Recommended fallback language for FRNs referencing CORRA

This note describes fallback language that CARR recommends for inclusion in floating rate notes (FRNs) that reference CORRA. 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).¹ 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 CORRA 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 CORRA FRNs.

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.

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



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 fall back 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 "CORRA Cessation Events" or "CAD Recommended Rate Cessation Events"). If either of these trigger events occur for CORRA, 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 event 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. 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 by or on behalf of CORRA'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 CORRA (or the applicable replacement rate).		
Trigger 2	A public statement by one of a number of public authorities (including the administrator's supervisor, if applicable) stating that CORRA'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 CORRA (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 "CORRA Cessation Effective Date" or the "CAD Recommended Rate 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. When applicable, a replacement rate spread would be added to the rates to help account for the economic difference between them and CORRA. The waterfall for replacement rates and spreads is as follows:



	Replacement rate and replacement spread waterfall		
	Previous Rate	Replacement Rate	Description
Step 1	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 2	CAD Recommended Rate	BOC Target Rate	Bank of Canada's Target rate for the Overnight Rate as set by the Bank of Canada and published on the Bank of Canada's Website

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 CORRA FRN fallback language.



Section 2: Recommended Fallback Language

Section 1: Fallback Language Regarding Reference Rate Cessation

(a) CORRA

- (i) No CORRA Cessation Effective Date. If neither the administrator nor authorized distributors provide or publish CORRA and a CORRA Cessation Effective Date 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) CORRA Cessation Effective Date. If a CORRA Cessation Effective Date occurs, then the rate for a Reset Date which relates to a [relevant interest period] in respect of which the CORRA fixing date occurs on or after the CORRA Cessation Effective Date with will be the CAD Recommended Rate, to which the [Calculation Agent]³ shall apply a spread and make 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 CORRA, if any.

(b) CAD Recommended Rate.

- (i) No CAD Recommended Rate Cessation Effective Date. If there is a CAD Recommended Rate before the end of the first [Toronto Banking Day (NTD: Match underlying agreement)] following the CORRA Cessation Effective Date but neither the administrator nor authorized distributors provide or publish the CAD Recommended Rate and a CAD Recommended Rate Cessation Effective Date 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 CAD Recommended Rate Cessation Effective Date. If: there is no CAD Recommended Rate before the end of the first [Toronto Banking Day] following the CORRA Cessation Effective Date; or there is a CAD Recommended Rate and a CAD Recommended Rate Cessation Effective Date subsequently occurs, then the rate for a CORRA fixing date occurring on or after the CORRA Cessation Effective Date or a CAD Recommended Rate Fixing Date occurring on or after the CAD Recommended Rate Cessation Effective Date (as applicable) will be the BOC Target Rate.

(c) BOC Target Rate.

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.



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 as at close of business in Toronto on that day.

(d) 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 if any, 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 [CORRA Floating Rate Notes] in such circumstances.
- (e) Definitions. For these purposes:
 - (i) **"Applicable Fallback Rate"** means one of the CAD Recommended Rate, or the BOC Target Rate, as applicable;
 - (ii) **"BOC Target Rate"** means the 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;
 - (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) "CAD Recommended Rate Fixing Date" means, in respect of the CAD Recommended Rate and a Reset Date, the publication day specified by the administrator of the CAD Recommended Rate for the CAD Recommended Rate in its benchmark methodology;
 - (v) "CAD Recommended Rate Cessation Effective Date" means, in respect of the CAD Recommended Rate and a CAD Recommended Rate Cessation Event, the first date on which the CAD Recommended Rate would ordinarily have been provided and is no longer provided;
 - (vi) **"CAD Recommended Rate Cessation Event"** means, in respect of the CAD Recommended Rate:
 - (A) a public statement or publication of information by or on behalf of the administrator of the CAD Recommended Rate announcing that it has ceased or will cease to provide the CAD Recommended Rate permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide the CAD Recommended Rate; or
 - (B) a public statement or publication of information by the regulatory supervisor for the administrator of the CAD Recommended Rate, the central bank for the currency of the CAD Recommended Rate, an insolvency official with jurisdiction

over the administrator of the CAD Recommended Rate, a resolution authority with jurisdiction over the administrator of the CAD Recommended Rate or a court or an entity with similar insolvency or resolution authority over the administrator of the CAD Recommended Rate, which states that the administrator of the CAD Recommended Rate has ceased or will cease to provide the CAD Recommended Rate permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide the CAD Recommended Rate.

- (vii) **"CORRA Floating Rate Note"** means, as the context requires, a floating rate note that uses CORRA (or an Applicable Fallback Rate) as a benchmark for determining interest, fees and other amounts payable to the holder thereunder (*NTD: Match underlying agreement*);
- (viii) "CORRA" means the Canadian Overnight Repo Rate Average (CORRA) administered by the Bank of Canada (or any successor administrator);
- (ix) "CORRA Cessation Effective Date" means, in respect of one or more CORRA Cessation Events, the first date on which CORRA is no longer provided. If CORRA 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 [CORRA Floating Rate Note], then the CORRA Cessation Effective Date will be the next day on which the rate would ordinarily have been published;
- (x) "CORRA Cessation Event" means:
 - (A) a public statement or publication of information by or on behalf of the administrator of CORRA announcing that it has ceased or will cease to provide CORRA permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide CORRA; or
 - (B) a public statement or publication of information by the regulatory supervisor for the administrator of CORRA (if applicable), the Bank of Canada, an insolvency official with jurisdiction over the administrator for CORRA, a resolution authority with jurisdiction over the administrator for CORRA or a court or an entity with similar insolvency or resolution authority over the administrator for CORRA, which states that the administrator of CORRA has ceased or will cease to provide CORRA permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide CORRA;
- (xi) "Relevant Original Fixing Date" means, unless otherwise agreed, the day on which CORRA would have been observed.