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Claire McKay
Sectoral Assessment
Consumer Data Right Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: data@treasury.gov.au

Dear Claire

Consumer Data Right (CDR) Open Finance Sectoral Assessment – Non-bank lending consultation paper – Australian Securitisation Forum response

On behalf of the Australian Securitisation Forum (ASF) and its members, we are writing in response to Treasury's consultation paper dated 15 March 2022 on the *Consumer Data Right Open Finance Sectoral Assessment - Non-bank lending* (consultation paper).

The ASF is the peak body representing the securitisation industry in Australia and New Zealand. The ASF's role is to promote the development of securitisation in Australia and New Zealand by facilitating the formation of industry positions on policy and market matters, representing the industry to local and global policymakers and regulators and advancing the professional standards of the industry through education and market outreach opportunities. The ASF is comprised of a National Committee, specific subcommittees and a national membership of over 160 organisations.

ASF response to the consultation paper

The ASF's responses to the questions in the consultation paper are limited to information received from ASF members who are in the business of providing finance but are not '*authorised deposit-taking institutions*' and therefore not regulated by APRA.

The ASF supports the application of the CDR to the wider economy including the finance sector (open finance) by giving customers the option to securely share their data with banks, financial services firms and other sectors enabling them to switch to products and services that will suit their needs. This has the potential to generate competition and product innovation across the finance industry with greater choice and access to finance available to consumers.

However, the expansion of CDR to the non-bank lending sector (including smaller and emerging lenders) should be carefully considered for the following reasons:

1. The non-bank lending sector in Australia is diverse and cannot be defined by a single statutory definition. A key aspect of the CDR assessment process is to define the scope of data holders of open finance and determine under what statutory regime non-banks can be captured for this purpose. Although it is often thought that non-banks are credit providers and therefore required to hold an 'Australian Credit Licence' (ACL), there are many specialist non-bank business lenders who are not required to hold an ACL or other licence because they do not provide credit in the terms specified under the ASIC Act.

Similarly, the Financial Sector (Collection of Data) Act (known as FSCODA regime) is unlikely to be an appropriate way to define non-banks for the purpose of CDR because the FSCODA regime was established for statistical reporting purposes only, so its purpose is limited. Therefore, Government needs carefully determine if and how CDR compliance can be applied to an undefined and non-systemically homogenous sector.

The fact that the non-bank sector is not homogeneous may also limit the consumer benefits and outcomes that may be derived through the extension of the CDR to the non-bank sector. The CDR operates most effectively in markets supplying high volume, homogenous products – for example, prime, residential mortgage lending in the bank sector. In these markets, consumers can compare and select products which are essentially fungible based on price. Product sets in the non-banks sector tend to be highly diversified, involve servicing niche markets, and lack the homogeneity required to make CDR an effective policy tool.

2. It is our understanding that the rollout of CDR open finance to ADIs took considerable time to implement from a consumer credit perspective. In our view, the proposed timeframes for mandating CDR compliance for non-bank lenders are too ambitious. A targeted or sequenced approach to applying CDR measures to certain sized non-bank lenders and product types would ensure that CDR does not create undue regulatory and cost burdens for smaller non-bank lenders.

Government might consider designating those non-banks with a specified revenue threshold together with a per product customer number threshold as the first group in the sector to comply. This would allow the sector to develop the requisite knowledge and adjust systems. Product data should be the primary focus as it is most available data among non-banks. Consumer data might follow. However, there is a lot of work to implement transactional based data (as shown in the case of ADIs) and most non-banks do not even have this data due to the diversity of lenders and products in this sector. In other words, it is not a '*one size fits all*' proposition for non-bank lending data.

3. The extent of work and expense required to implement CDR open finance across the non-bank sector should not be underestimated. From a consumer credit perspective, it has taken a period of years for CDR to be rolled out by ADIs. The data requirements of CDR will be extensive for non-banks, particularly the requirement for transaction-based data. Sufficient

time will be needed for non-banks to understand the application of the proposed accreditation system and further privacy considerations for sharing data. If Government wishes to accelerate CDR adoption in this sector, it might consider providing some form of incentive for the development of CDR related technological solutions such as an accredited central data recipient.

