

Analysis and recommendations on CDOR Legacy Securities

1. Background

On May 16, 2022, Refinitiv Benchmark Services (UK) Limited announced that they will cease the publication of the Canadian Dollar Offered Rate (CDOR) after June 28, 2024. Coincident with Refinitiv's announcement the Office of the Superintendent of Financial Institutions (OSFI) provided guidance to Federally Regulated Financial Institutions (FRFI) that they are expected to follow the Canadian Alternative Reference Rate's (CARR) two-stage transition. In CARR's plan, any new securities that are issued into the market after June 30, 2023 that reference a Canadian floating rate must use the Canadian Overnight Repo Rate Average (CORRA) as the prevailing benchmark and no new securities should be issued with a current or future coupon linked to CDOR after such date.¹ This deadline has been reinforced by supervisory guidance from the Office of the Superintendent of Financial Institutions.² Existing securities referencing CDOR that mature after June 28, 2024 will need to revert to the applicable fallback for CDOR as defined for the specific security.

This paper outlines and provides recommendations related to legacy securities linked to CDOR. It identifies the scope of legacy securities in Canada, differentiating "legacy" securities (those that mature after June 28, 2024) from "tough legacy" securities (i.e., those that mature after June 28, 2024 and have both (i) inadequate or no fallback language (i.e., effectively reverts to the last posted rate or is silent as to what happens if the benchmark is not available), and (ii) high consent thresholds for amending governing documentation). The paper then provides recommendations to market participants from CARR on addressing tough legacy securities referencing CDOR.

To complete this work, CARR (i) reviewed all public Canadian dollar-denominated securities that contain a reference to CDOR, (ii) filtered them by maturity to identify legacy securities, and then (iii) filtered them based on CUSIP-level documentation by the prescribed fallback provision. Impacted securities are categorized in three main groups: corporate and provincial issued securities, mortgage-backed securities (MBS) and structured notes. The proposed lists may not be exhaustive and market participants are encouraged to submit additional securities for review.³

An advantage of the Canadian CDOR transition, and distinct from other jurisdictions, is that it relates primarily to the institutional market, although some legacy cash securities may be held by retail investors. This greatly simplifies the legacy problem. Another attribute is that many issuers adopted CARR's draft CDOR fallback language after May 2019, creating a securities market that predominately has sufficiently robust fallbacks in the event of CDOR's cessation. CARR developed this recommended CDOR fallback language to ensure that market participants had a single agreed to methodology for the CDOR fallback which aligned with fallback methodology for CDOR linked derivatives.⁴ This fallback methodology was developed to apply for all cash securities that reference CDOR, including floating-rate notes and NHA MBS.

¹ For clarity, Term CORRA will not be available for use as a benchmark in securities documentation, see CARR [Use Cases](#).

² See <https://www.osfi-bsif.gc.ca/Eng/fi-if/in-ai/Pages/cdor-trns.aspx>.

³ Please send any proposals for securities to review to CARR-WG@bankofcanada.ca.

⁴ Bloomberg is the designated administrator for calculating the CDOR (and LIBOR) fallback rates for ISDA's derivative documentation.

However, the fallback methodology may not necessarily be consistent with the recommended calculation methodology for new CORRA based securities. Despite this CARR recommends that market participants should use the recommended fallback methodology [published](#) in final form in July 2021 to calculate any coupons that reference CDOR once CDOR is discontinued.

Certain securities have fallback language that includes coupons linked to Bankers' Acceptances (BAs) at the top of the waterfall as an alternative fallback rate. For the purposes of this paper, it is assumed that BAs will not be issued in the market once CDOR ceases to be published and that BA rates will not be provided by Canadian banks after June 28, 2024. Therefore, any securities identifying BAs as the only alternative fallback rate would be deemed to be not robust and these securities would be included in the list below if they meet the other conditions to be deemed tough legacy.

2. Legacy Securities

Legacy CDOR securities include existing CDOR-linked securities issued into the public market that mature after June 28, 2024. The reference to CDOR may be as a benchmark in calculating the current coupon, as in the case of an FRN, or it may be referenced in the documentation in the determination of a future economic outcome, for example a regulatory capital or hybrid instrument where the coupon may change from a fixed rate to a floating rate at some point prior to its legal maturity.

