



Consultation on Consumer Data Right Rules Updates per September 2020

TrueLayer submission

October 2020

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29 October 2020

Attn: Australian Competition and Consumer Commission

Subject: TrueLayer Submission - Consultation on Consumer Data Right Rules Updates per September 2020

Thank you for the opportunity to comment on your proposed changes to the *Competition and Consumer (Consumer Data Right) Rules 2020 (CDR Rules)*.

About TrueLayer

TrueLayer is a UK-headquartered firm, founded in 2016 and authorised by the UK's Financial Conduct Authority ("FCA"). Our platform allows clients to access their customers' banking data and initiate payments from their customers' accounts in a uniform, simple, and secure manner by integrating our Application Programming Interface ("API").

Our customers tend to be FinTechs and high-growth tech companies, as well as larger financial institutions and online merchants. We allow them to build seamless user journeys and products, such as receiving bank transfers for payment and account top-up. We also allow them to automate manual workflows dealing with financial and identity data, and payments.

Our plans for Australia

Australia is a key growth market for our business, and our first expansion market outside of Europe. We welcome the ongoing amendments and consultation with regards to the CDR regime, and are encouraged by the clear regulatory and government support for FinTech and Regtech.

In 2021, we will launch our API-based Open Banking platform in Australia to help local and international companies build better experiences for their customers - all with the appropriate consents and data protection in place. We will also help Australian FinTechs and scale-ups export their products globally with our platform, as we are already doing with the likes of Stake.

We have responded in detail to the statements in the consultation paper and specifically to a number of the questions in the Annex to this document. We also highlight upfront our key points in response to this consultation on the CDR Rules.

We thank you again for the opportunity to contribute at this important time for the CDR.

Kind Regards



TRUELAYER LIMITED



1.0 Focus: Enhancing participation at this key time for the CDR

The Consumer Data Right promises to empower consumers to use and re-use their data in new and meaningful ways. The Treasury's December 2017 review into open banking¹ stressed that it should be customer focussed, encourage competition, create opportunities and be efficient and fair. Data holders, such as banks, will no longer have privileged access to valuable consumer data, and a range of different accredited third parties will put the data to work for consumers.

TrueLayer has been following the development of the CDR closely in the past 18 months, and given our input in a number of consultations, especially on the matter of how access to the CDR infrastructure could be allowed in a way that furthers the principles outlined in the Open Banking review from 2017.

Unfortunately, we are increasingly concerned that the framework as it is developing will not sufficiently achieve the stated objectives. The various regulatory models proposed place complex restrictions on the data that can be shared and with whom it can be shared. We fear these restrictions will hamper competition, create unnecessary technical complexity downstream, increase barriers to understanding and entry for competitors, and ultimately reduce consumer convenience and benefits.

While we understand the intention is to safeguard consumers from harmful data sharing practices, we now consider that the current framework as envisaged further increases complexity and may put the success of the Consumer Data Right with broad participation at risk.

We therefore call for the regulatory framework to be simplified, as follows:

- Accredited parties should, with the consumer's permission, be empowered to share **full** CDR data with businesses of the consumer's choosing.
- The number of regulatory models should be reduced to prevent customer and participant confusion and to enhance opportunities for data use.
- We recommend proceeding without delay with implementing an effective Affiliate/Sponsor model to enable the greatest uplift in participation, since we believe it provides the best balance of flexibility and regulatory and will allow the next phase of the CDR to flourish.
- More responsibility should be handed to 'data extractors'/intermediaries to safely access data and hand it on to other businesses (incl. non-accredited ones) in line with the clear and explicit consent of consumers.

¹ Open Banking Review, Dec 2017 (accessed 24th October 2020):
<https://treasury.gov.au/sites/default/files/2019-03/Review-into-Open-Banking-For-web-1.pdf>



- To allow this, the Affiliate/Sponsor model should be simplified so that Sponsors can apply to the regulator to appoint Affiliates, without the Affiliate needing to go through an additional accreditation process. The Sponsor would retain full responsibility for the actions of the Affiliate, including liability to the consumer.

The reason we have focused our main response on the Affiliate/Sponsor model are our many conversations with both Australian and international clients and prospects over the last 9 months, which have mostly followed this pattern:

1. First, there is a lot of excitement and optimism about the potential of the CDR considering its good technical and consumer experience standards, as well as its more comprehensive nature compared to, for instance, PSD2 in Europe.
2. In the conversation that follows around how to actually get access and make use of it for their customers, the excitement makes way for deep thought and analysis, followed by the conclusion that it's too difficult and costly in light of the unique and novel accreditation requirements.
3. Finally, the conversation concludes with a hopeful look towards CDR Rules changes which might allow for easier access. The preference is usually a clear and simple affiliate/sponsor model, since it has common counterparts in financial services and is well understood in principle.

We are concerned that, unless simplified, the CDR regime will only work well for ADIs, narrow prescribed use cases, and/or some select organisations that are willing to incur the significant costs of becoming accredited in their own right or engage in the complex arrangements set out in the consultation.

The time is now to make the Consumer Data Right easier to access for a broad set of participants in order to achieve the principles set out by the Open Banking Review and fulfil the promise of the Consumer Data Right.

We consider that full CDR data should be shareable with non-accredited parties, akin to the existing process for Outsourced Service Providers

Consumers should be able to share their data in an efficient, secure and cost-effective way, with the party of their choosing, subject to the appropriate consent being provided. As noted by the ACCC, this is consistent with the principles of consumer choice and control which underpin the CDR regime.



Consumers routinely entrust their sensitive data to others for a range of reasons in the current under-regulated system (for example screen scraping) and therefore it will be important to find a reasonable and practical level of regulation that does not seek to restrict data sharing too heavily.

