WILDEBOER DELLELCE LLP

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This Is the End, Beautiful Friend: How to Prepare for the End of CDOR

Many of our clients are party to loan agreements that reference the benchmark Canadian Dollar Offered Rate ("**CDOR**") plus a spread, as the interest rate charged on the principal amount owing. Back in May of this year, financial data provider Refinitiv Benchmark Services (UK) Limited announced that CDOR, a very commonly used benchmark in Canada, would no longer be published as of June 2024. As a consequence, you may be wondering what you should do if your loan agreement cites CDOR and will mature (or be refinanced) after June 2024. The quick answer: in the short term, amend your loan agreement and other contracts to include fallback language. In the long term, amend your loan agreement to replace CDOR in its entirety with another benchmark, such as the Canadian Overnight Repo Rate Average ("**CORRA**").

How Did We Get Here?

Canada formed the Canadian Alternative Reference Rate working group ("**CARR**") to examine CDOR after the 2012 investigation in Britain of the London Inter-bank Offered Rate ("**LIBOR**") benchmark. As widely reported, the investigation found that several banks had falsely reported financial data, manipulating the LIBOR benchmark. While CARR did not find CDOR to have been manipulated, regulators are trending away from benchmarks like it, which they see as more easily biased. As recently as May of 2021, certain types of CDOR (6- and 12-month tenors) had already been discontinued.

Next Steps

Since the May 2021 discontinuations of certain types of CDOR, our clients have been developing and implementing fallback language to address the phase out. Generally speaking, such fallback language enables a borrower and lender to determine if CDOR is unavailable, mutually agree on a successor rate, and then amend their agreement to incorporate that rate. If they cannot agree on a successor rate, the lender is no longer responsible to make or maintain CDOR loans and the borrower can revoke any request for a CDOR loan advance (or conversion of an existing loan advance into a CDOR loan advance) and otherwise will be deemed to have converted that request into another type of available loan.

Just last week, CARR released a more fulsome, market-standard set of recommendations for how parties should deal with the phase out of CDOR, including standardized fallback language.

CARR-Recommended Approaches

On a longer-term basis, CARR recommends amending your existing loan agreements or contracts to replace CDOR loans with CORRA loans. For new loans, it recommends providing availability via CORRA loans rather than CDOR loans.

On a short-term basis, over a transitional period before CDOR ceases to exist in June 2024, CARR recommends amending your existing loan agreements or contracts to incorporate fallback language.

The new CARR recommended fallback language is notable for a few reasons:

- **Successor Rate Waterfall.** CARR's language prescribes what the successor rate will be. There is a waterfall of two replacement rates; whereas, in the floating rate note (FRN) world, where it is a lot more difficult to get consensus among stakeholders (i.e., potentially many noteholders), there is a much longer waterfall of alternatives provided.
- **Use of "Term CORRA."** CARR expects a "Term CORRA" rate to become available in Canada by September 2023. To the extent it is not available in time, where it serves as the successor rate, a CORRA rate, compounded in-arrears ("Daily Compounded CORRA"), plus a spread, will substitute the Term CORRA rate, and can convert to Term CORRA, once available.
- **Transition Timing.** CARR's language provides for a transition to CORRA once CDOR ceases in June 2024, not before.
- **Impact on Bankers' Acceptances (BAs).** CARR's expectation is that lenders move away from a BA lending model once CDOR is discontinued. CARR's language provides for BA loans transitioning into CORRA loans. Note, in particular, that if your loan agreement only provides for BA loans, which use different mechanics (e.g., stamping fees or discount rates, etc.) for non-BA loans like CORRA, you will need to add some basic mechanical provisions, in addition to CARR's language.
- **Credit Spread Adjustment.** Note that there may be a difference, economically, between CDOR and its replacement. CARR has suggested credit adjustment spreads, as a starting point, but these may evolve as we move towards June 2024.

- **Daily Compounded vs. Daily Simple.** CARR recommends daily compounded in-arrears calculation of CORRA, not daily simple. If your preference is to use daily simple, you would amend the CARR language accordingly.
- **Interest Periods.** CARR's language assumes a standard interest period, i.e., interest periods published on a screen rate, but you can elect to use a non-standard period, taking into consideration how to price those tenors, and any according credit spread adjustment from CDOR to CORRA.

Take-Away

The take-away here is that if you are amending any of your loan agreements that provide for CDOR availability, you should consider using that opportunity to add in the CARR fallback language. If you have a CDOR loan agreement that will not likely be amended before June 2024, you should get advice on adding fallback language into that agreement and/or plan to take the extra step of amending such loan agreements to replace CDOR with CORRA. The Debt Products team at Wildeboer Dellelce would be happy to look at those options with you.

If you have any questions with respect to the matters discussed above, please contact Rachel Manno at rmanno@wildlaw.ca or any other member of our Debt Products practice group.

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If you would like further information regarding the issues discussed in this update or if you wish to discuss any aspect of this commentary, please feel free to contact us.