommended for use by the administrator of CDOR during the period of nonpublication of CDOR and for so long as an Index Cessation Effective Date has not occurred. If no such rate is available, then the [Calculation Agent (NTD: Match underlying agreement)]³, in consultation with the Issuer, shall determine a commercially reasonable alternative for CDOR, taking into account any rate implemented by central counterparties and/or futures exchanges, in each case with trading volumes in derivatives or futures referencing CDOR that the [Calculation Agent] considers sufficient for that rate to be a representative alternative rate.

(ii) Index Cessation Effective Date with respect to CDOR. Upon the occurrence of an Index Cessation Event, the rate for a Reset Date occurring on or after the Index Cessation Effective Date will be determined as if references to [CDOR (NTD: Match underlying agreement)] were references to Fallback Rate (CORRA) for the 'Original IBOR Rate Record Day' that corresponds to the Reset Date, as most recently provided or published as at 11:30 a.m., Toronto time on the related Fallback Observation Day. If neither Bloomberg Index Services Limited (or a successor provider as approved and/or appointed by ISDA from time to time) provides, nor authorized distributors publish, Fallback Rate (CORRA) for that 'Original IBOR Rate Record Day' at, or prior to, 11:30 a.m., Toronto time on the related Fallback Observation Day and a Fallback Index Cessation Effective Date with respect to Fallback Rate (CORRA) has not occurred, then the rate for that Reset Date will be Fallback Rate (CORRA) as most recently provided or published at that time for the most recent 'Original IBOR Rate Record Day', notwithstanding that such day does not correspond to the Reset Date.

³ **NTD**: FRNs and indentures may not have a "Calculation Agent". In current fallback language in the market, a Calculation Agent is contemplated and the language provides that the Issuer, in its sole discretion, may appoint a calculation agent, which in the case of a bank may be an affiliate of the bank.



(b) Fallback Rate (CORRA)

(i) Fallback Index Cessation Effective Date with respect to Fallback Rate (CORRA). Upon the occurrence of a Fallback Index Cessation Event with respect to Fallback Rate (CORRA), the rate for a Reset Date which relates to a [relevant interest period] in respect of which the Fallback Observation Day occurs on or after the Fallback Index Cessation Effective Date with respect to Fallback Rate (CORRA) will be the Canadian Overnight Repo Rate Average ("CORRA") administered by the Bank of Canada (or any successor administrator), to which the [Calculation Agent] shall apply the most recently published spread, as at the Fallback Index Cessation Effective Date with respect to Fallback Rate (CORRA), referred to in the definition of "Fallback Rate (CORRA)" after making such adjustments to CORRA as are necessary to account for any difference in term structure or tenor of CORRA by comparison to Fallback Rate (CORRA) and by reference to the Bloomberg IBOR Fallback Rate Adjustments Rule Book.

(c) CORRA

- (i) No Fallback Index Cessation Effective Date with respect to CORRA. If neither the administrator nor authorized distributors provide or publish CORRA and a Fallback Index Cessation Effective Date with respect to CORRA has not occurred, then, in respect of any day for which CORRA is required, references to CORRA will be deemed to be references to the last provided or published CORRA.
- (ii) Fallback Index Cessation Effective Date with respect to CORRA. If a Fallback Index Cessation Effective Date occurs with respect to each of Fallback Rate (CORRA) and CORRA, then the rate for a Reset Date which relates to a [relevant interest period] in respect of which the Fallback Observation Day occurs on or after the Fallback Index Cessation Effective Date with respect to Fallback Rate (CORRA) (or, if later, the Fallback Index Cessation Effective Date with respect to CORRA) will be the CAD Recommended Rate, to which the [Calculation Agent] shall apply the most recently published spread, as at the Fallback Index Cessation Effective Date with respect to Fallback Rate (CORRA), referred to in the definition of "Fallback Rate (CORRA)" after making such adjustments to the CAD Recommended Rate as are necessary to account for any difference in term structure or tenor of the CAD Recommended Rate by comparison to Fallback Rate (CORRA) and by reference to the Bloomberg IBOR Fallback Rate Adjustments Rule Book.

(d) CAD Recommended Rate.