We recognise that allowing the disclosure of full CDR data to non-accredited persons feels like a significant shift in the CDR regime, but would like to highlight that this is already happening through outsourced service providers (OSPs).

If ADRs can be trusted to select, manage, and contractually oblige OSPs to meet the regulatory requirements, we consider that the same should be possible for other scenarios. We fundamentally believe that this is fundamental to enabling greater participation (by both companies and consumers) in the ecosystem and the promise of the CDR being fulfilled.

An update to the proposed Rules could be for the ACCC to consider not distinguishing between 'Trusted Advisors' and 'Non-Accredited Participants', but instead creating a single category of 'Non-Accredited Participants' to which a set of guidelines could apply when sharing CDR data, subject to consumer consent. We believe this strikes a good balance between enabling more participation while maintaining adequate oversight. An accredited data recipient would still be required to facilitate this sharing, giving the ACCC a nexus of control and the ecosystem more flexibility to innovate for consumers.

While the proposed Trusted Advisor and Insights additions go some way to alleviate specific issues (such as an accounting software platform who is an ADR being able to share a consumer's CDR data with their respective accountant or financial advisor on their behest), they are very prescriptive and could stop novel use cases from being developed quickly enough using the CDR ecosystem.

We restate our concerns that, if CDR data sharing models are too restrictive or complex, consumers and businesses will continue to utilise existing under-regulated options (such as screen scraping) to share data and not participate in the CDR. The last months have solidified this view, with numerous clients and prospects confirming that they do not wish to use CDR APIs given the current hurdles, when compared to legacy technology.

We believe an Agency-based Affiliate Model will deliver the best balance of oversight and flexibility to achieve the stated goals of the CDR

Given what we have outlined above, we welcome the introduction of the concept of an Affiliate model to the CDR rules, but we believe it requires some simplification and clarification to achieve its goal of increasing participation. We are also of the view that a well-functioning Affiliate model



will provide the greatest increase in participation to the CDR, and reduce the need for additional more complex models such as Data Enclaves or Limited Data Restrictions.

However, this increased participation will rely on the Affiliate not having to, in essence, go through the whole process of accreditation, which a conservative reading of the consultation paper and the proposed Rules indicates may be the case.

As an illustration, Rule 5.2.(2).b, which applies to any and all applications for accreditation of any level and kind, states “the application must: (b) include any documentation or other information required by the approved form; and”. It is not clear from the consultation whether Affiliates would be filling in a new kind of approved form. If not, the process will not actually be easier for them, and work will be duplicated rather than simplified.

We have set out at **Figure A** a matrix outlining a comparison between different Principal and Provider models, both proposed and in existence. We recommend shifting from Model #1 (as proposed in the consultation) to Model #2 (Agency-based Affiliate Model) in order to achieve the best outcomes for the CDR’s progress.

Figure A: Comparison of Principal and Provider Models

	Principal accredited	Principal non-accredited
Provider accredited	<p>#1. Affiliate Accreditation Model</p> <p>Status: Proposed in consultation</p> <p>Model: Both parties are accredited, sharing happens via CAP or ADR-to-ADR</p> <p>Example: TrueLayer, as an accredited provider, partners with its accredited client Rumbley, who provide cash flow mgmt system</p> <p>Liability: Per CAP arrangement</p> <p>Comment: Ongoing high barrier to participation and highest level of oversight</p>	<p>#2. Agency-based Affiliate Model</p> <p>Status: Proposed by TrueLayer</p> <p>Model: Provider is Sponsor, Principal is Affiliate, sharing happens via commercial agreement</p> <p>Example: TrueLayer sponsors its client BusyBee for an account aggregation use case, this is noted on the CDR Register/ACCC site</p> <p>Liability: Sits with TrueLayer Guidelines published for Affiliates and Sponsorship</p> <p>Comment: Preferred model to allow ideal trade-off between participation and oversight</p>
Provider non-accredited	<p>#3. Outsourced Service Provider Model</p> <p>Status: Existing under OSP rules</p> <p>Model: ADR sends any data to outsourced service provider and takes on the liability</p> <p>Example: Regional Australia Bank (ADR) sends CDR data to Basiq (OSP, non-accredited) to assess income</p> <p>Liability: Sits with accredited Principal, they manage OSP via commercial arrangement</p> <p>Comment: Agency-based Affiliate Model (#2) is equivalent to this, reversing who takes on the liability: the provider instead of the principal</p>	<p>#4. Under-regulated Model</p> <p>Status: Existing outside scope of CDR</p> <p>Model: Screen Scraping, private data feeds, consumers sending PDFs...</p> <p>Example: A Fintech obtains consumer banking credentials and uses them to access a bank’s website and scrape data</p> <p>Liability: Sits with the consumer</p> <p>Comment: Under-regulated territory</p>
<p>N/B: we have not included the other proposed kinds of restricted accreditations as we deem them to be lower priority</p>		



than a well-functioning Sponsor/Affiliate model.

We see two possible options for the ACCC to move from Model #1 to Model #2:

1. Clarify that an Affiliate is not accredited in their own right, but operating under the accreditation of their Sponsor
2. Increase how much of the Sponsor's work the ACCC relies on before accrediting (at a restricted level) an Affiliate, and clarify this in the Rules and a simplified, streamlined approved form for this accreditation process

Agency-based Affiliate models are well understood and already in use

The concept of agency has been well established in financial services and other industries in Australia for a long time. The Authorised Representative model used in the [Australian Financial Services License holders](#) is a suitable example of an agency arrangement that extends regulatory oversight and compliance.

Furthermore, we can rely on international experience: for instance, TrueLayer operates a successful “agent model” in Europe, where we accept the liability for our clients' actions in order to allow them to receive and use full, unedited Open Banking data to develop innovative products for consumers. We have seen it significantly increase participation in a licensing regime that is arguably still simpler than the current Rules outline for CDR participation.

