

27.10.2020

To [ACCC-CDR@acc.gov.au](mailto:ACCC-CDR@acc.gov.au)

**Australian Competition and Consumer Commission**  
GPO Box 3131  
Canberra ACT 2601

Dear Sir/Madam

### Consultation — Consumer Data Right (CDR) Rules – Amendment No. 3

Judo Bank Ltd (Judo) is a rapidly growing challenger bank focussing on the SME market. To date, our focus has been business loans and retail term deposits. We intend to expand our product range over time to provide a full service to small and medium businesses across both deposits and lending.

Judo is a strong supporter of the Consumer Data Right (CDR) regime and intends to take up the opportunity to participate. The proposals creating new levels of accreditation and flexibility for third parties to participate appropriately, among other things, are equally of great benefit to Judo's customer base, and, if adopted, would be utilised by Judo. We thank the Commission for this opportunity to comment on the proposed amendments.

The Commission has raised several issues in the Consultation Paper. Judo has limited its responses to those issues on which it is considered Judo has a contribution to make to the debate. We have also included, as an appendix, a table containing the Commission's consultation questions and notes to show which questions we have responded to, within this letter.

The Commission may assume that Judo is in broad support of the proposals not otherwise addressed.

#### 4.2. Transfer of CDR data between accredited persons

We believe this is an important enhancement to the data sharing arrangements. Facilitating current arrangements for credit providers to share data with accounting platforms, such as Xero and MYOB, will create efficiency gains that support the availability of credit to small businesses through streamlined information flows between a customer's bookkeeping services and their bank.

We expect that ADR status will be attractive to accounting platform providers to simplify their ingestion of banking data and create a uniform experience across all participating ADIs.

If the proposals proceed as envisaged, having an ADR (unrestricted) status will enrich the services Judo can provide to customers. Independent aggregation of a customer's banking through direct data feeds from each of a customer's banks is possible. However, we believe it to be more efficient and in all parties interests to enable access to that information through an interface to the

customer's accounting platform whereby Judo would indirectly receive the account information and have direct access the customer's accounting ledgers.

For these reasons we strongly support the amendments proposed in this section.

On consultation question 15, we think that it would be a better customer experience to have a single consent process (consenting to disclosure to other ADRs at the same time as the consent to collect and use their data). This would enable a streamlined onboarding process for the customer. It may, however, be an implementation challenge for an ADR given the probable wide variety of disclosures.

A second option would be for disclosure to be separately consented. This could be mediated by either the initial ADR, or the ADR receiving the disclosed data. Logically, the initial ADR becomes a Data Holder in the consent framework and the same consent/authorisation process could apply (note that we are NOT suggesting that the initial ADR become a Data Holder in the manner described in Schedule 3 rule 7.2, but rather that the consent mechanism is the same as for a Data Holder).

We note in the proposed drafting that rule 4.10(1)(b)(ii) may also need amendment to allow the bundling of 'consent to disclose' with 'consent to collect and use'.

In heading down the ADR to ADR sharing path, consideration needs to be given on how long a chain of ADRs would be appropriate and how to avoid a circular data path forming. The principal needs to be around keeping the model as simple as possible whilst enabling important use cases.

On consultation question 15 (a), the proposed threshold for being able to offer an alternative is that the ADR 'reasonably believes' that the CDR consumer 'might' benefit from those other goods or services. We consider that this concept of 'reasonable belief' is problematic and subjective, and request that an amended threshold is considered such that the ADR has *grounds to believe* that the CDR might benefit.

On consultation question 15 (b), we think that making any such commercial relationship transparent to the consumer should be consistent with the approach to third party relationships under the AFSL or consumer credit regimes and should allow for the possibility that while financial arrangements are in place, their quantum is not ascertainable. These existing regimes are prescriptive and detailed, and Judo does not support an approach that would generate further complexity in this area. In the scenarios we envisage, Judo would likely have a single commercial agreement with each accounting platform which would cover all mutual customers. If the terms of such an agreement have any fixed component it is likely that it would be too difficult to attribute a dollar amount to any individual consumers, and it is therefore unascertainable but we support the principle that consumers should be aware of the overall fact that commercial arrangements are in place.

