Financial Data and Technology Association – North America
Request for Information Regarding Global Financial Innovation Network

VIA ELECTRONIC SUBMISSION

October 12, 2018

Mr. Paul Watkins
Director, Office of Innovation
Bureau of Consumer Financial Protection
1700 G Street, Northwest
Washington, DC, 20552

Dear Mr. Watkins,

The Financial Data and Technology Association of North America ("FDATA North America") appreciates the opportunity to respond to the Office of Innovation's request for comment on the Global Financial Innovation Network ("GFIN") framework announced in August 2018 by the Bureau of Consumer Financial Protection ("the Bureau"); Abu Dhabi Global Markets; Autorité des marchés financiers in Québec; Australian Securities and Investments Commission; Central Bank of Bahrain; Dubai Financial Services Authority; Guernsey Financial Services Commission; Hong Kong Monetary Authority; Monetary Authority of Singapore; Ontario Securities Commission; and Consultative Group to Assist the Poor (CGAP).

FDATA North America was founded in early 2018 by several firms whose technology-based products and services allow consumers and small businesses to improve their financial wellbeing. We count innovative leaders such as Cardlytics, Envestnet Yodlee, Flinks, Intuit, Kabbage, Moven, Morningstsar, Onist, Questrade, Quicken Loans, Plaid, and others, as our members. We are a regional chapter of FDATA Global, which was the driving force for Open Banking in the United Kingdom and which continues to provide technical expertise to regulators and policymakers in London, to the European Commission, and to regulatory bodies internationally contemplating, designing, and implemention open banking frameworks.

Globally and in North America, our members are united behind the notion that consumer data access is a fundamental right and a market-driven imperative, and that standardization can help consumers and the market empower that right. As policymakers and industry participants in the United States have recently begun in earnest a dialogue around how best to balance access to third-party tools with appropriate safeguards, we seek to encourage stakeholders to pursue open banking frameworks – ecosystems in which consumers and small businesses can freely and safely choose to use whatever financial provider they prefer – by sharing our collective expertise, relying on lessons learned, both good and bad, in the United Kingdom Open Banking experience.

The Office of Innovation has indicated it is particularly interested in public comment on ten questions. This submission will provide FDATA's response to those questions in the GFIN request for comment for which we believe FDATA's has a relevant perspective:

Question #1: The proposed mission of the Global Financial Innovation Network (GFIN).
Question #2: The three main proposed functions for the GFIN.

The GFIN's proposed mission is to form "a collaborative policy and knowledge sharing initiative aimed at advancing areas, including financial integrity, consumer wellbeing and protection, financial inclusion, competition and financial stability through innovation in financial services, by sharing experiences, working jointly on emerging policy issues and facilitating responsible cross-border experimentation of new ideas." The proposed functions are to:

- act as a network of regulators to collaborate and share experience of innovation in respective markets, including emerging technologies and business models;
- provide a forum for joint policy work and discussions; and
- provide firms with an environment in which to trial cross-border solutions.

As noted above, FDATA North America grew out of efforts to advance open banking in Europe and in the United Kingdom. Sharing experiences across jurisdictions and working jointly on emerging policy issues is at the very core of our mission. Further, the experience of FDATA Global has demonstrated clearly that international coordination and collaboration among policymakers can better inform regulatory frameworks that can help spur innovation while ensuring continued protection for consumers and small businesses. FDATA North America and its members therefore wholeheartedly support GFIN's proposed mission and its proposed core functions.

Our support comes with a note of caution. GFIN's work, while valuable, must *not* take the place of the significant cross-agency work that must be undertaken by U.S. regulators to break down barriers to financial technology innovation. Though many innovative new technology-based financial tools have been introduced in the United States over the last several years, obstacles remain to ensure end users have continued access to these tools over the long term. The fragmented U.S. financial regulatory structure at both the federal and the state levels require significant collaboration by the various agencies that each have jurisdiction over the market, and FDATA North America encourages the Bureau to take a leadership role domestically in addition to its participation in GFIN to improve the ecosystem here at home.

For example, although the U.S. economy is performing well from a macroeconomic standpoint, there are unquestionably significant numbers of Americans who are being left behind and are financially invisible. The level of credit card debt in the United States is historically high and, earlier this year, exceeded $1 trillion for the first time ever, with the average American household holding approximately $8,200 in credit card debt.[1] About half of American consumers have no retirement savings at all, and of those that do, the average retirement account balance is about $60,000.[2]

The crisis, of course, is not limited only to an accumulation of debt or a lack of retirement savings. The Federal Reserve Board of Governors determined earlier this year that 40 percent of American consumers could not afford a surprise $400 expense without either selling an asset or taking on additional debt.[3] It is no wonder, then, that 85 percent of Americans report feeling anxious about their financial state, with more than two-thirds believing that their financial anxiety is negatively impacting their overall health.[4]

Compounding this economic predicament is the growing complexity of most consumers' and small business' relationships with the American financial system. The vast majority of Americans have multiple different accounts across a variety of products providers. The most basic, fundamental first step towards financial health — simply understanding what one has and what one owes — is often intimidating and logistically difficult for all but the most financially savvy.

