



FDATA North America

Options for Governance of Customer-Directed Finance in Canada

Since the publication earlier this year of the Open Banking Advisory Committee’s recommendations to the Minister of Finance regarding the imperative for a customer-directed finance regime in Canada, quite a lot has happened in the financial technology sector. As the Department of Finance enters into the second phase of its consultative process, which will focus on how to deliver customer-directed finance in Canada, the Financial Data and Technology Association of North America (“FDATA North America”) wishes to provide the attached document as a guide that demonstrates the absolute need for government to lead the deployment of a successful open finance regime.

The core of any successful framework that provides for customer centricity, better financial access, and increased competition is a customer data right (“CDR”). Only government can implement this open finance tenet, and it is the foundation of every successful customer-directed finance framework globally. As you’ll see from slides 1 and 2 in the attached document, there are two means through which the Department of Finance may, in FDATA North America’s view, deliver a CDR: legislatively or directionally. By placing a CDR at the cornerstone of the frameworks, the governance models proposed by slides 1 and 2 of the attachment provide two potential frameworks for a customer-directed finance regime in Canada that ensure that customers have complete control of and access to their financial data. Importantly – and unlike in, for example, the United Kingdom – FDATA North America suggests that government-prescribed technology standards in the Canadian market are unnecessary and counterproductive, as such technology mandates: 1) will struggle to keep pace with market innovation; 2) risk creating a significant and costly hurdle for smaller market participants; and 3) may be unnecessary given the rise of private sector-led technology standards groups in Canada. With that said, private sector-led technology standards created in the absence of a CDR present a very real risk of further limiting competition.

Unfortunately, FDATA North America fears that outcome is likely without the Department of Finance promulgating a CDR. As slide 3 in the attachment shows, a customer-directed finance model that defers decisions around data rights to industry results in an ecosystem in which

incumbents are further empowered to determine how much control their customers may have over their data, to the detriment of competition, innovation and financial access. This outcome is not hypothetical: it is precisely the outcome that the U.S. Consumer Financial Protection Bureau has observed which led it to announcing this summer [its intention to promulgate a consumer financial data access rule](#).

FDATA North America respectfully submits these proposed governance models for the Department's consideration with the strong recommendation that industry alone cannot deliver customer-directed finance but can provide technology solutions that meet the policy standards set by government. There is a clear need for government to lead the way through the promulgation of a CDR.

Option 1: Legislation-led Model

FDATA North America believes this model provides the best outcome for consumers, SMEs, and market stakeholders alike. Under this model, a legislatively-imposed CDR provides a clearly-defined scope of account types and data types that customers have the legal right to access and make portable to financial providers of their choosing. The implementing legislation would also create a framework for governance of the customer-directed finance ecosystem, ensuring that an entity with no commercial interests in customers' journeys through the framework is tasked with applying and enforcing appropriate governance over the market.

Unlike other regimes in which either legislation or the implementing requirements of the open finance model prescribe technology solutions, including, for example, the UK's Open Banking framework, Canada should avoid a one-size-fits-all, government-prescribed technology solution for delivery of customer-directed finance. Under this governance model, customer-directed finance should provide for private sector-led technology standards to be encouraged so long as they meet the policy requirements set forth by both the implementing legislation and regulatory guidance.

The clear benefit of a legislation-led model is the uniform application of policy standards across the marketplace, ensuring that customers have the same opportunities and protections regardless of which financial providers they choose to help them manage their financial wellbeing. By incorporating private sector-led technology standards into this model and providing for technological flexibility with regard to meeting the policy requirements implementing customer-directed finance, Canada would take advantage of its "fast follower" position relative to other countries that have implemented open finance.

Option 2: Government-led Model

The obvious complication of a legislation-led model is the difficulty and political uncertainty associated with enacting legislation. While option 1 is, in FDATA North America's perspective, a preferable outcome to ensure a level playing field for consumers and SMEs, it is not the only governance model through which customer-directed finance can be delivered in Canada. A government-led model, under which the Minister of Finance issues formalized guidance or a ministerial decree, could see delivery of a well-structured open finance regime in Canada. To be successful, such guidance/ministerial decree would have to include, at a minimum:

1. A right to data portability for consumers and SMEs;
2. A detailed description of the covered accounts types and scope of data included in the portability mandate;
3. High-level requirements for third-party provider certification; and,
4. Principles regarding a liability framework under the new regime.

With this government action, Finance Canada could establish the same neutral governance body for the customer-directed finance regime as described in option 1. To ensure the governance body delivers a framework that comports with the Department's objective of a competitive, customer-centric ecosystem, however, it is imperative that whatever guidance of ministerial decree establishes the regime is as prescriptive as possible with regard to the policy standards that will govern Canada's customer-directed finance marketplace.

