

CARR's recent recommendations for 'tough-legacy securities' ahead of CDOR cessation

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On June 30, 2023, the Canadian Alternative Reference Rate (CARR) working group published a white paper summarizing its [analysis and recommendations on "legacy securities"](#) [PDF] (securities that mature after June 28, 2024) that are linked to CDOR in the months leading up to CDOR cessation. Consistent with prior announcements, CARR also noted that, following June 30, 2023, no new securities should be issued with a current or future coupon linked to CDOR. Instead, any new securities should reference overnight CORRA compounded in arrears.

In its review, CARR identified 20 corporate and provincial "tough legacy securities", totaling approximately C\$17 billion, which are legacy securities that have insufficient or no fallback language and are subject to high consent thresholds for amending governing documentation. For tough legacy securities governed by Canadian law, CARR recommends that issuers take measures to amend the underlying documentation to conform with CARR's recommended fallback language.^[1] To adopt such amendments, trust indentures generally require consent from a specified proportion of holders of the security (for example, some trust indentures require a simple majority, while others require 66 2/3%). For tough legacy securities governed by U.S. law, the *Trust Indenture Act of 1939* applies, which effectively requires unanimous consent; however, the paper notes there is a strong argument that unanimous consent should not be required.

In addition, CARR considered whether NHA-MBS and structured notes will be impacted by the cessation of CDOR. CARR noted that, while there are approximately \$4.4 billion of "tough legacy" NHA-MBS, the majority of them are 100% owned by a single entity, and CARR expects they will be transitioned to recommended CORRA-based fallback without significant difficulty. For the remaining NHA-MBS, CARR recommends that issuers obtain consent from investors to incorporate CARR's recommended fallback language. With respect to those structured notes lacking adequate fallback language, CARR concluded that such securities would not be problematic as they would either be callable or allow for the issuer to amend those terms governing the benchmark.

Key takeaways

Given the relatively small pool of "tough legacy securities" in Canada, CARR has recommended that market participants (including both issuers and investors) take measures

to review the terms of their securities that mature after June 28, 2024 and consider the adequacy of the fallback language with legal counsel. CARR recommends that issuers undertake further steps to amend the terms of their problematic securities through a consent solicitation process, issue a statement of intent providing the issuer will seek consent to amend the terms of the securities to reflect CARR's recommended fallback language, or call or tender for the affected securities prior to the cessation of CDOR. CARR also encourages market participants to submit additional securities for review, as the list of securities included in the paper may not be exhaustive.

Further questions

If you have any questions about the cessation of CDOR or the transition to CORRA, please reach out to Lisa Mantello and Jasmyn Lee, who have been actively involved with CARR in this process. Lisa is co-Chair, and Jasmyn is co-Secretary, of the CARR Accounting, Tax and Regulatory working group, and are involved in a number of other working groups, including the Loan working group and Cash Securities working group.

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