In Europe, we currently have over 30 agents who receive client banking data through TrueLayer's license as an account information services provider. These agents are publicly visible on the FCA Register², and include Australian firms such as Rapid Pay Legal as well as international organisations like Olivia.ai and Numbrs with millions of customers. In this model TrueLayer is responsible for applying to the regulator (the FCA or CBI or BaFin) to appoint the agent.

We perform rigorous due diligence on these firms, and perform ongoing automated and spot-check monitoring to ensure that firms are securely handling consumer data and acting in compliance with legislation. The FCA can and does investigate the appointment of agents and the agents themselves. Not every Account Information Service Provider is allowed to appoint agents, with some having restrictions placed on them preventing them from appointing agents.

In the case of something going wrong, the Sponsor takes on the liability as the license holder. This sort of Agency program is very common in the financial services sector, from card issuing to insurance to debt collections, and also in the Open Banking space as evidenced from Europe.

² TrueLayer FCA Register entry, see heading “Who is this firm connected to?” for a full list of our Agents: <https://register.fca.org.uk/s/firm?id=001b0000042fMZyAAM>

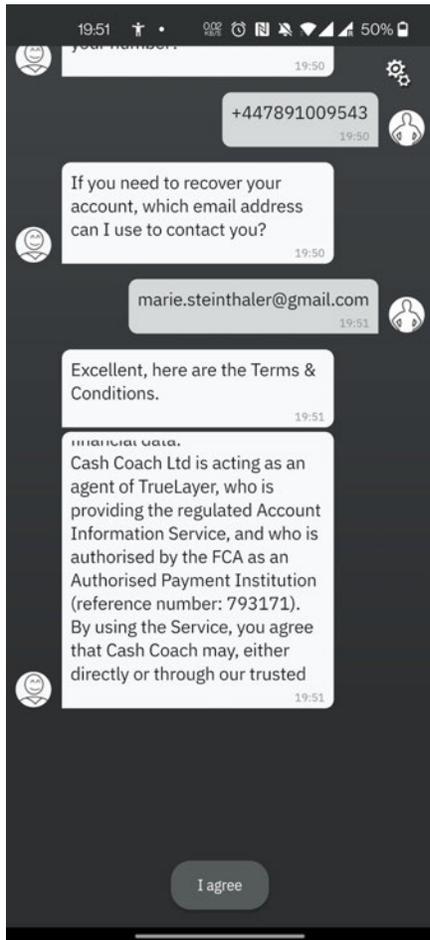




Example from the UK: TrueLayer Agent Cash Coach

Cash Coach is a European Personal Finance Management tool that engages consumers in fun money-saving challenges. It uses TrueLayer's Data API product to power its service. TrueLayer has appointed Cash Coach as an Agent, meaning it is liable for any problems that result from Cash Coach's activities. As an illustration, should a consumer have a complaint against Cash Coach, the liability would fall on TrueLayer as the main license holder. To the consumer, this is made clear as part of onboarding, terms and conditions, and in any customer service interactions. It is also visible on the [FCA Register](#), where both TrueLayer and Cash Coach are visible, and linked.

TrueLayer performed detailed due diligence before applying to appoint Cash Coach as an agent, and is allowed to investigate and gain access to Cash Coach's systems to perform its ongoing monitoring program. Should the FCA wish to investigate the operations of Cash Coach or take enforcement actions, they would see TrueLayer as the main entity with liability, while still retaining oversight of Cash Coach as an entity on their system as well.



Individual prohibitions Fund search Other registers Data and downloads

Contents

- Who is this firm?
- How are customers protected?
- What can this firm do in the UK?
- What can this firm do in the European Economic Area?
- Who is this firm connected to?

Passport out

Regulated activities this firm can offer in other EEA countries.

Who is this firm connected to?

Appointed representatives and agents

This firm is responsible for regulated activities of the firms listed below.

This table lists the Appointed Representatives and Payment services / Electronic money agents connected with this firm. You can also see if they have Tied agent or EEA Tied agent status. In each case, the principal is responsible for the activities carried out by its appointed representatives / agents on its behalf. An agent or Appointed Representative may act of behalf of more than one principal firm.

Current

< Previous Page 1 of 4 Next > Go to page 1 Enter

Results per page 10 Show all results Showing 10 records out of 32

Name	Insurance Distribution	Tied Agent	EEA Tied Agent	Firm reference number	Effective from
IA					
ABSOLUTELY NON SENSE ADMIN LTD	No	No	No	840175	12 Apr 2019
AGENTOS PROPTTECH GROUP LTD	No	No	No	850923	25 Feb 2020
APTAP LTD	No	No	No	850828	14 Feb 2020
Audaxio Limited	No	No	No	924133	07 Apr 2020
BankTrec Software Limited	No	No	No	931404	05 Aug 2020
Cash Coach Ltd	No	No	No	923683	01 Apr 2020
Economy1 Ltd	No	No	No	930155	17 Jul 2020
Fairstone Ltd	No	No	No	828910	18 Dec 2018
GOSAVEX LTD	No	No	No	924240	08 Apr 2020
InfoTrack limited	No	No	No	709745	14 Jul 2020



Suggested design principles for an Agency-based Affiliate Model

We agree with a lot of the suggestions for how Sponsors and Affiliates can interact from the Consultation paper. We have outlined below commentary to the ACCC consultation paper, together with some suggested design principles that could be used in the design of an Agency-based Affiliate Model. These are:

