



Canadian Market
Infrastructure Committee

Via e-mail to: dmoletters@cftc.gov

Mr. Vincent McGonagle
Director
Division of Market Oversight
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, D.C. 20581


Mr. Ted Kaouk
Chief Data Officer and Director, Division of Data
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, D.C. 20581

**RE: Canadian Market Infrastructure Committee - Application to the CFTC
Regarding the Reporting of CAD CDOR Swaps that will Transition to a Risk-Free Rate
in July 2024**

The undersigned, an authorized representative of the Canadian Market Infrastructure Committee ("CMIC"), hereby certify, in my capacity as Chair of CMIC and not in my personal capacity, that the material facts set forth in the attached letter dated June 12, 2024 are true and complete to the best of my knowledge.

DATED at Toronto, Ontario, this 12th day of June, 2024.

CANADIAN MARKET INFRASTRUCTURE COMMITTEE

By: 
Name: Keri Burton
Title: Chair



Canadian Market
Infrastructure Committee

Via e-mail to: dmoletters@cftc.gov

Mr. Vincent McGonagle
Director
Division of Market Oversight
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, D.C. 20581
vmcgonagle@cftc.gov

Mr. Ted Kaouk
Chief Data Officer and Director, Division of Data
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, D.C. 20581
tkaouk@cftc.gov

June 12, 2024

Re: Letter Regarding the Reporting of CAD CDOR Swaps that will Transition to a Risk-Free Rate in July 2024

Dear Mr. McGonagle and Mr. Kaouk,

The Canadian Market Infrastructure Committee (**CMIC**) and its member firms are writing to the staff of the Division of Data and the Division of Market Oversight of the U.S. Commodity Futures Trading Commission (**Commission** or **CFTC**) to request no-action relief in relation to the reporting requirements contained in Part 43 (**P43**) and Part 45 (**P45**) of the Commission's rules¹ with respect to certain uncleared swaps that will transition to a risk-free fallback rate (**Fallback Rate**) following the cessation of the Canadian dollar (**CAD**) interbank rate known as the Canadian Dollar Offered Rate (**CDOR**) provided by Refinitiv Benchmark Services (UK) Limited, as the administrator of CDOR (or a successor administrator) (**Refinitiv**), on June 28, 2024 pursuant to their terms.

This letter is being submitted further to certain limited pre-filing discussions held between the CFTC Chair's office and Mr. Harri Vikstedt, co-chair of the Canadian Alternative Reference Rate Working Group (**CARR**) on February 6, 2024 in connection with the content of this application for no-action relief. He, along with his co-chair, Karl Wildi, have been copied on this letter.

¹ See 17 C.F.R. Part 43 and 17 C.F.R. Part 45.

CMIC's purpose is to assist regulatory and legislative authorities in Canada by providing the views of key Canadian market participants on proposed Canadian regulatory and legislative changes having an impact on over-the-counter (**OTC**) derivatives. CMIC was formed in 2010 at the request of representatives from the Bank of Canada, the Canadian Securities Administrators, the Federal Department of Finance and The Office of the Superintendent of Financial Institutions. CMIC has provided commentary on proposed draft rules and consultation papers relating to OTC derivatives that have been well-received by Canadian federal and provincial public authorities. CMIC brings a unique voice to the dialogue regarding the appropriate framework for regulating the Canadian OTC derivatives market as well as providing input with respect to issues faced by the Canadian OTC derivatives market. Its membership consists of major institutional participants in the Canadian market (such as major public sector pension plans and large financial institutions) and intentionally includes participants from both the 'buy' and 'sell' side of the market, as well as domestic- and foreign-owned banks operating in Canada.² This letter has been signed by only a portion of the CMIC membership due, in part, to time constraints in obtaining internal approvals. It does not necessarily signify disagreement by any CMIC member with any of the points set out in this letter.

I. INTRODUCTION

CARR has been working with regulators, other industry groups and market participants, including members of CMIC, to develop recommendations to encourage a smooth transition away from CDOR. CARR has identified the Canadian Overnight Repo Rate Average (**CORRA**) as the preferred alternative to CDOR for new CAD derivatives and other financial contracts. CARR has subsequently published various milestones, guidance and best practices, and continues to take a range of other actions to build progressively the liquidity required to support the issuance of, and transition to, contracts referencing CORRA.