### 6.1. Proposed approach to enabling CDR data sharing by non-individuals

As Judo focusses almost entirely on the SME sector, we see great value in the enablement of non-individuals in the CDR regime. At present, only a small minority of our business customers can participate in data sharing since the majority operate as either private companies or trusts.

In relation to consultation questions 20-22, we agree that the concept of nominated representatives and a single shared dashboard is the right approach to enabling non-individual customers and

business partnerships. Recognizing that many of our SME customers operate as sole director companies, it would make sense in our view to automatically assign the account owner as a nominated representative to avoid the need for the customer to take an extra step to enable data sharing when they are the only person operating an account.

We note that this will require core banking system upgrades for all Data Holders and so the implementation timeline needs to be informed with input from core banking system providers. We are not yet able to estimate when we could implement this capability, but we think that it will need at least 12 months' lead time. It may be appropriate to align implementation with phase 3 product customer data sharing in Feb 2022, as this is when the majority of business-oriented accounts begin sharing and will only be able to be shared practically by the expansion of eligibility to non-individuals.

The proposal does not specifically call out trusts, but we assume that they are intended to also operate using the nominated representative model. It is important that the nomination of a representative does not require any additional checks that would require re-examination of trust deeds or other company documentation. We understand that this should not be necessary as the nominated representative would be appointed by the account owner which has already been subject to appropriate "verification of authority" checks.

Finally, we believe it may already be covered by the drafting, but an important use case for nominated representatives is where the nominated representative is an external advisor of a business (for example an accountant). It is common for small businesses to delegate their accounting operations to an accounting firm which would need to be able to set up data sharing to streamline operations for the company. We request that the drafting place no restrictions on who can be named as a nominated representative to facilitate this use case.

### 6.3. Secondary users

We do NOT support the proposal to allow secondary users to authorise data sharing. This would require a significant increase in complexity in supporting yet another type of account authorization by Data Holders for very marginal benefit to end users in our view.

### Other Proposals

Judo is generally supportive of the remainder of the proposals which simplify commercial arrangements and improve customer experience. We support the principal of lowering the barriers to participation as worthwhile in our view.

We note that the proposed commencement dates for the proposed rules which are outlined in the CDR Roadmap are a key area in which the Commission seeks feedback. The time frames proposed in the roadmap are achievable for Judo.

In closing, we hope these perspectives are of assistance to the Commission as you drive the rollout of the Consumer Data Right regime.

We are happy to discuss any of these items further, if required, and Sophie Newing [REDACTED] is your best contact point.

Warm Regards



Jacqui Colwell

CRO and Co-Founder  
Judo Bank Pty Ltd

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DOING BUSINESS**



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# Appendix – ACCC Consultation Questions & Judo Responses

Section Ref	Consultation questions	Judo Feedback
2	1 Comments on the proposed timeline for the proposals referred to in the CDR roadmap	A single shared dashboard (our preferred approach) for business consumers may affect the implementation timeline since all Data Holders will require core banking system upgrades so the timeline needs input from core banking system providers.
3	2 The proposed rules include three discrete kinds of restricted accreditation (i.e. separate affiliate, data enclave or limited data restrictions). We welcome views on this approach and whether it would provide sufficient flexibility for participants. In responding to this question, you may wish to consider whether, for example, restricted accreditation should instead be based on a level of accreditation that permits people to do a range of authorised activities.	Judo has no specific comment
3	3 We also welcome views on alternative risk-based restrictions that could apply to a lower level/s of accreditation, as envisaged by the Open Banking Report, including views on whether, and in what way, an approach based on volume (for example, volume of customers or customer records), could provide an appropriate basis for developing levels of accreditation.	Judo has no specific comment
3.1	4 What are your views on the low to medium classification of risk for the data set out in Table 1?	Judo has no specific comment
3.1	5 Are the accreditation criteria that apply to a person accredited to the restricted accreditation level (limited data restriction) appropriate for that level?	Judo has no specific comment
3.1	6 Do you consider the restricted level (limited data restriction) would encourage participation in the CDR? What are the potential use cases that this level of accreditation would support, including use cases that would rely on the scope of data available under this level increasing as the CDR expands to cover new sectors beyond banking?	Judo has no specific comment
3.2	7 Do you consider the data enclave restriction would increase participation in the CDR? Where possible, please have regard to potential use cases in the banking sector and future CDR sectors	Judo has no specific comment