1. Sponsors should be required to obtain unrestricted accreditation
2. Sponsors take on liability for their Affiliates actions towards the consumer
3. Sponsors should be able to pass on their accreditation to an Affiliate
4. Sponsors apply to the ACCC to appoint Affiliates
5. Sponsors must maintain due diligence & monitoring processes, and be monitored in turn
6. Sponsor can attest to Affiliate's adherence to the Rules and information security setup
7. Sponsors can appoint multiple Affiliates subject to approval by the ACCC
8. Affiliates are recorded on the CDR Register against the Sponsor's entry and vice versa
9. Affiliates are required to disclose to the consumer under which Sponsor they act
10. Affiliate are not restricted from using more than one Sponsor or becoming an ADR

Sponsors should be required to obtain unrestricted accreditation

We are of the view that businesses wishing to act as Sponsors should be required to obtain unrestricted level accreditation in order to do so. We believe that any business that can directly access CDR data through CDR APIs should be required to comply with the rules and requirements that ensure the highest level of protection to sensitive consumer data, as those parties can collect the CDR data from the Data Holder.

Those instructed to retrieve data must bear important responsibilities for handling and transmitting it securely, and for obtaining the explicit consent of the consumer, or ensuring this consent has been obtained by their Affiliate.

We consider that in being required to obtain unrestricted accreditation, Intermediaries will be able to demonstrate to consumers, the ACCC, and to their clients that CDR data will be handled correctly and the infrastructure has been built to the highest security standard. This will be important to building consumer trust in the CDR system as it becomes more widely adopted.

We agree with the ACCC that in addition to obtaining unrestricted accreditation, it is suitable that Sponsors implement specific due diligence and monitoring procedures for their Affiliates.



Sponsors take on liability for their Affiliates actions towards the consumer

Ultimate responsibility for compliance of the Affiliate and liability to the end-users should rest with the Sponsor as the fully accredited entity. A Sponsor that has provided certification to the Data Recipient Accreditor about its Affiliates will be subject to additional liability and compliance under the CDR rules as a result of providing that assurance.

Sponsors should be able to pass on their accreditation to an Affiliate

We recommend the Sponsor and Affiliate are required to adhere to a set of guidelines published by the ACCC rather than requiring the Affiliate themselves to become accredited. As such, we do not recommend introducing an additional kind of accreditation for Affiliates, but instead rely on an Agency-based Model of extending the accreditation of the Sponsor to the Affiliate.

Put differently: The onus of accreditation should be placed only on the Sponsor, particularly given that the Sponsor is required to have the highest level of accreditation, as discussed above.

Requiring both Sponsors and Affiliates to obtain accreditation would limit the efficiencies and benefits of this model in the CDR regime, and raise barriers for adoption by Affiliates, unless the accreditation process and associated approved forms are significantly simplified for Affiliates. If the implementation of the Affiliate Model recognises and accepts the Sponsor's involvement in order to streamline the accreditation process, then we would reconsider this design principle.

Otherwise, running two full accreditation processes, especially while under-regulated methods continue to exist, is not a practical timeframe for innovation to occur, let alone commercial outcomes or benefits for a consumer.

Sponsors apply to the ACCC to appoint Affiliates

As the main accredited entity, Sponsors should be responsible for applying to the ACCC to appoint Affiliates. The form for such appointments should include necessary questions to ascertain that the Sponsor has performed the necessary due diligence.

Example from the UK's FCA

Here is a link to the [FCA's PSD Agent appointment form](#), which TrueLayer completes for any agents we appoint. It includes company information, confirmation of the existence of various relevant policies, 'fit and proper' individuals, and a number of other attestation boxes that the FCA uses to ensure we have conducted all required due diligence. Untruthful submissions are a criminal offence. Agent appointments can be as fast as 2 days to 3 weeks for a UK entity, and follow-up questions vary depending on the agent and situation. They have included detailed reviews of customer journeys, spot checks on our ongoing monitoring program and all due diligence files from specific agents.



Sponsors must maintain due diligence & monitoring processes, and be monitored in turn

As part of their relationship with Affiliates, a Sponsor should have appropriate access to its Affiliates information and systems, as well as inspection and ongoing monitoring rights. This can be achieved through a commercial agreement, as is already in practice.

We also agree that a Sponsor that has provided certification to the Data Recipient Accreditor about its Affiliates will be subject to additional liability and compliance under the CDR rules as a result of providing that assurance.

Sponsors can attest to Affiliate’s adherence to the Rules and information security setup

We agree that a Sponsor will be required to attest to the Data Recipient Accreditor that its Affiliates meet the appropriate guidelines and provide certain evidence in support.

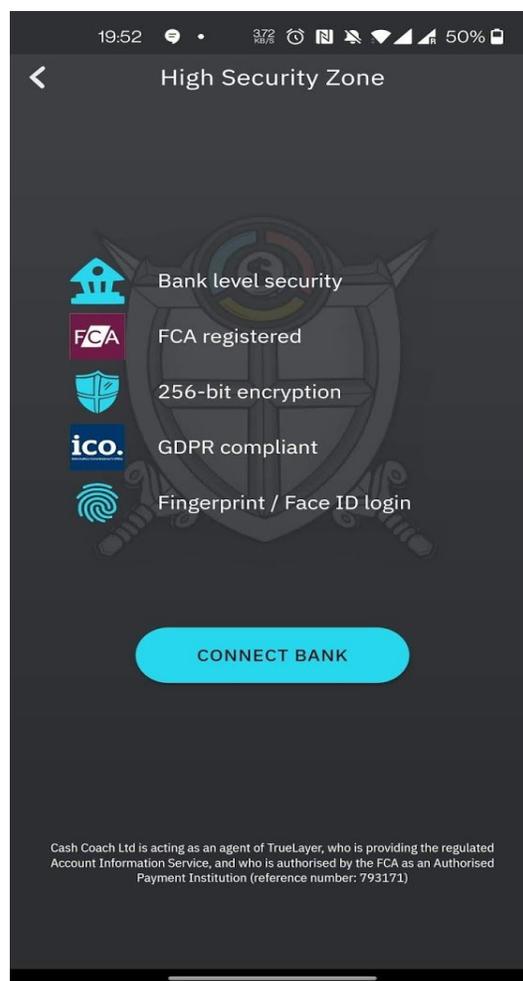
In addition and on an annual basis, we agree a Sponsor should be required to provide an attestation and assessment (‘sponsor attestation’ and ‘sponsor assessment’) regarding continued compliance with the required controls in Schedule 2.

