GOODBYE CDOR, HELLO CORRA: CDOR'S FINAL MONTH AND CORRA LOAN TRENDS

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Refinitiv Benchmark Services (UK) Limited, the administrator of the Canadian Dollar Offered Rate ("**CDOR**"), confirmed in April 2024 that CDOR will not be published after June 28, 2024.[1] In addition, unlike for certain currencies and tenors of the London Interbank Offered Rate, synthetic CDOR will not be published.[2] In this bulletin, we discuss certain issues with respect to transitioning loan documents from CDOR to the Canadian Overnight Repo Rate Average ("**CORRA**") and examine several trends with respect to CORRA.

1. **Fallback Language and Transition Issues**

Many loan agreements have already been amended to reference CORRA instead of CDOR, while others contain the Canadian Alternative Reference Rate working group's ("**CARR**") recommended fallback language. Those that include the fallback language will still need to be amended to incorporate CORRA borrowing mechanics – they will not automatically transition to CORRA. In addition, some loan agreements do not have appropriate fallback mechanics. As a result, lenders should be actively reviewing their loan agreements to ensure that these are transitioned to CORRA before the June 28, 2024 deadline. After this date, it will not be possible to lend using CDOR.

CDOR fallback language varies between different loan agreements, even in those that incorporate CARR's fallback language. Some loan agreements give the agent the sole right to make the requisite conforming changes to transition from CDOR to CORRA, others require lender consent to do so, and yet others require the consent of the borrower and the agent but not the lenders, in particular where there is a financial disadvantage to the borrower flowing from the proposed changes. These differences result in varying levels of negotiation and time spent on the conforming changes, as well as different outcomes for the resulting CORRA provisions themselves.

Along with the cessation of the publication of CDOR, the Banker's Acceptance ("**BA**") based lending model will cease to exist. The BA-based lending model is not used in any other major market and is considered to be inconsistent with both capital and liquidity adequacy requirements applicable to regulated financial institutions. While the issuance of BAs has already declined significantly, it is expected to end entirely by the end of June. Therefore, loans which are made by means of BAs or reference a rate based on BAs (which is also the ultimate source for determining CDOR) should be replaced with rates which reference CORRA or another commonly used Canadian lending rate.

2. Issues and Trends with respect to CORRA

(a) Which Type of CORRA are Lenders Using?

On May 1, 2024, CARR released its monthly report on Canadian dollar loans that reference or have transitioned to CORRA and Term CORRA.[3] This report indicated that in March 2024, about 12% (in dollar value) of such loans referenced only CORRA (whether Daily Compounded CORRA or Daily Simple CORRA), 38% referenced only Term CORRA and 50% referenced both CORRA and Term CORRA.

This is consistent with our experience. Most of the loan agreements with which we are involved reference both Term CORRA and Daily Compounded CORRA. Some loan agreements reference only Term CORRA with a fallback to Daily Compounded CORRA, or Term CORRA with a fallback to Canadian prime rate. We have also seen loan agreements that reference Daily Simple CORRA instead of Daily Compounded CORRA. For a discussion of Term CORRA, please see our previous bulletin. It appears that the market is moving towards loans that allow the borrower to choose between Term CORRA and Daily Compounded CORRA. It should be noted that the CARR-developed rate-flip mechanic, where a loan can "flip" between Term CORRA and Daily Compounded CORRA based on availability, but only offering one such reference rate at a time, has not, in our experience, been implemented in the market.

(b) CORRA Mechanics

The mechanics of calculating CORRA have been fairly consistent in the market. Term CORRA, Daily Compounded CORRA and Daily Simple CORRA are typically offered for one and three-month interest periods. We continue to see credit spread adjustments for all types of CORRA, with a standard of 32.138 basis points for one-month and 29.547 basis points for three-month interest periods.

(c) License Required for Term CORRA

The agent and all lenders in a lending syndicate need to be licensed with TMX Datalinx in order to use Term CORRA. This license is available at a fixed cost depending on the type of entity being licensed. Obtaining a license can take several months, meaning that lenders should start the licensing process as soon as possible.

(d) Day Count

Although CARR's recommended provisions state that 365 days and 366 days in a leap year should be used for calculating interest with respect to CORRA and Term CORRA, CORRA and Term CORRA are actually calculated on the basis of 365 days (without adding a day in a leap year) and so loan documents should reference a 365 day count with respect to CORRA.

(e) Hedged Loans

We have seen certain issues arise specifically with respect to derivatives and hedged loan agreements:

- Hedged loans transitioning from CDOR to CORRA are using a two Business Day lookback period for Daily Compounded CORRA, as opposed to the five Business Day lookback period for new loans of any type, as this allows for the standard credit spread adjustments to be used without requiring changes to the borrower's fixed interest rate.[4]
- There is a preference to use the definition of "Business Day" from the 2021 ISDA Interest Rate Derivatives Definitions published by the International Swaps and Derivatives Association, Inc. ("**ISDA**") in hedged loan agreements, for consistency with the underlying derivatives contract.
- Fallbacks are hardwired to ISDA fallback mechanics in hedged loan agreements (i.e. Term CORRA, Daily Compounded CORRA, Canadian Dollar Recommended Rate and Bank of Canada Rate, plus a to be determined credit spread adjustment, if any, and lastly, the agreement of the parties).

3. Conclusion

The CORRA landscape is rapidly evolving as the volume of CORRA loans increases. At the same time, the use of CDOR (and BAs) is ending, with a final deadline of June 28, 2024. Lenders should be prepared for the end of CDOR. If they haven't already, they should make plans for transitioning their loans and hedges to CORRA.

We will continue to monitor issues and trends with respect to the use of CORRA, and will continue to publish updates on notable developments. If you have any questions about the transition to CORRA, please reach out to the authors.

[1] Refinitiv Benchmark Services (UK) Limited, "CDOR Cessation Reminder" (April 2024).
[2] Bank of Canada, "CARR reiterates that market participants with CODR-based loans, derivatives or securities must prepare for CDOR's cessation post June 28, 2024" (April 30, 2024).
[3] Canadian Alternative Reference Rate Working Group, "From CDOR to CORRA: Monthly indicative loan CORRA/Term CORRA transition update" (May 1, 2024).
[4] Canadian Alternative Reference Rate Working Group, "CDOR Transition FAQs" (February 29, 2024).

by Shahen Mirakian and Maria Sagan

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against