The technology-powered tools on which millions of Americans have come to depend, provide intuitive, accessible platforms that enable even the least financially savvy among us to manage their finances and improve their economic outcomes. In addition to allowing Americans to see the totality of their financial accounts in one place, these applications empower consumers and small businesses to find lower loan rates or better loan terms, to avoid predatory products and services, to compare fees across different product offerings, to receive personalized investment and wealth management advice, to find and secure capital that otherwise may not be extended, or to take advantage of budgeting and savings tips to secure their financial future.

This of course presumes that one has access to the system in the first place. Twenty percent of adult Americans are underbanked by the traditional financial services system and almost nine million American households are entirely unbanked.[5] For these consumers, third-party, technology-based tools can provide vital, affordable access to a financial system that has left them behind. Though engagement with other GFIN regulatory agencies will undoubtedly

[1] Comoreanu, A. (2018, June 11). Credit Card Debt Study: Trends & Insights. Retrieved from https://wallethub.com/edu/credit card-debt-study/24400/
[2] Morrissey, M. (2016, March 3). The State of American Retirement: How 401(k)s have failed most American workers. Retrieved from https://www.epi.org/publication/retirement-in-america/
[3] Report on the Economic Well-Being of U.S. Households in 2017. (2018, May 22). Retrieved from https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf
[4] Planning & Progress Study 2016. (2016, June 8). Retrieved from https://news.northwesternmutual.com/planning- and-progress-study-2016
[5] Financial inclusion in the United States. (2016, June 10). Retrieved from https://obamawhitehouse.archives.gov/blog/2016/06/10/financial-inclusion-united-states

benefit innovation globally, we respectfully suggest that the Bureau increase its coordination with its peer U.S. regulators as well.

Question #3: Aspects/areas of regulation that pose the biggest challenge when it comes to innovation.

The critical issue that underlies the entire fintech ecosystem's ability to continue to deliver the products and services on which many consumers and small businesses now rely is the fact that there is no legal requirement in the United States stipulating that a financial institution must make the consumer's or small business' financial data it holds available to a third party in the event their customer provides affirmative consent for the institution to do so.

In the United States today a consumer's or small business' ability to take advantage of the benefits offered by third-party, technology-based tools rests almost entirely with the inclination of their financial institutions to allow them to do so.

Not all financial institutions are disposed to allow third-party tools, some of which compete directly with their own products and services, complete access to their customers' data. The U.S. Treasury Department's ("the Department") July 2018 report on financial technology regulation notes, for example, that "access [to financial data] through APIs was frequently and unilaterally restricted, interrupted, or terminated by financial services companies."[6] In many cases, these APIs also may not provide the full suite of data required by technology-powered tools to deliver their products or services. The market is therefore fundamentally dislocated. The unevenness of this playing field could materially worsen if large U.S. financial institutions seek to impose on consumers and small businesses their view of how the ecosystem should function in the form of bilateral agreements with aggregation firms that include restrictions on consumer financial data access.

While policymakers in the United States have not issued any regulation specific to consumer-permissioned financial data access, regulators and legislators abroad have sought to harness innovation. The United Kingdom's Open Banking regime, under which consumers can utilize authorized third-party tools without restriction, began its implementation phase earlier this year, as did Europe's Second Payments Services Directive, or PSD2. In Mexico, following a recently-passed new fintech law, the Bank of Mexico and the National Banking and Securities Commission ("CNBV") are in the midst of developing API standards that national financial institutions will be required to adopt in order to facilitate the use of third-party fintech tools. The Australian government has made public its intention to begin its implementation of an Open Banking regime in July 2019. New Zealand, and Canada are not far behind. In late September, in

[6] A Financial System That Creates Economic Opportunities: Nonbank Financials, Fintech, and Innovation. (2018, July 31). Retrieved from https://home.treasury.gov/sites/default/files/2018-08/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financials-Fintech-and-Innovation_0.pdf

fact, the Canadian government announced plans to establish an Advisory Committee on Open Banking. The country's finance minister is expected to submit a report on this issue at the end of 2018.