Sponsors can appoint multiple Affiliates subject to approval by the ACCC

A Sponsor can appoint multiple Affiliates, subject to the approval by the ACCC. The ACCC can could impose limitations on the number of Affiliates, based on an assessment of the Sponsor’s ability to absorb the Affiliates’ risk and perform appropriate monitoring.

Affiliates are required to disclose their status and Sponsor to the consumer

Since the Affiliate would be acting on the Sponsor’s accreditation, we recommend that it would need to disclose the fact that it is acting on the accreditation of its Sponsor. As an example, this could be worded as “[X Fintech] is an affiliate of the accredited data recipient [Y ADR] under the CDR Rules.”





We attach to the right an example from a budgeting app called Cash Coach. They display the notice that they are acting as an agent of TrueLayer in multiple places throughout their application, their terms of service, and app store listings.

Affiliates are recorded on the CDR Register and linked to the Sponsor's entry and vice versa

Taking inspiration from the FCA Register and listing of Agents, we recommend that the CDR Register outlines which Affiliates are sponsored by whom, and vice versa.

This will increase transparency and consumer trust by creating a central place to look for this information, as opposed to in many different consumer dashboards and locations across the ecosystem.

Examples from the FCA Register in the UK:

- [TrueLayer](#) (acting as Sponsor)
- [Cash Coach](#) (acting as Agent/Affiliate)

Affiliate are not restricted from using more than one Sponsor or becoming an ADR

An Affiliate should be able to concurrently obtain accreditation as an ADR if they choose to and this would not limit them from also being an Affiliate of a Sponsor. Similarly, they should be able to partner with a number of Sponsors, should they require this to satisfy their use case. While we cannot currently think of a use case that would require this setup, the flexibility this brings may lead to novel implementations in the market.



Conclusion

As outlined in our response, we encourage the ACCC to take the opportunity under this rules review to *empower consumers to use and re-use their data in new and meaningful ways* in accordance with Treasury's December 2017 review into open banking.³ In particular to ensure that the rules are aligned with the Open Banking principles: *customer focussed, encourage competition, create opportunities and be efficient and fair.*

The time is now to make the CDR easier to access for a broad set of participants in order to achieve the principles set out by the Open Banking Review and fulfil the promise of the Consumer Data Right. Again, we are concerned that, unless simplified, the CDR regime will only work well for ADIs, narrow prescribed use cases, and/or some select organisations that are willing to incur the significant costs of becoming accredited in their own right or engage in the complex arrangements set out in the consultation.

We therefore call for the CDR Rules to be simplified, as follows:

- Accredited parties should, with the consumer's permission, be empowered to share **full** CDR data with businesses of the consumer's choosing, for instance by extending how Trusted Advisors are defined.
- The number of regulatory models should be reduced to prevent customer and participant confusion and to enhance opportunities for beneficial data use.
- We recommend proceeding without delay with implementing an effective Affiliate/Sponsor model to enable the greatest uplift in participation, since we believe it provides the best balance of flexibility and regulatory and will allow the next phase of the CDR to flourish.
- More responsibility should be handed to 'data extractors'/intermediaries to safely access data and hand it on to other businesses (incl. non-accredited ones) in line with the clear and explicit consent of consumers.
- To allow this, the Affiliate/Sponsor model should be simplified so that Sponsors can apply to the regulator to appoint Affiliates, without the Affiliate needing to go through an additional accreditation process. The Sponsor would retain full responsibility for the actions of the Affiliate, including liability to the consumer.

We have provided comments on each of the above in Section 1.0 and have sought to align our comments with the Open Banking principles. In addition to our detailed comments above, we have responded to a number of the consultation questions in the Annex.

Thank you again for the opportunity to submit a response to the CDR Rules consultation.

³ Open Banking Review, Dec 2017 <https://treasury.gov.au/sites/default/files/2019-03/Review-into-Open-Banking-For-web-1.pdf>



2.0 Annex: Response to Consultation Questions

Question	TrueLayer Response
2. Timelines for implementation	
<i>1. Please provide comments on the proposed timeline for the proposals referred to in the CDR Roadmap</i>	<p>Page 3 of CDR Roadmap:</p> <ul style="list-style-type: none">● Metrics API enhancements v2: since the first user journeys are now in flight, we would push to accelerate the inclusion of CX metrics (such as conversion rates by provider etc.). <p>Page 5 of CDR Roadmap:</p> <ul style="list-style-type: none">● Affiliate accreditation timeline<ul style="list-style-type: none">○ We recommend proceeding without delay with implementing this model to enable the greatest uplift in participation.○ We believe an effective Agency-based Affiliate model will provide the best balance of flexibility and regulatory and allow the next phase of the CDR to flourish.● Limited data accreditation timeline<ul style="list-style-type: none">○ We do not see this accreditation as being useful for enough use cases to increase participation meaningfully and would therefore de-prioritise.● Data enclave accreditation<ul style="list-style-type: none">○ We are unclear of the demand this level of access would receive (for instance, we have had no clients and prospects asking for it) and therefore would also de-prioritise implementation to instead focus on an effective Agency-based Affiliate model.
3. Increasing the number and types of businesses that can participate in the CDR	



