

**Written Submission for the
Pre-Budget Consultations
in Advance of the
Upcoming Federal Budget**

By: FDATA North America

Summary of Recommendations

Recommendation 1: That the government include language in Budget 2023 asserting the importance of governance in an open banking framework, and that any open banking governance entity must be neutral, transparent, and nimble.

Recommendation 2: That the government allocate sufficient and sustained funding in Budget 2023 towards the implementation of an open banking framework and governance entity.

Recommendation 3: That the government include language in Budget 2023 outlining its approach to Open Finance, the next logical step after Open Banking, and the framework needed to truly unlock market innovation and competition to benefit Canadian consumers and businesses. This includes an amendment to the Canadian Payments Act to grant federally regulated payment service providers access to Payment Canada's forthcoming real-time retail payment system and make them eligible for membership in Payments Canada.

Despite significant strengthening over the past two years, Canada's economy is still grappling with fiscal challenges, and new and persistent headwinds threaten to derail a sustained rebound. The impacts of global inflation and the subsequent cost of living challenges are making life more expensive for Canadians, at a time they can least afford it. The government began addressing these challenges in Budget 2022 but it cannot sit back and wait for this storm to pass.

Thankfully, Canada has reached a crucial point in its journey towards a more open, consumer-directed finance (CDF) regime, starting with its efforts to bring Open Banking (OB) to Canadian consumers, and the government is beginning to make progress in its pledge to bring OB to Canada. Building off the appointment of Abraham Tachjian as Canada's open banking lead in March 2022, the Open Banking Secretariat has been busy. FDATA NA would like to commend the government for establishing Working Groups (Privacy, Security, Accreditation, Liability) for some of the most crucial issues associated with the introduction of open banking in Canada, and for creating a steering committee tasked with discussing, on an as-needed-basis, progress and issues out the remit of the working groups.

In order to continue this progress, Canada needs to remain diligent and stick to committed timelines, as it still lags other countries - both developed and developing - in its pursuit of an open banking framework and must learn from other countries' experience implementing their OB regimes. Therefore, FDATA NA's first recommendation for Budget 2023 is that the government outline its approach to the governance of the Open Banking (OB) framework currently being discussed by the Open Banking Secretariat.

FDATA NA, along with several other OB stakeholders, has called for the establishment of a separate Governance Working Group to sit alongside the other four Working Group's set up by the Open Banking Secretariat. Experience implementing OB in other markets demonstrates that failing to contemplate a governance structure significantly increases the risk that the OB system will not meet its full potential. Indeed, relying on back-end integration of governance is a sure-fire way to jeopardize all of the good work put in at the front end.

What makes a strong governance framework? FDATA NA asserts that any open banking governance entity in Canada must be **neutral** (i.e. not controlled by any particular stakeholder(s) with commercial interests in the ecosystem), **transparent** (i.e. it invites and considers stakeholder input and subjects its decisions to an open, publicly

visible process), and **nimble** (i.e. capable of making binding decisions relatively quickly and without undue bureaucracy). All stakeholders in the open banking system must agree to comply with the decisions and determinations made by the open banking governance entity as a condition of being active in the market.

Functions

The main functions of a Canadian Open Banking Governance Entity (COBGE) should include:

- **Dispute resolution:** Responsibility for issuing a binding decision in instances in which two or more open banking participants cannot themselves mediate a dispute (e.g. an accredited entity finding itself unable to access a data provider's data).
- **Auditing of data provider APIs:** Responsibility for auditing APIs to ensure that they meet the Service-Level Agreements (SLAs) established in the design of the open banking system, and that all of the data required to be included in the APIs is accessible.
- **Oversight of accreditor(s):** Presuming an accreditation regime in which third-party consulting firms will be tasked with performing accreditation audits, responsibility for oversight of the consulting firms' audits.
- **Ongoing reviews of accreditation standards:** Responsibility for continually monitoring and revising accreditation standards for third parties in Canada's open banking regime as appropriate.
- **Oversight of technical standard(s):** Responsibility for ensuring that any technical standard(s) deployed in Canada's open banking regime are fit-for-purpose and meet the criteria required to deliver an open banking solution to Canadian consumers and SMEs.
- **Liability apportionment:** In instances in which a data breach has resulted in end user damages, responsibility for determining which party or parties is responsible for making affected end users whole.
- **Managing administration and evolution:** Responsibility for ensuring the system is operating as intended, includes all of the data in scope for the various phases of the regime, and oversight of the addition of new account and data types into an open finance framework over time.

