Ministry of Business Innovation and Employment
15 Stout Street,
Wellington Central
Wellington 6011
New Zealand

25 August 2025

REF : Submissions on Exposure drafts for Open Banking Regulations under the Customer and Product Data Act

Dear Sir / Madam,

We are writing to you in response to your request for feedback on the exposure draft of Open Banking Regulations under the Customer and Product Data Act.
After a review of both the Exposure draft for Customer and Product Data (Banking and other Deposit Taking) Regulations 2025 as well as Exposure draft of Customer and Product Data (General Requirements Regulations) 2025 we have the following concerns:

1. **Intermediaries Should Not Be Subject to Disproportionate Obligations**

   We strongly recommend that intermediaries not be subject to additional or more onerous requirements than other accredited requestors under the Customer and Product Data framework.

   Where a customer has expressly authorised the sharing of their data via an intermediary, that decision should be respected. It is not the role of the intermediary - or the Chief Executive - to second-guess the customer's intent. If there are concerns about the security of data once it is passed on by an intermediary, then those concerns should be addressed directly through obligations on the receiving party, not by imposing upstream compliance burdens on intermediaries which will introduce uncertainty, cost and inefficiencies into the system.

   Currently, there is no prohibition in the Act or the Regulations on accredited requestors who are not intermediaries sharing data with third parties, nor are there specific regulatory obligations imposed on them in doing so. These matters are rightly governed by existing legal frameworks such as the Privacy Act 2020 and contractual confidentiality obligations. The same approach should apply in relation to information provided by intermediaries.

   As a result, we recommend removal of the obligations imposed on intermediaries under

Regulation 14 of the General Requirements Regulations.

2. **If Specific Rules for Intermediaries Are Retained, They Must Be Clear, Limited, and Consistent**

If the obligations in Regulation 14 of the General Requirements Regulations are not to be removed in their entirety, then consideration must be given to the inconsistent and unclear obligations they impose on intermediaries and the imposition of considerations which are not relevant to the Chief Executive's assessment other accredited requestors:

- **Compliance Oversight**: The requirement for intermediaries to ensure that those they provide intermediate services to have "adequate processes" to support the intermediaries compliance with the Act is an overreach and an unnecessary duplication. The arrangements that an intermediary has in place to manage its compliance may or may not depend on the processes of those using its services – that is a matter for the intermediary. In addition, in order to receive accreditation, an intermediary must be able to satisfy the Chief Executive of its ability to meet its obligations under the Act (section 112(2)(d)) – the relevance of arrangements with third parties can be assessed at that stage without requiring an uncertain, costly and inefficient additional layer of compliance being imposed on intermediaries.

- **Risk of Deception**: No other class of accredited requestor is required to address the risk of deception and nor is the Chief Executive required to assess this factor when determining whether to grant accreditation for any other accredited requestors. Imposing this obligation solely on intermediaries is inconsistent and unsupported by evidence. The obligation lacks any clarity and will impose additional costs and uncertainties into the regime.

- **Privacy Act Compliance**: All entities handling personal information are already subject to the Privacy Act. It is inappropriate to require intermediaries to assess the privacy policies of third parties when the Chief Executive is not held to the same standard when assessing applications for accredited requestors.

The use of vague terms like "adequate" introduces regulatory uncertainty and undermines the goals of section 105 of the Act, which emphasises secure, standardised, and efficient data services. Without clear benchmarks, there is a risk of:

- **Regulatory arbitrage**, where customers seek out intermediaries who require the lowest standards of compliance.

- **Fragmentation**, which undermines standardisation and reduces the overall security and efficiency of the system.

The Regulations introduce significant uncertainty with requirements that, for example, the intermediary has "adequate processes to verify the identity of each person…to whom..[it]…provides an intermediary service". Compare this to the more certain approach to identity verification imposed on data holders under clause 45(3) of the Act that requires verification of identity "in the manner (if any) prescribed by the regulations and the standards". That provides a mechanism with clear and certain standards avoiding the cost and inefficiencies of an uncertain "adequate processes" standard.