<p>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.</p>	<ul style="list-style-type: none"> • The proposed rules provide flexibility, but also introduce significant complexity to an already complex regime. • This may be confusing to market participants, whose alternative remains to utilise under-regulated means of obtaining the same - or even more - data. • We believe that creating momentum in the growth of the CDR's usage is paramount at this stage to learn about the next iterations to the Rules and available models. • Based on our experience and market feedback, we believe the best way to achieve this is to focus on implementing the model most likely to enhance participation: the Affiliate/Sponsor model. • Finally, companies who wish to use either of the other two models to access the CDR to service customers better would be able to operate under this model as well, while the reverse is not necessarily true.
<p>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.</p>	<ul style="list-style-type: none"> • Usage volumes could be one of the factors to consider in the appointment of Affiliates and in the Sponsor's decision making around due diligence
<p>3.1. Restricted level: limited data restriction</p>	
<p>4. What are your views on the low to medium classification of risk for the data set out in Table 1?</p>	<ul style="list-style-type: none"> • We do not see this restriction accreditation kind as being useful for enough use cases to increase participation meaningfully and would therefore de-prioritise. • On the risk assessment itself, it is unclear which factors are used to determine why something is low, medium or high risk, especially in absence



	<p>of how the data may be used or combined with additional information.</p> <ul style="list-style-type: none">• While more sophisticated frameworks combining, for instance, data clusters with use cases and recipient industries are conceivable, we believe this introduces a level of complexity and prescriptiveness into the regime which will not lead to more participation and more consumer benefit
<p>5. Are the accreditation criteria that apply to a person accredited to the restricted accreditation level (limited data restriction) appropriate for that level?</p>	<ul style="list-style-type: none">• It is unclear how a restricted ADR's obligations change depending on whether they are using Low or Medium risk data, or even whether their obligations compared to the unrestricted level are any easier to achieve.• The proposed Rules draft includes additional limitations placed on the restricted ADR (limited data restriction) but it is not clear where the obligations have been reduced to reflect the lower amount of risk.
<p>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?</p>	<ul style="list-style-type: none">• We do not believe the restricted accreditation (limited data restriction) would meaningfully encourage participation in the CDR.• Some use cases that would be enabled include Account Verification (e.g. a marketplace provider could verify validity of an account and name of the account holder before paying out to a seller on their platform) and Balance Checks (e.g. before taking a payment, a merchant could verify there is enough money on an account).• These use cases on their own are unlikely to justify the level of investment that would still be required to achieve this restricted level of accreditation.
<p>3.2 Restricted Level: Data Enclave Restriction</p>	
<p>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 CDR rules expansion amendments 15 future CDR sectors.</p>	<ul style="list-style-type: none">• We do not see the data enclave restriction as flexible enough to increase participation in the CDR meaningfully.• We also believe it limits the possibility for innovators in the market to move at pace, since it couples the technical infrastructure development



	<p>of the data enclave environments to their ability to enhance their offers for customers.</p> <ul style="list-style-type: none"> • While there may be some demand for this model, we believe it should not take priority over the more Agency-based Affiliate model.
<p>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?</p>	<ul style="list-style-type: none"> • No comment
<p>9. Should there be additional requirements under Part 1 of Schedule 2 for enclave providers in relation to the management of data enclaves?</p>	<ul style="list-style-type: none"> • No comment
<p>3.3 Restricted Level: Affiliate Restriction</p>	
<p>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.</p>	<ul style="list-style-type: none"> • We are of the view that the Affiliate restriction will provide the greatest increase in participation to the CDR. • Therefore, we recommend this kind be prioritised in its implementation, and provide detailed considerations on what is crucial in an implementation to achieve more participation and strong oversight in our Focus Section 1.0. • This model enables consumer-facing businesses to provide access to the CDR, without the need to themselves undertake the highest level of accreditation. This will significantly reduce the friction to participate in the CDR. • The concept of agents or affiliates is well established in other sectors such as lending and insurance, and has direct counterparts in other jurisdictions with Open Banking regulations, such as the UK. • It is also extendable into future CDR sectors very easily and gives the ACCC regulatory oversight by focusing market uptake through highly regulated and trustworthy Sponsors.



<p>11. Should there be additional requirements under Part 1 of Schedule 2 for sponsors?</p>	<ul style="list-style-type: none">• No, we believe the existing requirements and addition of an ongoing third-party management framework are adequate.
<p>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?</p>	<ul style="list-style-type: none">• No, we recommend that the CAP arrangement should be left to the commercial parties to agree in line with existing requirements and with a view to the fact that the Sponsor is the main accredited party.
<p>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 fewer 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.</p> <p><u>Example level 1:</u> affiliate is able to obtain access to any CDR data collected by the accredited sponsor and all data is held and managed on the affiliate member's systems.</p> <p><u>Example level 2:</u> affiliate is able to access all data sets, but uses some of the sponsor's systems and applications to access or manage the data.</p>	<ul style="list-style-type: none">• We recommend that the responsibility of determining which controls are necessary should pass to the Sponsor, and that the level of control would need to be attested by the Affiliate in accordance with their access level.



<p><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.</p>	
4. Expanding how accredited persons can work together	
4.1. Combined Accredited Person arrangements	
<p>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.</p>	<ul style="list-style-type: none">• No comment.
4.2. Transfer of CDR data between accredited persons	
<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>	<ul style="list-style-type: none">• Yes, it should be possible to combine or separate consents as it makes sense in the context of their product or service.• Adding complexity or prescriptions to separate steps in the Rules or CX Standards will, in our view, limit CX innovation and iterative improvement.
<p>15(a) Is the proposed threshold for being able to offer an alternative good or service in rule 7.5(3)(a)(iv) appropriate?</p>	<ul style="list-style-type: none">• Yes.• However, we do not believe this should be restricted to only accredited persons, as we have outlined in other parts of this response.