Similar to option 1, FDATA North America suggests that, under this governance model, private sector-led technology standards groups are best positioned to create and deploy the technology solutions that can deliver against the ecosystem policies set forth by both the implementing government action and the neutral governing body.

Option 3: The Worst Scenario

The model described under option 3, in which government provides no prescriptive, binding policy standards to the market against which customer-directed finance must be delivered, represents the worst possible outcome for Canada. Unfortunately, FDATA North America fears that this is the path upon which Canada's journey is currently traveling, exacerbating the need for the government to intervene.

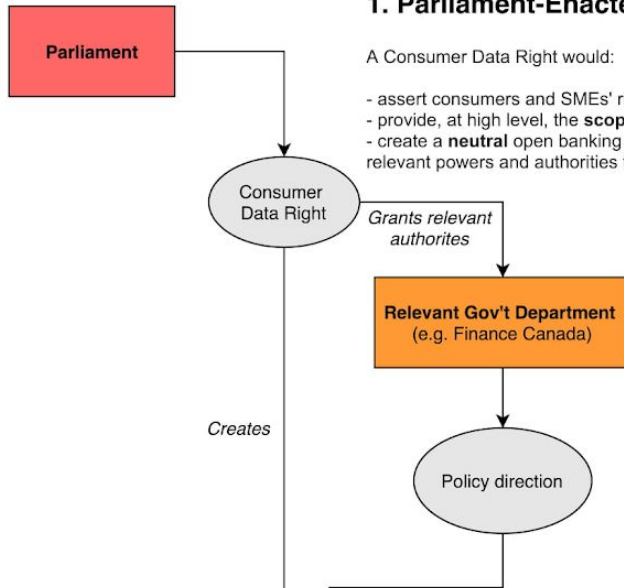
In this model, the absence of any government mandates regarding customer data rights, covered account types, third-party certification, or a liability framework creates a scenario in which private sector-led technology standards groups, rather than simply focusing on the technological

delivery of an open finance regime, necessarily make decisions regarding the critical policy issues that govern a customer-directed framework and ultimately impose them on customers. Under this model, the private sector by default takes on the responsibility for exerting governance over the ecosystem; however, private sector market participants have commercial interests.

As FDATA North America has seen in other markets, including the United States, allowing this model to implement customer-directed finance will provide for an uneven market in which customers may have varying levels of ability to utilize third-party providers and different protections when they do, based solely on the financial institution with which they have a primary banking relationship. Moreover, the reliance in this model on bilateral data access agreements between financial institutions and data aggregation firms -- the only legally-binding method through which market participants can establish data sharing and data protection standards with one another in the absence of a government mandate -- fosters an ecosystem that is opaque to the end customer and challenges the ability of smaller financial institutions to keep pace with their larger peers.

Preferable Outcome: Legislation-Led Model

1. Parliament-Enacted Consumer Data Right



A Consumer Data Right would:

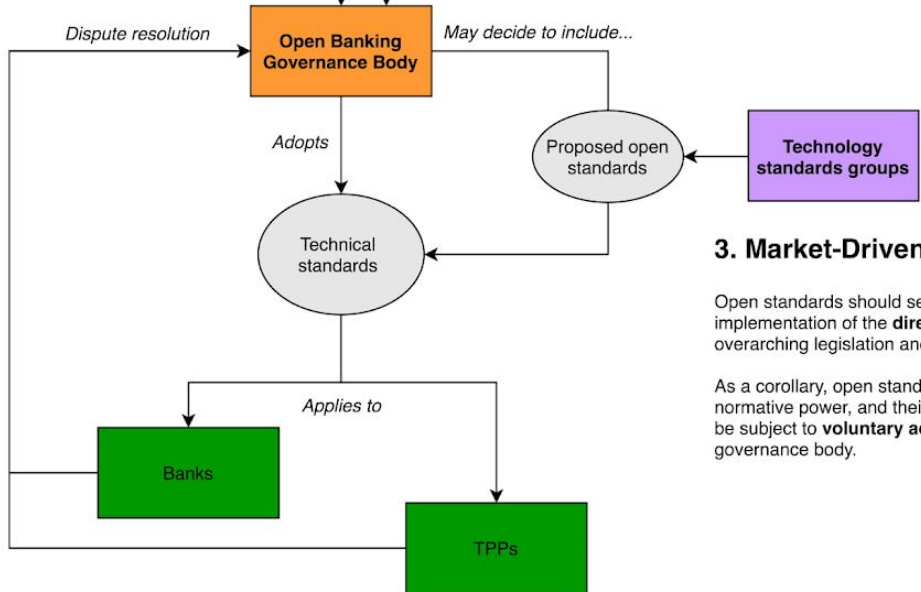
- assert consumers and SMEs' right to **data portability**;
- provide, at high level, the **scope of data** that would benefit from such right; and
- create a **neutral** open banking governance body, and grant government the relevant powers and authorities to exercise oversight on it.