To assist with this transition in the swaps markets, the International Swaps and Derivatives Association, Inc. (**ISDA**) has developed fallback provisions for transactions that incorporate the 2006 Definitions or certain versions of the 2021 Definitions. The ISDA Definitions are incorporated into the documentation used for a significant majority of interest rate and other derivatives transactions that are "swaps" under the CEA.³ The fallbacks are designed to ensure that transactions that reference CDOR will continue to function following the cessation of CDOR by providing that upon such an event, it will be replaced with the relevant Fallback Rate plus any applicable standard spread adjustment as published by a specified reference rate provider or otherwise determined through a published formula (together with certain conforming changes to give effect to the calculation of the relevant Fallback Rate). These fallbacks are automatically incorporated into transactions that incorporate the 2006 ISDA Definitions or 2021 ISDA Definitions and are entered into after January 25, 2021 (the **Relevant Date**), in each case, to address CDOR and provide for its transition to the Fallback Rate.

² The current CMIC members are: Alberta Investment Management Corporation; Bank of America; Bank of Montreal; BNP Paribas (Canada); Caisse de dépôt et placement du Québec; Canada Pension Plan Investment Board; Canadian Imperial Bank of Commerce; Citigroup Global Markets Inc.; Deutsche Bank A.G., Canada Branch; Fédération des Caisses Desjardins du Québec; Healthcare of Ontario Pension Plan Trust Fund; Intact Financial Corporation; JPMorgan Chase Bank, N.A., Toronto Branch; Manulife Financial Corporation; Morgan Stanley; MUFG Bank Canada; National Bank of Canada; OMERS Administration Corporation; Ontario Teachers' Pension Plan Board; Public Sector Pension Investment Board; Royal Bank of Canada; Société Générale Capital Canada Inc.; Sun Life Financial; The Bank of Nova Scotia; The Toronto-Dominion Bank

³ See 7 USC § 1a(47)(A).

ISDA has also published the ISDA 2020 IBOR Fallbacks Protocol and the ISDA 2021 IBOR Fallback Protocol, including the June 2022 Benchmark Module and the November 2022 Benchmark Module (the **ISDA Protocols**),⁴ each a multilateral protocol and in the case of the ISDA 2021 IBOR Fallback Protocol a modular protocol, to allow market participants to include the fallbacks referred to above in certain transactions that were entered into prior to the Relevant Date. A significant number of market participants have adhered⁵ to the ISDA Protocols or have agreed bilaterally to incorporate substantively identical fallbacks to the ISDA Protocol in their existing transactions.

The fallbacks (including the spread adjustment and conforming changes described above) in the 2006 ISDA Definitions, the 2021 ISDA Definitions, the ISDA Protocols or the bilaterally incorporated provisions equivalent to the ISDA Protocols are referred to in this letter as the **ISDA Fallbacks**.

Consistent with the prior announcement by the UK Financial Conduct Authority (the **FCA**), the regulatory supervisor for the administrator of the London Interbank Offered Rate (**LIBOR**), the overnight and 1-, 3-, 6-, and 12-month tenors of U.S. Dollar LIBOR, the USD LIBOR ICE Swap Rates and the Moscow Prime Offered Rate (together, the **Impacted Rates**) have not been available on a representative basis since June 30, 2023. Following a request by the Alternative Reference Rate Committee (**ARRC**) dated June 14, 2023, the Commission staff issued CFTC No-Action Letter 23-09⁶ to grant no-action relief in connection with market participants' reporting obligations under P43 and P45 arising out of changes in the floating rate pursuant to the ISDA Fallbacks with respect to uncleared swaps referencing any of the Impacted Rates.

On May 16, 2022, Refinitiv announced that the calculation and publication of all tenors of CDOR will permanently cease immediately following a final publication on Friday, June 28, 2024 (**Refinitiv Announcement**).⁷

For reasons similar to the request for relief made by ARRC dated June 14, 2023, CMIC is requesting relief in relation to swaps referencing CDOR similar to the relief granted under CFTC No-Action Letter 23-09.

II. BACKGROUND ON P43 AND P45 REPORTING OBLIGATIONS

To provide context for CMIC's request for relief, this section provides a brief overview of P45 and P43 reporting obligations.