<p>15(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>	<ul style="list-style-type: none">• The consumer should be made aware of the commercial arrangement, but the form thereof should be left to the accredited person, who is already obliged in 7.5(3)(a)(iv) to keep the consumer’s interest in focus. For example a suitable disclosure could be: “<i>In providing you this [insert service], we (ADR A) may be compensated by the service provider (ADR 2).</i>” or “<i>We (ADR 1) partner with (ADR2) to help you find the best deals on your mortgage. To do that, we’ll share your data with them securely.</i>”
<h2>5. Greater flexibility for consumers to share their CDR data</h2>	
<h3>5.1. Disclosure to trusted advisors</h3>	
<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>	<ul style="list-style-type: none">• As stated throughout this response, we believe that consumers should be able to consent for their data to be disclosed to any third party of their choosing and not just Trusted Advisors, subject to appropriate consent being provided.• On the specific proposal of Trusted Advisors, we recommend that, instead of a closed list, a guideline be provided for ADRs and consumers to consider (prior to sharing) whether the third party getting access to the data is trusted, taking into account regulation under another professional standard (such as AFSL, ICAANZ, Authorised Representatives, fiduciary duty rules etc).• These guidelines would provide a suggested list of professions, which could include those outlined by the ACCC, but leave room to ADRs to interpret reasonably according to a risk assessment. This interpretation would then be subject to scrutiny by the ACCC as part of ongoing enforcement, while allowing industry to develop innovative, customer-centric sharing patterns.• On the specific list the ACCC has suggested, we believe it should include regulated lenders.



<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?</p>	<ul style="list-style-type: none">• No.• Further, in many use cases we see for this Rule, consumers are likely to be contractually engaged directly with the Trusted Advisor, and not the ADR.• As such, it will introduce additional complexity and limit the sharing of data significantly, resulting in no increased participation in the CDR.• Further, this principle is in direct conflict with the proposed Affiliate rules. It is likely that ADRs (especially intermediaries) will be engaged to perform valuable services in the secure collection, management, and disclosure of data.
<p>17(a) 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>	<ul style="list-style-type: none">• No. We believe no restrictions should be put in place, since ADRs are already required to operate on the basis of consumer consent and clear disclosures.• Instead, the focus of the Rules or, better yet, the CX Standards should be on what information is required to be shared with the CDR consumer before they can consent to data being shared with non-accredited third parties.
<p>5.2. Disclosure of CDR insights</p>	
<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>	<ul style="list-style-type: none">• No, we believe the consumer should be able to share data with parties of their choosing, subject to adequate consent being collected.
<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>	<ul style="list-style-type: none">• The disclosure of CDR data insights should follow appropriate disclosure consents, where the consumer is made aware who the data is being shared with, including information on their status as a non-accredited party and what this means.• We do not believe consumers need to be able to elect to view an insight before they consent for it to be disclosed, although it may be something an ADR chooses to share to build consumer trust and increase conversion.



	<ul style="list-style-type: none">• Furthermore, we do not recommend that the Rules prescribe that an ADR retain records of insights they have provided on consumers, since this could preclude interesting and data-minimising business models where an ADR only temporarily stores data flowing through their systems to provide said insights.• A suggested amendment would be to include language indicating that this disclosure only applies if data has been retained by the ADR.
6. Extending the CDR to more consumers (eg Businesses)	
6.2. Specific rules for business partnerships	
<i>20. We are seeking feedback on the proposal for enabling business consumers (both nonindividuals and business partnerships) to share CDR data.</i>	<ul style="list-style-type: none">• We support the ACCC extending the CDR to business consumers including non-individuals and business partnerships.• We agree with the ACCC that extending the CDR to business consumers is particularly important to driving the uptake of the CDR by consumers in the business banking space.
<i>21. In particular, 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.</i>	<ul style="list-style-type: none">• We support the functionality to enable business consumers to access and self-serve their CDR data sharing arrangements.
<i>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? CDR rules expansion amendments 36</i>	<ul style="list-style-type: none">• No comment.



<p>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 take into account?</p>	<ul style="list-style-type: none">• No comment.
<p>24. Should additional protections be introduced for personal information relating to business partners who are individuals?</p>	<ul style="list-style-type: none">• No, we believe the level of protection built into the CDR Regime is already at a very high standard.
<p>25. Are there other aspects of the rules that may require consequential changes as a result of the enablement of business consumers? For example, are the internal dispute resolution requirements appropriate for business consumers?</p>	<ul style="list-style-type: none">• No comment.
<p>6.3. Secondary users</p>	
<p>26. We welcome feedback on the proposals for enabling authorised users to share CDR data.</p>	<ul style="list-style-type: none">• No comment.
<p>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?</p>	<ul style="list-style-type: none">• Yes, for instance a user who has the right to submit transaction requests but cannot approve the transaction to actually be made.• Similarly, users with lower account privileges could request the sharing of data, to have it approved by a master user.



<p>28. How should secondary users rules operate in a joint account context?</p>	<ul style="list-style-type: none">• No comment.
<p>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?</p>	<ul style="list-style-type: none">• No comment.
<p>7. Facilitating improved consumer experiences</p>	
<p>7.1. Sharing CDR data on joint accounts</p>	
<p>30. We are seeking feedback on our proposals relating to sharing CDR data on joint accounts, including:</p> <p><i>a. the proposed approach to require data holders to allow consumers to set their preferences (a disclosure option) as part of the authorisation process</i></p> <p><i>b. the proposed approach of allowing ‘joint account holder B’ to withdraw an approval at any time</i></p> <p><i>c. the expansion of the rules to include joint accounts held by more than two individuals</i></p> <p><i>d. the proposal that joint account holder B does not have to ‘approve’ amendments to authorisations</i></p> <p><i>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.</i></p>	<ul style="list-style-type: none">• We are in agreement with all proposed changes and welcome the simplifications and additional flexibility they introduce.• We especially welcome the requirement for joint account holders to be provided with an online joint account management service. This is a minimum step to ensuring joint account holders can also participate in a CDR that is to deliver better digitally-enabled services and products.