In as much as CDR may improve competition, there is always a risk that the additional cost and regulatory burden could put some non-banks at a competitive disadvantage. As already mentioned, the non-bank sector is not as systemically homogenous as is the ADI or bank sector and consequently CDR does not necessarily mean there will be greater competition and consumer choice.

4. Non-bank lenders adopt a range of corporate and trust structures with unrelated entities providing the finance to fund the consumer through securitisation technology. This method of funding is often referred to as '*white labelling*' and involves special purpose vehicles (SPVs) (managed by a corporate trustee) acting as the legal lender of record. Although a number of entities form part of such a lending structure, the consumer's point of reference or lending relationship will always be with the non-bank lender itself.

It is important to ensure that the unrelated entities (including the SPV trustee) are not caught by any CDR compliance requirements as this would create potential duplication and additional costs for the consumer. The non-bank lender who provides a product to a consumer is the primary entity that receives the consumer's information. Therefore, the non-bank lender who sells the products to a consumer should be the designated data holder, not a corporate trustee who, although named as the lender in documentation, performs an ancillary role in the financing structure. A trustee of a securitisation SPV is also exempt as a credit provider under the NCCP regime.

The ASF is of the view that there should be further consultation stages to explore data collection and sharing across the various lending and product groups that comprise the non-bank lending sector before a single CDR open finance compliance regime is imposed on this sector.

The ASF appreciates your consideration of the matters raised in this letter and is more than happy to discuss them in further detail with Treasury and indeed any other matter relating to the Australian securitisation market.

Yours sincerely,

A handwritten signature in black ink that reads "Chris Dalton". The signature is written in a cursive, flowing style.

Chris Dalton, Chief Executive – Australian Securitisation Forum

ASF responses to consultation paper questions

Benefits and use cases

1. *How could sharing non-bank lending data encourage innovation or new use cases for CDR data? Are there cross-sectoral use cases that non-bank lending data can support, in particular with Open Finance/Banking?*

Non-bank lenders have different and diversified lending criteria and niche product sets to ADIs and cater to specific markets. For example, non-bank lenders may accommodate market segments that would otherwise find it challenging to obtain loans with ADIs (i.e., self-employed, SMEs seeking unsecured loans, borrowers with previous defaults or bankruptcies).

There are benefits in data sharing within or across sectors. There would be potential gains in efficiency allowing consumers greater access to product data to assist in identifying the suitability of products and services and to the cost of finance. However, this is dependent on the process of customer consent and any limitations imposed by privacy laws on the use of personal information.

2. *May the benefits of sharing non-bank lending data vary across particular consumer groups; for example, vulnerable consumers?*

Each consumer has specific circumstances. For example, there could be consumers who are vulnerable due to their age, financial situation or physical or mental health. As a consequence, they may not be willing or even able to share services under open finance. In other words, the open finance user base, at least at the initial stages, is probably going to consist of those consumers who are perhaps more financially and technologically perceptive.

3. *Would the designation of non-bank lending improve competition between lenders, including leveling the playing field with banks, or lead to greater market efficiencies?*

While eventually the application of CDR to non-bank lending could improve competition, mandating compliance with CDR for smaller and even product specialist lenders and fintechs at this stage could have the opposite effect by giving a competitive advantage to the accredited non-banks who have the resources and size to put in place CDR systemic changes.

Data holder and datasets

4. *If non-bank lending is designated, which entities should be designated as data holders?*

As highlighted above, there should be a progressive or sequential approach to the designation of the non-bank sector because there is no 'one size fits all' definition of non-banking. The CDR regime will need to take into account the differences between various non-bank lending entities in terms of their services and product offerings. It might be more efficient to start with consumer lending products (including retail lending such as home loans and credit cards) at an initial phase followed by business lending products (which are not as homogenous) at a later stage. This is because business lending products are often tailored to a consumer's needs, handling data is less useful than for consumer lending.

5. *How should data holders be described in a designation instrument? Is there potential to leverage existing definitions (for example, the definition of 'registrable corporation' in the Collection of Data Act or 'credit facility' in the ASIC Act)?*

These definitions are not completely suitable. As mentioned above, the ASIC Act is intended to capture entities that are in the business of providing credit while the FSCODA regime is purely for statistical reporting. Neither definition completely defines the non-bank lending sector.