2. Government Policy Direction

Government direction (through a ministerial decree, order-in-council, or other mechanism enabled by the CDR) would mandate the opening of APIs for the major banks, and provide policy direction on key governance items around financial data sharing:

- **scope of data** to be covered
- **UX guidelines** to respect
- **TPP certification** criteria; and
- principles around the **liability framework**.

Such policy direction would then have to be translated into technical standards by the **neutral** (i.e. competition-agnostic) open banking governance body.



3. Market-Driven Open Standards

Open standards should serve as the technical implementation of the **direction provided** by the overarching legislation and/or regulation.

As a corollary, open standard bodies should have no normative power, and their proposed standards should be subject to **voluntary adoption** by the neutral governance body.

Functional Outcome: Government-Led Model

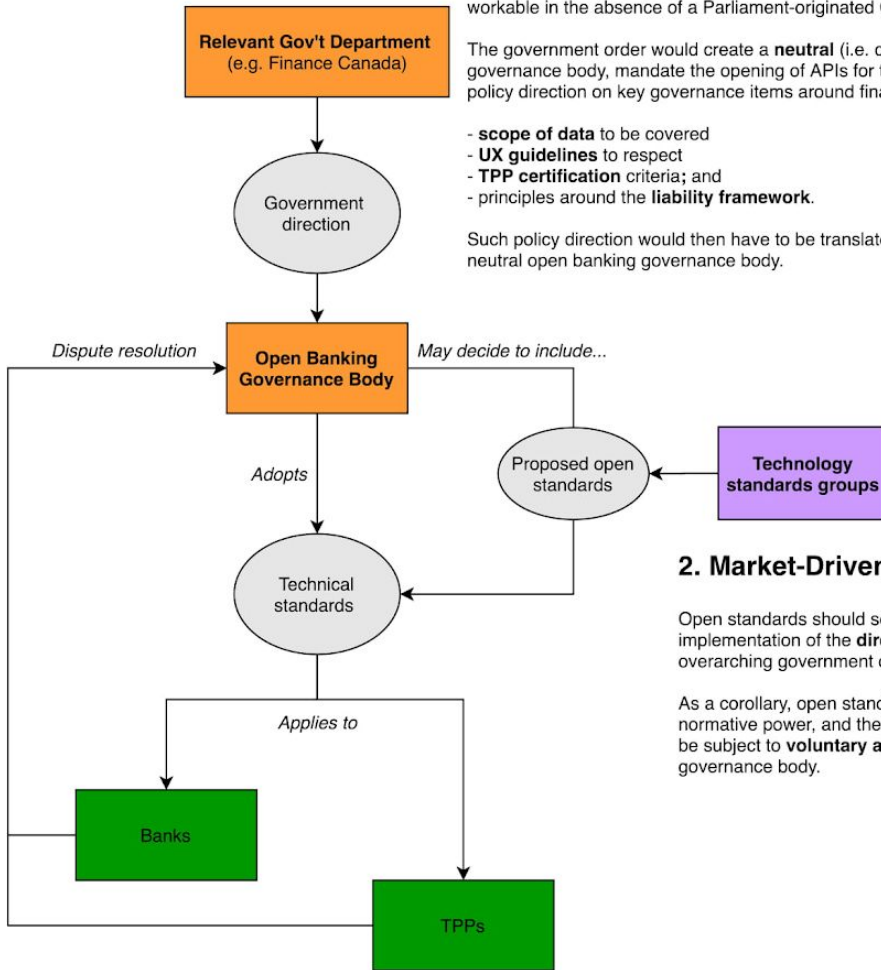
1. Government-Decreed Consumer Data Right

Government direction (e.g. through a ministerial decree) could achieve something workable in the absence of a Parliament-originated CDR.

The government order would create a **neutral** (i.e. competition-agnostic) open banking governance body, mandate the opening of APIs for the major banks, and provide policy direction on key governance items around financial data sharing:

- **scope of data** to be covered
- **UX guidelines** to respect
- **TPP certification** criteria; and
- principles around the **liability framework**.

Such policy direction would then have to be translated into technical standards by the neutral open banking governance body.



2. Market-Driven Open Standards

Open standards should serve as the technical implementation of the **direction provided** by the overarching government direction.

As a corollary, open standard bodies should have no normative power, and their proposed standards should be subject to **voluntary adoption** by the neutral governance body.

Worst Outcome: Industry-Led Model