Section Ref	Consultation questions	Judo Feedback
3.2	8 Should the combined accredited person (CAP) arrangement between an enclave provider and a restricted level person include additional requirements, for example, in relation to incident management between the parties?	Judo has no specific comment
3.2	9 Should there be additional requirements under Part 1 of Schedule 2 for enclave providers in relation to the management of data enclaves?	Judo has no specific comment
3.3	10 Do you consider the affiliate restriction level would increase participation in the CDR? Where possible, please have regard to potential use cases in the banking sector and future CDR sectors.	Judo has no specific comment
3.3	11 Should there be additional requirements under Part 1 of Schedule 2 for sponsors?	Judo has no specific comment
3.3	12 Where a sponsor and affiliate rely on a CAP arrangement, should the CAP arrangement include additional requirements, for example, in relation to incident management between the parties?	Judo has no specific comment
3.3	13 The draft rules envisage that all of Schedule 2 will apply to an affiliate of a sponsor. However, depending on the relationship between the sponsor and the affiliate, there may be options to reduce the risk associated with this model which in turn could result in less controls being relevant for some affiliates. We are interested in views on whether a distinction could, or should, be made for different levels of access to data between sponsors and affiliates (some examples below), and, if so, what approach to assurance of the information security criterion may be appropriate. <u>Example level 1:</u> affiliate can obtain access to any CDR data collected by the accredited sponsor and all data is held and managed on the affiliate member's systems. <u>Example level 2:</u> affiliate can access all data sets but uses some of the sponsor's systems and applications to access or manage the data. <u>Example level 3:</u> affiliate obtains access to a limited amount of CDR data held by the sponsor, or entirely uses the accredited sponsor's systems and applications to access or manage the data.	Judo has no specific comment
4.1	14 We consider that in the case of a CAP arrangement, it is appropriate for the principal (having the relationship with the consumer) to be responsible for ensuring that customer-facing aspects of the CDR regime are delivered (for example, dashboards and any customer-facing communications, including in relation to dispute resolution). We welcome views on this position.	Judo has no specific comment

Section Ref	Consultation questions	Judo Feedback
4.2	<p>15 Should consumers be able to consent to the disclosure of their CDR data at the same time they give a consent to collect and a consent to use their CDR data?</p> <p>a. Is the proposed threshold for being able to offer an alternative good or service in rule 7.5(3)(a)(iv) appropriate?</p> <p>b. The transfer of CDR data between accredited persons will be commonly facilitated through commercial arrangements. Should those commercial arrangements be made transparent to the consumer and, if so, to what extent?</p>	Judo response detailed in attached letter
5.2	<p>16 To which professional classes do you consider consumers should be able to consent to ADRs disclosing their CDR Data? How should these classes be described in the rules? Please have regard to the likely benefits to consumers and the profession's regulatory regime in your response</p>	Judo has no specific comment
5.2	<p>17 Should disclosures of CDR data to trusted advisors by ADRs be limited to situations where the ADR is providing a good or service directly to the consumer? If not, should measures be in place to prevent ADRs from operating as mere conduits for CDR data to other (non-accredited) data service providers?</p>	Judo has no specific comment
5.3	<p>18 Should disclosures of CDR data insights be limited to derived CDR data (i.e. excluding 'raw' CDR data as disclosed by the data holder)?</p>	Judo has no specific comment
5.3	<p>19 What transparency requirements should apply to disclosures of CDR data insights? For example, should ADRs be required to provide the option for consumers to view insights via their dashboard, or should consumers be able to elect to view an insight before they consent for it to be disclosed to a non-accredited person?</p>	Judo has no specific comment
6.1	<p>20 We are seeking feedback on the proposal for enabling business consumers (both non-individuals and business partnerships) to share CDR data.</p>	Judo response detailed in attached letter
6.1	<p>21 We welcome comment on the proposal to require a data holder to provide a single dashboard to business consumers which can be accessed by any nominated representative to manage CDR data sharing arrangements.</p>	Judo response detailed in attached letter
6.1	<p>22 Are there other implementation issues the ACCC should be aware of in relation to the proposed rules for CDR data sharing by non-individuals?</p>	Judo response detailed in attached letter