We submit that these requirements should be removed from the Regulations and that more certainty be added to any requirements that remain.

3. The Definition of "Acting as an Intermediary" Requires Clarification

This definition of "acting as an intermediary" is fundamental to the regime as it will determine whether an intermediary is acting within its class of accreditation and therefore whether it is entitled to make a request and whether the data holder is required to comply with that request.

The current definition of "acting as an intermediary" is problematic and unworkable and disenfranchises customers from control of their own data. It requires that:

- The customer has a contract with the person to who the intermediary is supplying the data or for whom it is facilitating the payment (B); and
- The intermediary's involvement is "reasonably necessary" for the provision of goods or services by B to the customer.

In practice, neither the intermediary nor the data holder is in a position to verify these conditions and they are unnecessary as the customer has determined that it wishes to have the intermediary provide services to B:

- **Existence of a contract**: There may be no contract in place. There may be simply an understanding of some kind between the customer and B that does not amount to a contract. In any event, it is not feasible for either the intermediary or the data holder to be able to determine the existence or continued validity of the arrangements between the customer and B. Nor is it necessary for them to do so: the intermediary and the data holder act on the basis

of a valid authorisation from the customer while that remains in place. There is no legal or practical basis to look behind that authorisation, nor should there be. There are adequate safeguards in the Act and the Regulations in relation to the validity and continued validity of customer authorisations.

- **Reasonably necessary**: Whether having an intermediary provide services is "reasonably necessary" to enable B to provide services to the customer introduces an uncertain and subjective element to determining whether a request for regulated data services is valid. Including this requirement undermines the customer's autonomy and disenfranchises them from control of their data. If the customer has consented to B receiving data via the intermediary, it is not for the data holder or intermediary to negate that consent by substituting their assessment of whether use of an intermediary is "reasonably necessary" in the circumstances. In providing a valid authorisation, the customer has clearly determined that it wishes the intermediary to provide the services.

These requirements of the definition create legal uncertainty and expose intermediaries and data holders to potential liability. Data holders will be unable to accurately assess whether a request by an intermediary for regulated data services is valid and intermediaries will be unable to assess accurately their risk of liability under section 44 of the Act for making a request outside of the scope of accreditation (e.g. despite operating under a valid authorisation, a court later determines that there was no contract or that despite there being a contract the use of an intermediary acting in accordance with the valid authorisation was not reasonably necessary to enable B to provided goods or services to C).

We recommend that the definition be amended to reflect the reality of authorisation-based data sharing, and to remove the requirement for intermediaries or data holders to independently assess the existence and continuation of a contractual relationships between other parties and whether the sharing of data with B is reasonably necessary.

4. Provision of Information and Consent Dashboards

Intermediaries should not be required to duplicate information provision where arrangements are in place for B to provide that information directly to the customer.

- Regulation 10 of the General Requirements Regulations should be amended to allow intermediaries to rely on B to provide the required consent information.

- Similarly, the regulations should provide that section 40 disclosure obligations should be

considered fulfilled where B maintains a compliant dashboard and the intermediary has a contractual arrangement to that effect.

This reflects the operational reality that many entities using the services of intermediaries will also be data holders in their own right and already maintain such systems. Requiring intermediaries to duplicate these functions adds unnecessary complexity and cost without improving consumer outcomes.

5. Conclusion

Intermediaries are essential to the success of the Customer and Product Data regime. To ensure their effective participation, the regulatory framework must be:

- **Proportionate**, avoiding unnecessary or duplicative obligations;
- **Consistent**, aligning intermediary requirements with those of other accredited requestors;
- **Clear**, providing certainty for compliance and enforcement;
- **Supportive**, recognising the role intermediaries play in enabling innovation and consumer choice.

We encourage MBIE to revise the draft regulations accordingly and would welcome the opportunity to engage further on these matters.

We look forward to hearing from you in due course.

Yours sincerely

David Mabon

Director

The Middleware Group