As these other jurisdictions implement open banking frameworks, the U.S. market is at risk of losing pace internationally with the development and delivery of new, innovative financial tools for consumers. There is, accordingly, "a huge risk the U.S. will fall behind, and with that a risk that jobs will go elsewhere."[7] Indeed, in the preamble to its July 2018 report, Treasury rightly notes that policymakers' engagement with the fintech ecosystem — and the decisions that are made by the financial regulatory agencies in response to Treasury's recommendations, particularly with regard to consumer-permissioned data access — will have implications for U.S. global competitiveness.[8]

The stakes are high: globally, the fintech market attracted more than $31 billion in 2017, with the United States attracting more than half the investment in the market.

Question #4: Any reasons why this initiative may be counterproductive to the outcomes it is seeking to achieve.

As noted above, FDATA North America strongly supports GFIN's proposed mission and core functions. We reiterate in our answer here that GFIN's work must not take the place of the significant work U.S. regulators must undertake to improve regulatory structures and collaboration within the United States.

One of the systemic disadvantages facing the fintech ecosystem in the United States as compared with many other countries that have imposed standards with regard to consumer-permissioned data access is the immense relative regulatory fragmentation that exists in the U.S. financial system. In the United Kingdom, for example, two agencies, the Financial Conduct Authority and the Competition and Markets Authority, represent the totality of regulatory authorities that were required to implement an entirely new, innovative approach to harnessing fintech under Open Banking. Mexico's CNBV and the Bank of Mexico are themselves responsible for developing and imposing financial API standards. The Australian Treasury and the Competition and Consumer Commission alone will deliver Open Banking in 2019.

There are at least eight federal regulatory agencies with jurisdiction over at least some portion of financial data access in the United States: the Bureau, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Federal Reserve Board of Governors, the Securities and Exchange

[7] Phillips, C. (2018, September 12). Remarks to the Exchequer Club of Washington. Speech, Washington, D.C.
[8] A Financial System That Creates Economic Opportunities: Nonbank Financials, Fintech, and Innovation. (2018, July 31). Retrieved from https://home.treasury.gov/sites/default/files/2018-08/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financials-Fintech-and-Innovation_0.pdf

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Commission, the Commodity Futures Trading Commission, and the Federal Trade Commission. (Other federal agencies, including the Financial Crimes and Enforcement Network and the Financial Industry Regulatory Authority, have also been involved in the issue of consumer-permissioned data recently.[9]) There are also, of course, regulatory authorities in each state that have jurisdiction over entities that play a role in the fintech market, financial services providers and fintech firms alike.

To address this fragmentation, FDATA North America endorses Treasury's call for all of the agencies in this space to align behind the Bureau's recognition of the importance of consumer control of their financial data and the Department's interpretation of Section 1033 of the Dodd-Frank Act. We believe this is an important step towards a level playing field. Greater domestic coordination that provides harmonization, rather than divergence, would spur innovation and improved consumer and small business financial outcomes. We respectfully suggest that the Bureau could play a leadership role with its peer regulatory agencies in encouraging them to adopt similar stances around Section 1033 as the Bureau historically has.

FDATA North America also believes that the issue of liability is the fundamental obstacle preventing the U.S. market from offering a more even, consumer-centric delivery of third-party tools powered by permissioned data connectivity. Decades-old regulations, such as Regulation E, create either the regulatory expectation or the consumer perception that financial institutions will largely make their customers whole in the event of any financial loss, including as a result of a data breach at a third party.[10] Further, prudential bank regulators have told the fintech community that the potential liability exposure to customers that nationally regulated banks face in the event of a data breach for which customers experience a financial loss represents a safety and soundness concern.

Question #5: Whether the issue of developing best practices for regulators, when assessing financial innovation, should be a priority for the network. If not, other priorities the network should first address.

Developing best practices should be a priority for the GFIN, but the consortium should also recognize and identify where those practices have already been developed. For example: when it comes to creating a functioning open banking network, these practices already exist.

The United Kingdom's Open Banking architecture includes prescriptive consent flows that ensure that a consumer's or small business' experience granting or revoking consent to access their data to any third party in the Open Banking environment is uniform. Accordingly, consumers in the Open Banking ecosystem experience the same consent-granting process across

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[9] Know Before You Share: Be Mindful of Data Aggregation Risks. (2018, March 29). Retrieved from http://www.finra.org/investors/alerts/know-you-share-be-mindful-data-aggregation-risks

[11] Open Banking Progress Update 13 July - 31 August. (2018, September 3). Retrieved from: https://www.openbanking.org.uk/about-us/news/open-banking-progress-update-july-august-2018/

every third-party application they use, regardless of the financial institution with which they have their primary banking relationship. Offboarding is similarly uniform. The evidence suggests that end users of the Open Banking ecosystem are quickly becoming comfortable and familiar with these standards; three million Open Banking API calls were made this July, a month-over-month increase of 50 percent.[11]

Public and private sector participants would do well to use these Open Banking consent standards as a starting point for creating best practices in the U.S. market. Rather than starting from scratch, we respectfully suggest that the Bureau could leverage its participation in GFIN to adopt best practices developed by peer regulators that are also GFIN member agencies.