(i) No Fallback Index Cessation Effective Date with respect to CAD Recommended Rate. If there is a CAD Recommended Rate before the end of the first [Toronto Banking Day (NTD: Match underlying agreement)] following the Fallback Index Cessation Effective Date with respect to Fallback Rate (CORRA) (or, if later, the end of the first [Toronto Banking Day] following the Fallback Index Cessation Effective Date with respect to CORRA) but neither the administrator nor authorized distributors provide or publish the CAD Recommended Rate and a Fallback Index Cessation Effective Date with respect to it has not occurred,



then, in respect of any day for which the CAD Recommended Rate is required, references to the CAD Recommended Rate will be deemed to be references to the last provided or published CAD Recommended Rate.

(ii) No CAD Recommended Rate or Fallback Index Cessation Effective Date with respect to CAD Recommended Rate. If: there is no CAD Recommended Rate before the end of the first [Toronto Banking Day] following the Fallback Index Cessation Effective Date with respect to Fallback Rate (CORRA) (or, if later, the end of the first [Toronto Banking Day] following the Fallback Index Cessation Effective Date with respect to CORRA); or there is a CAD Recommended Rate and a Fallback Index Cessation Effective Date subsequently occurs with respect to it, then the rate for a Reset Date which relates to a [relevant interest period] in respect of which the [Fallback Observation Day] occurs on or after the Fallback Index Cessation Effective Date with respect to Fallback Rate (CORRA) (or, if later, the Fallback Index Cessation Effective Date with respect to CORRA) or the Fallback Index Cessation Effective Date with respect to the CAD Recommended Rate (as applicable) will be Bank of Canada's Target for the Overnight Rate as set by the Bank of Canada and published on the Bank of Canada's Website (the "BOC Target Rate"), to which the [Calculation Agent] shall apply the most recently published spread, as at the Fallback Index Cessation Effective Date with respect to Fallback Rate (CORRA), referred to in the definition of "Fallback Rate (CORRA)" after making such adjustments to the BOC Target Rate as are necessary to account for any difference in term structure or tenor of the BOC Target Rate by comparison to Fallback Rate (CORRA) and by reference to the Bloomberg IBOR Fallback Rate Adjustments Rule Book.

(e) BOC Target Rate.

- (i) No Fallback Index Cessation Effective Date with respect to BOC Target Rate. If neither the administrator nor authorized distributors provide or publish the BOC Target Rate and a Fallback Index Cessation Effective Date with respect to the BOC Target Rate has not occurred, then, in respect of any day for which the BOC Target Rate is required, references to the BOC Target Rate will be deemed to be references to the last provided or published BOC Target Rate.
- (ii) Fallback Observation Day. For the purposes of this [CDOR Floating Rate Note] and references to [Fallback Observation Day] in this [CDOR Floating Rate Note], references to "Business Days" will be to those Business Days applicable for the purposes of the payment obligation which is calculated by reference to this [CDOR Floating Rate Note] and references to an "Original IBOR Rate Record Day" are to that term as used on the Fallback Rate (CORRA) Screen.

(f) Applicable Fallback Rate Conforming Change

(i) Notwithstanding the foregoing, in connection with the implementation of an Applicable Fallback Rate, the Calculation Agent may, in consultation with the Issuer, make such adjustments to the Applicable Fallback Rate or the spread thereon, as well as the business day convention, Reset Dates and related provisions and definitions including the Fallback Observation Day, in each case that are consistent with accepted market practice for the



use of the Applicable Fallback Rate for debt obligations such as the **[CDOR Floating Rate Notes]** in such circumstances.

(g) Definitions. For these purposes:

- (i) "Applicable Fallback Rate" means one of Fallback Rate (CORRA), CORRA, the CAD Recommended Rate, or the BOC Target Rate, as applicable;
- (ii) "Bloomberg IBOR Fallback Rate Adjustments Rule Book" means the IBOR Fallback Rate Adjustments Rule Book published by Bloomberg Index Services Limited (or a successor provider as approved and/or appointed by ISDA from time to time) as updated from time to time in accordance with its terms;
- (iii) "CAD Recommended Rate" means the rate (inclusive of any spreads or adjustments) recommended as the replacement for CORRA by a committee officially endorsed or convened by the Bank of Canada for the purpose of recommending a replacement for CORRA (which rate may be produced by the Bank of Canada or another administrator) and as provided by the administrator of that rate or, if that rate is not provided by the administrator thereof (or a successor administrator), published by an authorized distributor;
- (iv) "CDOR" means the Canadian Dollar rate for bankers' acceptance borrowings known as the Canadian Dollar Offered Rate provided by Refinitiv Benchmark Services (UK) Limited, as the administrator of the benchmark, (or a successor administrator);
- (v) ["CDOR Floating Rate Note" means, as the context requires, a floating rate note that uses CDOR (or an Applicable Fallback Rate) as a benchmark for determining interest, fees and other amounts payable to the holder thereunder (NTD: Match underlying agreement)];
- (vi) "Fallback Index Cessation Effective Date" means, in respect of a Fallback Index Cessation Event, the first date on which the Applicable Fallback Rate is no longer provided. If the Applicable Fallback Rate ceases to be provided on the same day that it is required to determine the rate for a Reset Date pursuant to the terms of the relevant [CDOR Floating Rate Note] but it was provided at the time at which it is to be observed pursuant to the terms of the relevant [CDOR Floating Rate Note] (or, if no such time is specified in the relevant [CDOR Floating Rate Note], at the time at which it is ordinarily published), then the Fallback Index Cessation Effective Date will be the next day on which the rate would ordinarily have been published.