CEA section 2(a)(13)(G)⁸ and P45 require reporting of certain swap creation data upon the execution of any swap,⁹ regardless of whether it is a publicly reportable swap

⁴ ISDA, ISDA 2020 IBOR Fallbacks Protocol (October 23, 2020), available at <http://assets.isda.org/media/3062e7b4/08268161-pdf/>; ISDA, Amendments to the 2006 ISDA Definitions to include new IBOR fallbacks (October 23, 2020), available at <http://assets.isda.org/media/3062e7b4/23aa1658-pdf/>.

⁵ As of May 23, 2023, there are 15,887 adhering parties to the ISDA Protocol, <https://www.isda.org/protocol/isda-2020-ibor-fallbacks-protocol/adhering-parties>.

⁶ CFTC Letter No. 23-09 (June 29, 2023), available at <https://www.cftc.gov/csl/23-09/download>.

⁷ Refinitiv Announcement found [here](#).

⁸ 7 U.S.C. § 2(a)(13)(G).

transaction under P43.¹⁰ In addition, P45 requires the reporting of certain continuation data throughout the life of the swap.¹¹ For example, reporting counterparties are required to report life-cycle-event data (i.e., all data elements to fully report any “life cycle event”, defined as “an event that would result in a change to required swap creation data previously reported to a swap data repository in connection with a swap”) as the life cycle events occur.¹² Required swap data elements for P45 reporting are set out in P45 Appendix 1, which include a number of elements relating to the floating rate.

In addition to specifying the circumstances in which swap data must be reported, P45 specifies how quickly this data must be reported. Depending on the type of entity responsible for the reporting, creation data reporting is generally required within one or two business days following execution,¹³ and continuation data reporting is generally required within one or two business days following the reportable event.¹⁴ As discussed in more detail below, the timing under the P45 reporting requirements may present substantial operational challenges for market participants when transitioning from CDOR to the Fallback Rate under the ISDA Fallbacks.

P43 defines a “publicly reportable swap transaction” under CFTC Rule 43.2 to include an “amendment . . . that changes the pricing of the swap.” The obligation to report arises “as soon as technologically practicable after execution” of the transaction, with “execution” defined under CFTC Rule 43.2 as “an agreement by the parties, by any method, to the terms of a swap that legally binds the parties to such swap terms.” A publicly reportable swap transaction must be reported to a swap data repository under CFTC Rule 43.3 “as soon as technologically practicable after execution.” For an interest rate swap, pricing is currently reported under Part 43 using the “spread” field, which identifies any applicable spread above or below the relevant reference rate.¹⁵

III. REQUEST FOR RELIEF

A. Discussion of P45

The ISDA Fallbacks are included in a transaction between two parties entered into prior to the Relevant Date when those parties adhere to the relevant ISDA Protocol (or agree bilaterally to include the ISDA Fallbacks) or, automatically when the parties enter into a transaction after the Relevant Date.¹⁶

As stated in the Refinitiv Announcement, all tenors of CDOR will cease to be published immediately following a final publication on Friday, June 28, 2024. Under the terms of the ISDA Fallbacks, CDOR will be automatically replaced by term adjusted CORRA plus the spread adjustment fixed on May 16, 2022, as published by Bloomberg

⁹ Deliverable FX forwards and FX swaps that are excluded from being regulated as swaps under the Commodity Exchange Act for some purposes are subject to the requirements of P45, although they are not subject to the requirements of P43. See 77 Fed. Reg. 69694 (Nov. 20, 2012).

¹⁰ See 17 C.F.R. §§ 45.1 and 45.3.

¹¹ See 17 C.F.R. § 45.4(a).

¹² See 17 C.F.R. §§ 45.1, 45.4(c).

¹³ See, e.g., 17 C.F.R. § 45.3.

¹⁴ See 17 C.F.R. § 45.4.

¹⁵ See 17 CFR Part 43, Appendix A.

¹⁶ The fallbacks are not included if the parties expressly agree to the contrary.

Index Services Limited (or a successor provider) (**Bloomberg Spread**). The ISDA Fallbacks include other technical “conforming changes” to enable the Fallback Rate plus spread adjustment to be calculated and the resulting amounts paid.

