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Aris Cao
A/g Assistant Director
Market Conduct and Digital Division, Markets Group
The Treasury
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By email: CDRRules@treasury.gov.au

Dear Aris

Consumer Data Right (CDR) in non-bank lending – Consultation on Non-bank Lending Draft Rules – Australian Securitisation Forum response

On behalf of the Australian Securitisation Forum (ASF) and its members, we are writing in response to Treasury's consultation on the proposed draft rules applicable to non-bank lending as described in the exposure draft amendments to the *Competition and Consumer (Consumer Data Right) Rules 2020* (the 'CDR Rules'), explanatory materials and a draft Privacy Impact Assessment. We understand that the CDR data standards are to be considered separately and at this stage are not intended to be finalised nor implemented at the same time as the CDR Rules.

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.

ASF support for the application of CDR to the finance sector

The ASF's comments on the CDR Rules are limited to information received from ASF members who are in the business of providing finance but are not '*authorised deposit-taking institutions*' ('ADIs') and therefore are not regulated by APRA. The ASF and its members support the application of the CDR to the wider economy including the finance sector to give consumers 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 is expected to give consumers greater control over their data and potentially generate competition and product

innovation across the finance industry with greater choice and access to finance available to consumers.

Timetable for staged implementation of CDR to non-bank lending

As previously highlighted to Treasury in the ASF's first submission letter dated 9 May 2022 and in its second submission letter dated 7 February 2023, Treasury needs to be aware that within the non-bank lending sector there are resource and cost considerations in relation to the implementation of CDR requirements. This is largely attributable to the difference in scale between the larger, longer established non-banks and institutions, including ADIs, and non-banks in both compliance and technical development capabilities.

It is not feasible for non-bank lenders to be faced with CDR expansion and implementation in the same way and within a similar (or even shorter) timeframe as that which ADIs have been required to comply with, as this may result in a competitive advantage to existing CDR participants, particularly those who provide services that compete with products provided by non-bank lenders.

As you know, ADIs were granted a phased roll out period for CDR implementation from 2020 to 2022, being almost 2 years. However, under the proposed CDR Rules, non-banks (including both "Initial" and "Large" providers) are required to have their product data available by November 2024, a mere 1 year after the CDR Rules are expected to be made, and then data available for sharing within 12-15 months (depending on the complexity of the CDR request). Within this 12-month timeframe, non-bank lenders are expected to design and build homogenous systems to meet the specific data requirements of CDR implementation. This may even include the redevelopment of underlying products to achieve this.

We understand that the banking sector relied on a number of external consultants in their implementation of CDR although the big banks started the process first followed by the tier 2 banks which enabled those consultants to service them. However, if a large cohort of non-banks were to implement CDR at the same time, the pool of external consultants may be limited. In other words, it is highly likely that there would be a large number of non-bank lenders competing for the same resources. This will be relevant if there is a short 12-month implementation timeframe as proposed in the CDR Rules.

The ASF submits that the proposed schedule for applying CDR compliance arrangements on non-bank lenders (even if the "*de minimis*" threshold as a "*data holder*" is met) is too short and must be lengthened to acknowledge the vastly different systems used and product diversity across the non-bank lending sector. In fact, there is a greater need for specification with respect to data collection and reporting to reflect the product diversity of non-bank lenders. This is likely to have a flow on effect on the timing and cost to build CDR related systems.

Data standards and product related disclosure requirements

Whilst we understand that Treasury (through the Data Standards Chair) is prepared to separately consult on data standards for non-bank lenders (beyond the closing date of the CDR Rules consultation in October), the development of data standards is an integral part of the process of sharing data under the CDR Rules and are aligned in their application. Therefore, the CDR Rules

and data standards should be settled and be made simultaneously. It follows that when the data standards are developed, the systems for sharing data, in accordance with CDR Rules, can be built with greater specificity. For example, real time data will not be a viable standard for non-bank lenders as non-banks are not transaction account holders like ADIs. Non-banks are only lenders and usually only receive transaction data once a day. Although it is not expected that this would disadvantage consumer data requests and should provide consistency between the CDR regime and customer portals, it is unable to match the frequency of data updates for transactional banking in the ADI sector.

There should be consistency between data standards and other regulatory requirements for product-related disclosures. There are products, which are not offered by ADIs, that have similar regulatory requirements dictating specific product related disclosures. There will be no benefit for data providers and consumers alike if we end up with vastly different product-related disclosure requirements between CDR and other applicable laws or regulations.

The ASF submits that the Minister should not make the final CDR Rules applicable to non-bank lenders until the data standards are also finalised.

Covered products under CDR Rules

We note that CDR is intended to apply to individual and non-individual business consumers and the test of which product data is in scope largely depends on the publicly available and standardised nature of the product. However, if a product is designed specifically for and/or negotiated with a consumer (i.e., not a trial product), we believe greater clarity is required in relation to the definition of "*publicly offered under a standard form contract*" so as to determine CDR eligibility. It could be quite arbitrary to determine the extent to which contractual terms include standard and non-standard banking product terms.

Excluded products under CDR Rules

There are various cases where products should be excluded or treated as outside the scope of CDR:

1. White labelling arrangements are bespoke and the contractual relationship with consumers will be dependent on the contractual arrangement or terms. Therefore, the CDR Rules should allow the reporting responsibility of the data holder to be determined on an arrangement by arrangement basis.

2. There are a number of financial products that have prices on application with both bespoke pricing and loan conditions. For example, there could be a threshold of $5 million at which point price is on application. Residential mortgage funding warehouses provided to non-bank lenders usually include loan size limits, which vary by funder, and are typically in the range of $2 million - $4 million. These types of loan guides provide appropriate benchmarks for setting an exclusion threshold for CDR. An amount of $4 million could be reasonably acceptable. We note that a number of members will identify on their broker guides such products as "*price on application*".

The ASF submits that a more pragmatic approach may be to define "*publicly offered under a standard form contract*" to exclude by default:

a. products which are not advertised or promoted in broker guides or websites;
b. products with price on application;
c. products secured against non-residential properties;
d. residential and commercial loan products exceeding $4 million;
e. products for overseas resident consumers.

We note that it is Treasury's intention to capture commercial consumers. However, the definition of ''*resident loans*'' is ambiguous as it refers to '*persons*' or '*households*' which does not technically include corporates. Could Treasury please ensure that the definition is clearer.

Other ancillary matters

We understand that data holders will be required to be a member of an EDR scheme such as AFCA. It is not clear if AFCA's jurisdiction will be limited to CDR complaints or extend to all services offered by the data holder. If a non-bank lender is required to join AFCA only for CDR purposes, then AFCA's jurisdictional oversight similarly should be limited to CDR complaints.

The ASF appreciates Treasury's consideration of the matters raised in this letter and is more than happy to discuss them in further detail with Treasury at any time and participate in any ongoing dialogue relating to CDR and its application to the non-bank lending sector and the Australian securitisation market.

Yours sincerely,

Chris Dalton, Chief Executive – Australian Securitisation Forum