(vii) "Fallback Index Cessation Event" means:

- (A) a public statement or publication of information by or on behalf of the administrator or provider of the Applicable Fallback Rate announcing that it has ceased or will cease to provide the Applicable Fallback Rate permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator or provider that will continue to provide the Applicable Fallback Rate; or
- (B) if the Applicable Fallback Rate is:



- (1) Fallback Rate (CORRA), a public statement or publication of information by the regulatory supervisor for the administrator of Fallback Rate (CORRA), the Bank of Canada, an insolvency official with jurisdiction over the administrator for Fallback Rate (CORRA), a resolution authority with jurisdiction over the administrator for Fallback Rate (CORRA) or a court or an entity with similar insolvency or resolution authority over the administrator for Fallback Rate (CORRA), which states that the administrator of Fallback Rate (CORRA) has ceased or will cease to provide the Fallback Rate (CORRA) permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide Fallback Rate (CORRA); or
- (2) CORRA, the CAD Recommended Rate, or the BOC Target Rate, a public statement or publication of information by the regulatory supervisor for the administrator or provider of the Applicable Fallback Rate, the Bank of Canada, an insolvency official with jurisdiction over the administrator or provider for the Applicable Fallback Rate, a resolution authority with jurisdiction over the administrator or provider for the Applicable Fallback Rate or a court or an entity with similar insolvency or resolution authority over the administrator or provider for the Applicable Fallback Rate, which states that the administrator or provider of the Applicable Fallback Rate has ceased or will cease to provide the Applicable Fallback Rate permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator or provider that will continue to provide the Applicable Fallback Rate.
- (viii) "Fallback Observation Day" means, in respect of a Reset Date and the [relevant interest period] to which that Reset Date relates, the day that is two Business Days preceding the related Payment Date.
- (ix) "Fallback Rate (CORRA)" means the term adjusted CORRA plus the spread relating to CDOR, in each case, for a [relevant interest period] provided by Bloomberg Index Services Limited (or a successor provider as approved and/or appointed by ISDA from time to time), as the provider of term adjusted CORRA and the spread, on the Fallback Rate (CORRA) Screen (or by other means) or provided to, and published by, authorized distributors;
- (x) "Fallback Rate (CORRA) Screen" means the Bloomberg Screen corresponding to the Bloomberg ticker for the fallback for CDOR for a [relevant interest period] accessed via the Bloomberg Screen <FBAK> <GO> Page (or, if applicable, accessed via the Bloomberg Screen <HP><GO>) or any other published source designated by Bloomberg Index Services Limited (or a successor provider as approved and/or appointed by ISDA from time to time);
- (xi) "Index Cessation Effective Date" means, in respect of one or more Index Cessation Events, the first date on which CDOR is no longer provided. If CDOR ceases to be provided



on the Relevant Original Fixing Date but it was provided at the time at which it is to be observed pursuant to the terms of the relevant [CDOR Floating Rate Note], then the Index Cessation Effective Date will be the next day on which the rate would ordinarily have been published;

(xii) "Index Cessation Event" means:

- (A) a public statement or publication of information by or on behalf of the administrator of CDOR announcing that it has ceased or will cease to provide CDOR permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide CDOR; or
- (B) a public statement or publication of information by the regulatory supervisor for the administrator of CDOR, the Bank of Canada, an insolvency official with jurisdiction over the administrator for CDOR, a resolution authority with jurisdiction over the administrator for CDOR or a court or an entity with similar insolvency or resolution authority over the administrator for CDOR, which states that the administrator of CDOR has ceased or will cease to provide CDOR permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide CDOR;
- (xiii) "Relevant Original Fixing Date" means, unless otherwise agreed, the day on which CDOR would have been observed.