In Canada, there are just over \$125bn of legacy securities, comprised of the following:

Exhibit 1-1 CDOR legacy securities

Total CDOR Legacy Securities - maturing after June 28, 2024 (as at Apr 2023)	
Corporates	(C\$mm)
Domestic FI Regulatory Capital	45,248
TLAC Callables	16,275
Corporate Hybrids	6,150
Floating Rate Notes	1,603
Maple FI Regulatory Capital	1,081
Total	70,356
NHA MBS – maturing after July 1, 2024⁵	
Total	39,608
Governments	
CMB	13,500
Provincial	2,268
Total	15,768
Grand Total	125,732

3. Tough Legacy Securities

Tough legacy securities are described as those CDOR-linked securities that (a) mature after June 28, 2024, (b) have inadequate or no fallback language and (c) have high thresholds of consent for amending offering

⁵ Data as at December 31, 2022 provided by Canada Mortgage and Housing Corporation.

documentation. Despite having these characteristics, tough legacy securities may be able to be remediated by a variety of solutions including:

- i. Issuer calls
- ii. Consent solicitations, whereby the required bondholder approval is obtained, to update the CDOR fallback language
- iii. Issuer tender

Potential tough legacy securities were identified by determining whether the fallback language found in individual bond documentation aligned with key elements of CARR's recommended fallback language. To identify tough legacy securities, the consent solicitation threshold relative to the breadth of bondholders was then assessed and the fallback language reviewed by legal experts.

3.1 Corporate and Provincial Securities

Based on CARR's analysis, twenty (20) securities were identified, totaling approximately C\$17 billion, that CARR does not believe have satisfactory fallback language and may require amendments to their respective indentures. Sixteen (16) of the legacy securities are governed by Canadian law and four (4) are governed by United States law. The following list contains the securities governed under Canadian law:

Exhibit 1-2 CUSIPs of legacy securities under Canadian law

	CUSIP	Maturity	Next Call Date
1.	66989ZES3	09-Nov-24	-
2.	891160RP0	14-Sep-28	14-Sep-23
3.	455870AD7	15-Sep-28	15-Sep-23
4.	86682ZAJ5	19-Sep-28	19-Sep-23
5.	06415ELY9	18-Jan-29	18-Jan-24
6.	136765BF0	11-Jun-29	11-Jun-24
7.	891160QY2	25-Jul-29	25-Jul-24
8.	56501RAF3	20-Aug-29	20-Aug-24
9.	190330AD2	29-Oct-30	29-Oct-25
10.	AL7474292	31-Dec-30	-
11.	8911457R9	04-Mar-31	04-Mar-26
12.	56502FAA9	15-Dec-41	15-Dec-36
13.	866796AD7	29-May-42	29-May-37
14.	80928BAC0	31-Dec-56	31-Dec-36
15.	89356BAD0	18-May-77	18-May-27
16.	29250NAT2	27-Sep-77	27-Sep-27

These securities were issued prior to June 2019 when issuers in the Canadian market began to incorporate more fulsome standardized fallback language. Not all of the securities that were issued after May 2019 were reviewed, as it is assumed that the fallback language adopted by the Canadian market would be sufficient to address the CDOR/CORRA transition given the establishment and prevalence of standard market language at that point. As a result, it is recommended that issuers and their respective investors assess the adequacy of the existing fallback protection provisions in their respective underlying documentation to ensure that a benchmark change from CDOR is adequately provided for.

Unless the issuer is prepared to call or issue a tender offer for the tough legacy security (in which case they should issue a statement of intent that they would pursue a consent solicitation if they opt not to call or tender), it is recommended that the terms of the indentures for these remaining 16 legacy securities governed under Canadian law be amended, by way of a consent solicitation transaction, to conform with CARR's recommended fallback language. To adopt such amendments, the trust indentures for these legacy securities typically require that, for any changes that may impact the payment of interest, the issuer must first obtain consent from a specified proportion of holders of the security (e.g., certain trust indentures require the consent from holders representing 66 2/3% of the principal outstanding, while others require a "majority" threshold, which is not defined but would arguably require a simple majority (i.e. greater than 50%), to amend the underlying indentures). This may be achievable considering the precedent amendments seen in other jurisdictions to adopt similar requirements.