Section Ref	Consultation questions	Judo Feedback
6.2	23 We welcome comment on the proposed approach to require data holders to treat business partnerships in line with the approach for dealing with business consumers. Do you foresee any technical or other implementation challenges with taking this approach for business partnerships that the ACCC should consider?	Judo has no specific comment
6.2	24 Should additional protections be introduced for personal information relating to business partners who are individuals?	Judo has no specific comment
6.2	25 Are there other aspects of the rules that may require consequential changes because of the enablement of business consumers? For example, are the internal dispute resolution requirements appropriate for business consumers?	Judo has no specific comment
6.3	26 We welcome feedback on the proposals for enabling authorised users to share CDR data.	Judo has no specific comment
6.3	27 Should persons beyond those with the ability to make transactions on an account be considered a person with 'account privileges' in the banking sector?	Judo has no specific comment
6.3	28 How should secondary users' rules operate in a joint account context?	Judo response detailed in attached letter
6.3	29 As well as having the ability to withdraw a 'secondary user instruction', should account holders be able to have granular control and withdraw sharing with specific accredited persons that have been initiated by a secondary user?	Judo response detailed in attached letter
7.1	30 We are seeking feedback on our proposals relating to sharing CDR data on joint accounts, including: <ul style="list-style-type: none"> <li>a. the proposed approach to require data holders to allow consumers to set their preferences (a disclosure option) as part of the authorisation process</li> <li>b. the proposed approach of allowing 'joint account holder B' to withdraw an approval at any time</li> <li>c. the expansion of the rules to include joint accounts held by more than two individuals</li> <li>d. the proposal that joint account holder B does not have to 'approve' amendments to authorisations</li> <li>e. the proposed approach that the rules do not require (but do not prohibit) the history of disclosure option selections being displayed to consumers as part of the joint account management service or data holder consumer dashboard.</li> </ul>	Judo has no specific comment
7.1	31 Do the benefits of requiring data holders to display on-disclosures to 'joint account holder B' outweigh the costs?	Judo has no specific comment



Section Ref	Consultation questions	Judo Feedback
7.2	32 Should accredited persons be required to offer consumers the ability to amend consents in the consumer dashboard, or should this be optional?	Judo has no specific comment
7.2	33 We are seeking feedback on the proposed rules about the way accredited persons can invite consumers to amend their consents. Should a consumer be able to amend consent for direct marketing or research in the same way as amending consent for use of data in the provision of goods and services?	Judo has no specific comment
7.2	34 Should the authorisation process for amending authorisations also be simplified?	Judo has no specific comment
7.3	35 We are seeking feedback on the proposed approach of separating the consent to collect from the consent to use CDR data (rather than combining consent to collect and use	Judo has no specific comment
7.3	36 Should accredited persons be able to offer disclosure consents only after an original consent to collect and use is in place (with the effect that combining a use and collection consent with a disclosure consent would be prohibited)? See also the consultation questions in section 7.2 above.	Judo has no specific comment
7.4	37 We are seeking feedback on the 'point in time' redundancy approach	Judo has no specific comment
7.4	38 We are seeking feedback on the proposed approach where a consumer withdrawing their authorisation for a data holder to disclose their CDR data results in removal of the ADR's consent to collect only	Judo has no specific comment
7.4	39 We are seeking feedback on the collection consent expiry notification and permissible delivery methods.	Judo has no specific comment
7.5	40 We welcome any comment on the proposed rules to improve consumer experience in data holder dashboards	Judo has no specific comment
8.1	41 We are seeking feedback on whether the proposed amendments place the obligation on the party best placed to meet the obligation.	Judo has no specific comment
8.1	42 Are there any technical or other implementation issues of which the ACCC should be aware?	Judo has no specific comment
	Any other additional issues	No other issues at this stage