For CDOR, the member firms of CMIC that are reporting counterparties under P45 intend to report the change in the floating rate pursuant to the ISDA Fallbacks as life-cycle event data under P45. CMIC understands that this is consistent with the practice that has been or will be adopted in the context of reporting requirements established by the Canadian Securities Administrators (**CSA**) under the analogous requirement to P45 under Canadian trade reporting rules (**Canadian TR Rules**). As a result of the ISDA Protocols, the life-cycle event occurs on July 2, 2024 (which is the first business day following June 28, 2024) and firms have until the end of the business day on July 2, 2024, but if not technologically practicable to do so, no later than the end of the following business day, to report the change in the floating rate in accordance with the Canadian TR Rules. Certain member firms of CMIC, however, have applied to the CSA for exemptive relief in all provinces and territories of Canada, except Alberta and Ontario,¹⁷ of up to five business days after July 2, 2024, due to the large volume of CDOR derivatives that are expected to transition to CORRA on the same day. Many member firms of CMIC are also reporting counterparties under P45 and it would create a significant burden if the timing of the reporting requirements under P45 were to differ from the relief that is being sought under the Canadian TR Rules. The foregoing may be exacerbated by the fact that the transition will occur over a Canadian federal holiday weekend; it would be prudent from an operational and technological perspective to align the timing of the reporting under P45 with anticipated exemptive relief with respect to the Canadian TR Rules.

CMIC also believes that a time-limited delay to the P45 reporting requirements will not unnecessarily impact on regulatory oversight in relation to transition to the Fallback Rate due to the long-known and public nature of the transition from CDOR to the relevant Fallback Rate, the transparency of the list of Protocol-adhering parties, and the fact that under the terms of the ISDA Fallbacks, CDOR will fallback to a pre-defined corresponding Fallback Rate.

For the Commission’s reference, we include as Appendix A a chart that represents an illustrative list of how we expect the transition of swaps referencing CDOR pursuant to the ISDA Fallbacks will be reported.

B. Discussion of P43

The change to the Fallback Rate, the numerical value of any applicable spread or the formula of any applicable adjustment, and the conforming changes in each case to a swap pursuant to a ISDA Fallback discussed above are pre-determined and form part of the contractual terms of the swap prior to such change. None of these changes require, or are the result of, further agreement or negotiation between the parties to the swap at the time an ISDA Fallback is triggered and will occur automatically. The changes arising from the ISDA

¹⁷ On March 7, 2024, staff of the Alberta Securities Commission and the Ontario Securities Commission issued Multilateral CSA Staff Notice 96-305 (available [here](#)) providing guidance that there is no public interest in recommending or pursuing an enforcement action against counterparties in respect of late reporting of life-cycle event data with respect to transition to the Fallback Rate provided that the report is made on or before the end of the fifth business day after the day on which the CDOR transition life-cycle event occurs.

Fallbacks have been fixed and are publicly known, and the parties adhering to the ISDA Fallbacks are also publicly known. For example, in respect of swaps referencing CDOR, the designated Bloomberg Spread, which would be reported as the price of the changes to the floating rate pursuant to P43, was set on May 16, 2022, as a consequence of the Refinitiv Announcement.

CMIC understands from its member firms that reporting the changes to a swap arising from the ISDA Fallbacks being triggered would therefore not benefit price discovery as it would not provide new pricing information and may harm market transparency and data integrity, as it would suggest more current price forming activity than is actually the case.

C. Request for Relief

CMIC requests no-action relief from the P45 requirements for reporting the change in the floating rate pursuant to the ISDA Fallbacks in uncleared swaps referencing CDOR. Specifically, CMIC requests no-action relief so long as market participants make best efforts to report the change in the floating rate pursuant to the ISDA Fallbacks in accordance with the requirements of P45, provided that, to the extent it is not possible to comply with such timing requirements, affected market participants will report the required information under P45 not later than five business days from, but excluding, July 2, 2024.

CMIC further requests relief from the requirements for public reporting under P43 in uncleared swaps referencing CDOR, to the extent that the triggering of ISDA Fallbacks in any such swaps would constitute a “publicly reportable swap transaction” under P43.

IV. CONCLUSION

Thank you for your consideration of our request. Please feel free to contact Keri Burton (Keri.Burton@cibc.com) (Chair of CMIC), or Élodie Fleury (Elodie.Fleury@bnc.ca) (CMIC representative and co-chair of CARR communication and outreach subgroup) should you have any questions or concerns.