In addition to the 16 Canadian tough legacy securities, the following is a list of those securities that are governed by the laws of the State of New York:

Exhibit 1-3 CUSIPs of CDOR legacy securities under NY law

	CUSIP	Maturity	Next Call Date
1.	060505FM1	25-Apr-25	25-Apr-24
2.	060505FG4	20-Sep-25	20-Sep-24
3.	38141GWR1	31-Oct-25	31-Oct-24
4.	172967EB3	24-May-27	Monthly

These 4 U.S.-governed tough legacy securities, totaling C\$2.3 billion, are subject to the *Trust Indenture Act of 1939* (the Act), which states that, despite what is set out in the securities' respective indentures, "the right of any holder of any indenture security to receive ... interest on such indenture security ... shall not be impaired or affected without the consent of such holder". In effect, this provision requires that unanimous consent is obtained from all noteholders to change the benchmark rate. As a result of the necessity to change the benchmark from USD LIBOR to SOFR due to the impending cessation of USD LIBOR, Congress amended the Act to provide a legislative solution for the default fallback language. This amendment in effect allowed for changes to the benchmark rate (from USD LIBOR to SOFR) in trust indentures governed by the Act without the fulfilment of this consent requirement.

Unfortunately, the changes introduced by the Act only apply to securities referencing USD LIBOR. However, the CDOR to CORRA transition is analogous to the LIBOR to SOFR transition. There is a similar need to amend the referenced benchmark rate for these legacy securities in order to address the cessation of CDOR. As a result, there is a strong argument that unanimous consent should not be required and the purpose of the amendment to the Act should also apply to CDOR transition. CARR notes that the analysis in this report does not constitute legal advice and market participants should review the applicability of the Act with their legal counsel.

Many of these legacy corporate securities are regulatory capital instruments and are callable prior to entering a CDOR setting period.

3.2 Mortgage-Backed Securities (MBS)

There are approximately \$4.4 billion of NHA MBS, consisting of 445 pools, that have no fallback provisions and will be impacted by CDOR cessation after June 28, 2024. These pools have high consent thresholds to amend the documents to incorporate CARR's recommended fallback language. Therefore, all these pools can be viewed as tough legacy securities.

However, the majority of these NHA MBS pools are 100% owned by a single entity, either the Canada Housing Trust (CHT) or the NHA MBS issuing bank. Therefore, CARR expects these securities to be transitioned to the recommended CORRA-based fallback prior to June 28, 2024 without significant difficulty.

The remaining small number of pools account for approximately 20% of the total value outstanding with the longest maturity being October 2025. For these tough legacy NHA MBS pools, CARR recommends that the NHA MBS Issuers obtain consent from investors to incorporate CARR's recommended fallback language.

3.3 Structured Notes

Structured notes would be described as notes issued by a financial institution whose coupon or principal is linked to equities, interest rates, foreign exchange, commodities or other indices. These notes are primarily sold to retail investors through investment advisors, but some are sold by dealers to institutions as well. The total size of the Canadian dollar structured note market is not known with certainty, but it is estimated to be between \$50-75 billion. While each note is typically issued in a small notional size, there are thousands of individual CUSIPs in the marketplace. Many of the notes issued contain no reference to CDOR, but certainly many do. The notes vary in their original maturity, but most are between 2-5 years, so a significant proportion of the notes outstanding will mature before CDOR's cessation date.

In consultation with the main issuers of structured notes, CARR has determined that virtually all legacy securities (i.e. those that mature after June 28, 2024) have effective remedies to CDOR benchmark references. Some contain CARR recommended fallback language which would represent the most automatic remediation. Those that do not are almost all either callable or they allow for the issuer to amend certain terms including the governing benchmark. CARR recommends that issuers follow CARR's recommended fallback language when amending the documentation.

Notwithstanding the above, further analysis is being undertaken by CARR as well as note issuers to ensure there is a satisfactory resolution to CDOR-linked notes.

4. Recommendation

CARR's analysis has found that the exposure and number of tough legacy securities is comparatively small on an absolute basis (approximately \$18 billion) and when compared to the universe of legacy securities (15%). Given the small size and the fact that they are relatively easily resolved, CARR determined that the tough legacy securities did not necessitate a legislative solution as seen in other jurisdictions. CARR believes that the best course of action is for market participants, including both issuers and investors, to:

1. Review the terms of any securities that mature after June 28, 2024 and consider the adequacy of their fallback language and recommended steps to address CDOR cessation with legal counsel.
2. Work collaboratively to amend the terms of the securities through a consent solicitation process to include improved fallback language for both the coupon and the timing of payments bringing them in line with CARR's recommended fallback language; or
3. Issue a statement of intent that they will, if necessary at a future date, seek consent to amend the terms of the securities to reflect CARR's recommended fallback language; or
4. The issuer calls or tenders for the affected securities prior to the cessation of CDOR.

CARR's recommended fallback language can be found under "Conventions and fallback language - Recommended fallback language" on the [documents page](#) of CARR's [website](#).