<p>31. Do the benefits of requiring data holders to display on-disclosures to 'joint account holder B' outweigh the costs?</p>	<ul style="list-style-type: none">• No, the benefits do not outweigh the costs, and agree with the reasons listed in the consultation paper. We also believe the market can and will provide this service if it is desired by customers.
<p>7.2. Amending consents</p>	
<p>32. Should accredited persons be required to offer consumers the ability to amend consents in the consumer dashboard, or should this be optional?</p>	<ul style="list-style-type: none">• No, it should be possible but optional to provide the functionality to amend consents in the consumer dashboard.• We believe the current requirement to allow deleting a consent entirely via the dashboard is adequate to satisfy the most likely case for visiting the dashboard (i.e. a consumer who wishes to review and stop sharing entirely).• Consent amendments are much more likely to occur in a contextual user journey where an ADR offers additional services or products which require amended consent.• Incentives are also aligned such that ADRs are more likely to include amending consents in addition to complete deletion on their consumer dashboard, since they most likely want to keep connections active and consumers engaged.• Separately, the ACCC could consider preventing ADHs from allowing more nuanced consent amendments in their consumer dashboard. Since they may not be aware of which data is required to power the ADRs use cases, a potentially complex consent amendment could lead to unexpected downstream consequences and a confusing customer experience, as illustrated below. <p><u>Example</u> Consumer Aaron signs up to ADR Creditavoidr's personal finance management app which offers to track their account balances to help them avoid overdraft fees To provide this service, Creditavoidr needs ongoing consent to collect, at least, balance information and scheduled payments Aaron unrelatedly signs into his ADH Westpac's online account and explores his consumer dashboard Here, he sees Creditavoidr but decides to amend the consent to exclude scheduled payments This means Creditavoidr cannot provide their service properly anymore, but since Westpac did not know about this, they could not warn against this specific</p>



	<p>scenario clearly enough and Aaron misses notifications from Creditavoidr to that effect The next day, Consumer Aaron's mobile phone bill takes him overdrawn and he is angry at both Creditavoidr and Westpac A total deletion of the consent would have had the same effect but the impact would likely have been clearer to Aaron</p>
<p>33. We are seeking feedback on the proposed rules about the way accredited persons are able to 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?</p>	<ul style="list-style-type: none">• Yes, the consumer should be able to amend for both direct marketing and research in the same way as for additional products or services they provide.
<p>34. Should the authorisation process for amending authorisations also be simplified?</p>	<ul style="list-style-type: none">• Yes.
<p>7.3. Separate consents approach</p>	
<p>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).</p>	<ul style="list-style-type: none">• We agree with the reasoning for separating the concepts of collection from use, and believe it can be a useful enhancement to the CDR regime.• However, we recommend that the rules allow for enough flexibility for the data standards body and/or market participants to find the best way to use this separation to drive better consumer journeys and clarity.• In any case, we recommend as few steps as possible be required for the ADR to obtain consent. The more steps that are required of the consumer, the more likely the authorisation would not be completed and alternative under-regulated methods continue to be prioritized by businesses seeking access to data.



<p>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.</p>	<ul style="list-style-type: none">• No.• We believe it should be possible to combine consents as flexibly as it fits the use case and customer journey.
<p>7.4. A ‘point in time’ redundancy approach and the impact of withdrawing authorisation</p>	
<p>37. We are seeking feedback on the ‘point in time’ redundancy approach.</p>	<ul style="list-style-type: none">• We are in favor of the point in time approach, and providing ADRs with flexibility of using differing approaches.• The examples in the consultation paper make sense.
<p>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.</p>	<ul style="list-style-type: none">• We agree with the proposed approach of allowing an ADR to continue using data that was collected under a valid consent to collect in the past.• For instance, a consumer may not wish to share any further data with a particular budgeting app, but continue to access reports on their past spending.
<p>39. We are seeking feedback on the collection consent expiry notification and permissible delivery methods.</p>	<ul style="list-style-type: none">•
<p>7.5. Improving consumer experience in data holder dashboards</p>	
<p>40. We welcome any comment on the proposed rules to improve consumer experience in data holder dashboards.</p>	<ul style="list-style-type: none">• The proposed enhancements are sensible and will help customer understanding of what their data is used for, and by whom.• The use of metadata and display thereof in ADH consumer dashboards would also be valuable in the context of an Agency-based Affiliate model, since it would allow for both the Sponsor and the



	<p>Affiliate to be displayed to the consumer appropriately.</p> <ul style="list-style-type: none">• We recommend the rules allow for this but do not impose specific technical implementation or restrictions.
7.6. Use of the CDR logo	<ul style="list-style-type: none">• No comment
7.7. Permitting use of CDR data for research	<ul style="list-style-type: none">• We agree with the outlined reasoning, and reiterate our stance that, given appropriate information is provided by the ADR and consent is provided by the consumer, it should fundamentally be the consumer's choice that dictates sharing and use of CDR data.
8. Clarifying rule amendments	
<i>41. We are seeking feedback on whether the proposed amendments (regarding product reference data for whitelabelled agreements) place the obligation on the party best placed to meet the obligation.</i>	<ul style="list-style-type: none">• No comment
<i>42. Are there any technical or other implementation issues of which the ACCC should be aware?</i>	<ul style="list-style-type: none">• No comment