6. *Where lending is securitised or provided to a brand owner by a white labeller, does the same entity retain the legal relationship with the customer, as well as hold the data on the loan?*

See comments above on page 3 under paragraph 4.

7. *Are there differences in the data held by non-banks and banks that would require adapting the rules and standards that apply to banks so that those rules and standards would apply to non-bank lenders? If so, why?*

Many non-bank lenders provide lending products which are structured differently to banks and consequently collect and assess different data. Due to variability of products and services offered by non-banks, Government should undertake specific analysis across the range of non-bank lending products.

8. *Are there products offered by non-bank lenders that aren't covered by the existing rules and standards applying to banking data in the CDR? Are there CDR rules and standards that apply to banking data that warrant exclusion for non-bank lenders?*

Only where there are common products between banks and non-banks should such products be subject to the same rules and standards.

9. *Are there any government-held datasets that would be complementary to privately held datasets and could support possible use cases in non-bank lending?*

In terms of hardship cases, access to ATO or other Government held datasets that demonstrate a customer's payment or financial situation would be valuable. This would help assessing self-employed and PAYG individuals as part of the loan income verification process.

10. *What is the level of standardisation across products within business finance? Are there key datasets that are common across different types of business finance products that could be usefully compared? What are the key attributes of a product that would be useful for comparison services?*

As highlighted above, there are many non-bank lending products (particularly non retail or business related products) which are not standard across lenders and therefore difficult to compare. For lenders in the SME sector products can include secured and unsecured loans, short or medium term loans and loans secured by multiple pieces of collateral and director guarantees.

Privacy considerations and intellectual property

11. *Are there privacy concerns specific to non-bank lending that should be taken into account when considering the designation of the sector?*

We are not aware of any privacy concerns at this stage.

12. *Do you consider the existing privacy risk mitigation requirements contained in the banking rules and standards are appropriate to manage the privacy impacts of sharing non-bank lending data?*

Although the consent-based regime in open finance is reasonable, our members have not yet considered the specific banking rules and standards. We would welcome further engagement on this.

13. *Are there other examples of materially enhanced information specific to the non-bank lending industry?*

Our members have not yet considered this. We would welcome further engagement on this.

Regulatory burden and cost considerations

14. *Feedback is sought on the potential costs or regulatory burden implications across the spectrum of potential data holders and scope of product types and datasets that could be captured.*

Our members have not yet considered the potential costs and regulatory burden of CDR implementation to their organisations in detail. It is our understanding that CDR implementation in the banking sector continues to be complex and costly despite the significant resources available to ADIs. It would assist the non-banks if Government could provide some initial guidance on the relevant factors and associated costs incurred by ADIs for both data holder and data recipient components. This will enable non-banks to determine which data can be provided and the technical complexity of providing data sets. Government should be mindful that non-banks are economically sensitive to complex accreditation and compliance requirements.

It is suggested that data capture should only be forward looking to avoid the significant cost and time to manipulate historical data.

We would welcome further consultation on the regulatory burden of CDR compliance.

15. *What datasets would cost more for a data holder to share securely, and why?*

Our members have not yet considered this. We would welcome further engagement on this.

16. *Which entities, defined either by size or product offering, would be less suitable for CDR data holder obligations from a cost or technological sophistication point of view, and why?*

As mentioned above, we are of the view that organisational size and the years of operation among non-bank lenders should be a threshold to CDR compliance. CDR should not be an unnecessary burden or barrier to entry for new competitors or innovators. Government needs to ensure that the cost of CDR implementation does not outweigh the benefits. Therefore, a staged approach based on an organisation and customer product

threshold may allow open finance to develop for the larger product base where market comparisons and use is most valuable.

17. What would be the likely cost of implementation and ongoing compliance with CDR data sharing obligations for your entity? Please provide detail where possible.

Our members have not yet considered this. We would welcome further engagement on this.

18. What barriers to product data sharing exist for your entity or product offering? Please provide information on the types of systems you use and whether there is the potential to limit access to information, such as where data storage obligations are outsourced to third-parties.

Our members have not yet considered this. We would welcome further engagement on this.

19. Does your business have consumers that are unable to access their account and transaction information online and, if so, what proportion of your customers are 'offline'?

Our members have not yet considered this. We would welcome further engagement on this.