CMIC welcomes the opportunity to discuss this response with you. This letter has been signed by the following members of CMIC:

Bank of America
Bank of Montreal
BNP Paribas (Canada)
Canada Pension Plan Investment Board
Canadian Imperial Bank of Commerce
Citigroup Global Markets Inc.
Deutsche Bank A.G., Canada Branch
Fédération des Caisses Desjardins du Québec
Healthcare of Ontario Pension Plan Trust Fund
JPMorgan Chase Bank, N.A., Toronto Branch
Manulife Financial Corporation

Morgan Stanley
MUFG Bank Canada
National Bank of Canada
OMERS Administration Corporation
Ontario Teachers' Pension Plan Board
Royal Bank of Canada
Sun Life Financial
The Bank of Nova Scotia
The Toronto-Dominion Bank

- c.: Owen Kopon
U.S. Commodity Futures Trading Commission
- c.: Alicia Lewis
U.S. Commodity Futures Trading Commission
- c.: Harri Vikstedt
Canadian Alternative Reference Rate Working Group
- c.: Karl Wildi
Canadian Alternative Reference Rate Working Group

Appendix 1: Fallbacks reporting: FRO field reporting for 6/28/2024 transition date when fallbacks are triggered/applied*

						Industry P45 reporting for 6/28/24					
Cessation Date	IBOR FRO (ISDA 2006)	IBOR FRO (ISDA 2021) 1	Fallback RFR under the ISDA 2020 IBOR Fallbacks Protocol 2	IBOR ISO Code Name 3	IBOR ISO Code 3	FRO field: Leg 1 Floating Rate Index (TR field); Underlier ID – Leg 1 (ANNA-DSB submission) Leg 2 Floating Rate Index (TR field); Other Leg Underlier ID (ANNA-DSB submission)	#87 Unique Product Identifier (UPI)	#26 Action Type	#28 Amendment Indicator	#30 Event Timestamp (Thh:mm:ssZ to be left to discretion of party) 4	Spread-Leg 1; Spread-Leg 2; Spread notation-Leg 1; Spread notation-Leg 2; 5
28-Jun-24	CAD-CDOR	CAD-CDOR	Fallback Rate (CORRA)	CORRA	CORA	CAD-CORRA	The relevant UPI would be reported.	MODI	FALSE	2024-07-02 (Thh:mm:ssZ to be left to discretion of party). Based on ISO 8601 date and time format.	Spread fields would be reported.
28-Jun-24	CAD-BA-CDOR-Bloomberg	CAD-CDOR	Fallback Rate (CORRA)	CORRA	CORA	CAD-CORRA	The relevant UPI would be reported.	MODI	FALSE	2024-07-02 (Thh:mm:ssZ to be left to discretion of party). Based on ISO 8601 date and time format.	Spread fields would be reported.

Industry P45 reporting for tenor

TENOR examples ⁶ : #56 Floating Rate Reset Freq Period Multiplier-Num(3,0)		TENOR examples: #55 Floating Rate Reset Freq Period-Char(4)	
1		MNTH	
2		MNTH	
3		MNTH	

<https://www.isda.org/2020/05/11/benchmark-reform-and-transition-from-libor/#background>

* Refinitiv as CDOR administrator stated that publication of 1-month and 3-month CDOR settings will cease for good immediately after June 28, 2024.

https://www.lseg.com/content/dam/ftse-russell/en_us/documents/announcement/cdor-cessation-notice.pdf

¹ Table 1 "Mapping between FROs under the 2006 Definitions and FROs under the 2021 Definitions."

² ISDA 2020 IBOR Fallbacks Protocol (October 23, 2020), <https://assets.isda.org/media/3062e7b4/08268161-pdf/>

³ "BenchmarkCurveName2Code," ISO 20022, <https://www.iso20022.org/standardsrepository/type/BenchmarkCurveName2Code>

⁴ The date on which the fallbacks take effect is the "Index Cessation Effective Date," a term used in the ISDA Definitions, which are incorporated into legacy contracts via the 2020 IBOR Fallbacks Protocol. That is the first Toronto Banking Day on or after June 29, 2024 for all CDOR tenors (expected to be July 2, 2024, unless that is an unscheduled holiday in Toronto).

⁵ Spread Adjustments referenced on page 1 Figure 1 of document "IBOR Fallbacks: Spread Fixing Event for CAD CDOR" are to be added to the Spread field (e.g. https://assets.bbhub.io/professional/sites/10/IBOR-Fallbacks_CDOR_Cessation_Technical-Note_2205161.pdf).

⁶ 6 month and 12 month have already transitioned.