Question #7: Possible outcomes from the policy work and regulatory trials your organization would benefit from.

A move toward open banking in the United States would put the financial technology industry on a level playing field with financial institutions for the benefit of American consumers and small businesses.

With the rise in financial technology, consumers are increasingly looking to non-banks to meet their financial needs. The rise in fintech companies that provide meaningful services to consumers, often in faster and more user-friendly formats, has threatened the long-established role of financial institutions as the primary means of providing financial services. As a result, financial institutions will continue to erect barriers to accessing consumer account information to slow innovation on the part of fintech and to hold onto whatever competitive advantage they have vis-à-vis non-banks. However, if banks remain in control of access to consumer account data they will continue to have exclusive power to decide whether to provide this information and to whom, ultimately leaving consumers at a disadvantage.[12]

Broadly speaking, the overall balance of power in the financial services ecosystem must reflect all stakeholders' interests and focus squarely on the needs and financial well-being of the consumer. Currently, banks have the largest voice and continue to drive the agenda with respect to data access. However, the current ecosystem does not adequately reflect the position of aggregators, fintech companies and consumers, who should have as much influence regarding the terms on which data is permissioned, accessed, and used. The relevant stakeholders must work together to ensure that consumers receive continuous and secure access to their data by

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[11] Open Banking Progress Update 13 July - 31 August. (2018, September 3). Retrieved from: https://www.openbanking.org.uk/about-us/news/open-banking-progress-update-july-august-2018/

[12] See Jamie Dimon, Letter to Shareholders at 21, available at https://www.jpmorganchase.com/corporate/investor-relations/document/ar2015-ceolettershareholders.pdf ("[I]nstead of giving a third party unlimited access to information in any bank account, we hope to build systems that allow us to 'push' information – and only that information agreed to by the customer – to that third party.").

establishing direct relationships, setting mutually-agreed upon terms and implementing uniform technological standards.

Question #8: Your organization's interest in cross-border trials. If so, provide any potential example use cases.

To seek the right balance between consumer and market protection and innovation, many policymakers globally have embraced the concept of a regulatory sandbox. The United Kingdom's Financial Conduct Authority ("FCA") became the first major financial regulatory agency in the world to launch a sandbox program in 2016. Following the UK's lead, regulators in Switzerland, Canada, Australia, Singapore, Malaysia, Thailand, Hong Kong – among other countries – have all launched or are in the process of launching sandboxes. And, of course, earlier this year, Arizona Gov. Doug Ducey (R) signed legislation that a regulatory sandbox in the state – the first such sandbox in the country.

Regulatory sandboxes allow financial services providers – new entrants and incumbents alike – to temporarily test innovative new products or services in a live market but at a relatively small scale without the requirement of having to undergo a full regulatory authorization or licensing process. FDATA Global will soon launch, in partnership with multiple other academic and industry groups, a Global Open Banking Center of Excellence ("GOBCE") in Edinburgh, Scotland. The GOBCE will permit the testing of innovative new technology tools with data provided, with the end user's consent, from open banking regimes globally in a controlled environment. This type of international sandbox will, in FDATA's view, provide a unique opportunity for market stakeholders, regulators, and end users to create, observe, and take advantage of new tools that open banking environments can help see to market.

Importantly, however, while FDATA North America supports the development of these sandboxes, these trials also cannot take the place of the broader efforts to reduce regulatory fragmentation in the United States.

Conclusion

Though tens of millions of American consumers and small businesses are already utilizing third-party tools to improve their financial well-being, more can and should be done to harness the power of innovation and to give Americans full control of their own financial data and future. The Treasury's July 2018 report on financial technology regulation provides an insightful overview of the outstanding issues facing the U.S. market that should be collaboratively addressed in order to better serve consumers and to ensure that the United States remains globally competitive as multiple countries implement comprehensive, consumer-centric financial data access frameworks.

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Financial Data and Technology Association

The GFIN and its member countries may act as important advisers in this process, but your work with that body must come in tandem with BCFP's work with other U.S. regulatory agencies to break down barriers to financial technology innovation.

Sincerely,

Steven Boms
Executive Director
FDATA North America