Structure

There does not exist today a singular entity in Canada, either in government or in the private sector, that both possesses the expertise and resources required to undertake the functions of an open banking governance entity and whose leadership structure is truly neutral. FDATA NA therefore proposes the creation of the **Canadian Open Banking Governance Entity (COBGE)**, which would be tasked with the governance responsibilities enumerated above. To be fit for purpose, COBGE should:

- **Be led by a single executive director** who is accountable to a nine-person board. The director should be an executive-level individual with an understanding of the financial services marketplace, existing law, and technology, but should not have outweighed professional experience in only one of the sectors participating in open banking in Canada (e.g. banking or fintech). The board should at all times be comprised of three financial institution executives, three fintech executives, two consumer representatives and one SME representative appointed to staggered three-year terms. The Executive Director, a representative from the Department of Finance, and a representative from the Financial Consumer Agency of Canada should serve as board observers/advisors.
- **Hold regular open meetings and solicit public input.** As it considers improvements to Canada's open banking regime the COBGE should endeavor to ensure that any stakeholder input it receives is balanced and representative of the full universe of open banking participants.
- **Issue binding decisions.** All data providers and accredited data recipients should, as a precursor to gaining access to Canada's open banking system, agree to abide by the determinations and decisions made by COBGE.
- **Be curious.** COBGE should regularly test adoption and public attitudes towards Canada's open banking regime to inform its thought process as it evolves and improves the system.
- **Be accountable.** COBGE should issue reports every six months detailing its work, its rationale for any determinations it made, open issues it is considering, and its roadmap of issues for future consideration.

Following the government's articulation of its approach to the governance of the Open Banking (OB) framework, FDATA NA's second Budget 2023 recommendation is for the

government to announce an initial five-year investment (with on-going funding) in the implementation path it chooses to pursue. While seemingly less important than the policy it seeks to support, allocating funding for the HR, administrative, and operating budget of the implementing agency should be done well in advance of when it is deemed operational. Setting aside funds now, as opposed to once the OB process is completed, means a far quicker process to bringing the promised benefits of OB to market. The budget allocation can also be scaled up over a five year period, in line with the increased activity expected from the Implementing Entity.

Strengthening the governance framework for the implementing entity, and allocating appropriate resources for it to be effective, are significant commitments the government can adopt in order to ensure open banking is a success in Canada. For Canada to truly unlock the future benefits of these reforms, it must begin looking at the next steps of open banking - Open Finance.

There are several definitions of Open Finance, also known as Consumer Directed Finance, but essentially Open Finance allows for the ability to access and act on financial data to create personalized customer experiences, drive the pace and scope of innovation, and create deeper industry collaboration. The result is a potentially transformative impact on a wide range of financial products and services for the benefit of consumers and businesses. It would enable more consumers to gain access to a wider range of financial products and services, to have greater control of their data, including information from credit bureaus and utilities, and to develop a stronger relationship with their finances, empowering them to make better financial decisions.

Fintechs are currently unable to fully service consumers and businesses since they are not permitted to use Canada's payments system. The Canadian Payments Act, which governs access to the payments system that powers our economy, is currently being reviewed by the Canadian government, but little progress has been achieved. Access to the payment system is critical for fintechs' success and ability to empower Canadian consumers. The federal government should grant access to the Canadian payments system to fintechs, as is the case in other developed countries, and according to a recommendation made by Canada's Competition Bureau.

The time to start on this work is now. As we have seen with Canada's open banking experience, changes in financial sector policy take time. The number of interested stakeholders is significant, entrenched interests remain as barriers to change, and outside factors can lead to significant time delays; all in addition to the knotty policy questions which accompany any changes of this magnitude, as well as shifting personnel in key decision-making roles. Canada must begin thinking about what its

Open Finance regime will look like, the sequencing of the files it aims to tackle, the pace it seeks to bring in such changes, the budget and people it needs to deliver it and the overarching vision sitting over top of it. These are complex, dynamic and impactful policy decisions, which directly touch almost all Canadians in one or another. For Canada to get it right the government must begin outlining its Open Finance vision as soon as possible.

About FDATA North America

FDATA North America's members collectively serve nearly four million Canadian consumers and small and medium-sized enterprises by providing financial management and accounting tools, digital banking services, access to investment and savings platforms, affordable credit products, and other financial services.

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 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 policymakers and to regulatory bodies internationally that are contemplating, designing, and implementing open finance frameworks.