

Consumer Directed Finance: Open Banking in Canada

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On January 31, 2020, Canada's Advisory Committee on Open Banking (the Committee) released its report, "Consumer-directed finance: the future of financial services" (the Report), moving Canada towards the next phase in its process of implementing open banking legislation.

Background

The 2018 federal budget announced the Canadian government's review into the merits of open banking. The Committee was appointed and tasked with considering the merits of open banking in Canada and its benefits to Canadians, with regard to privacy, security and financial stability. The Committee released a consultation paper in January 2019, "A Review into the Merits of Open Banking." On review of responses from the public (including various stakeholders) and examining open banking in other jurisdictions, the Committee released its findings and recommendations in the Report.

Highlights of the Report

Key findings and recommendations of the Report include:

- **A made in Canada term: consumer-directed finance.** The Report replaces "open banking" with "consumer-directed finance" – same concept; different name. The Committee believes the term consumer-directed finance more accurately captures what is proposed: a consumer-controlled environment in financial services where, *inter alia*, consumers instruct financial institutions to share their information with an (accredited) third party of the consumer's choosing.

While open banking includes commercial activities, this shift in terminology also indicates a focus on consumer protection in the development of a Canadian consumer-directed finance regulatory framework (extending such protection to businesses in the context of consumer-directed finance). Moreover, the Report provides that key stakeholders agree that, in order for the benefits of consumer-directed finance to be fully realized, a framework must "first and foremost be designed with the consumer in mind."

- **Canadians benefit from consumer-directed finance.** Financial health is a significant concern for Canadians and, as such, Canadians could benefit from data-driven services to manage their

finances. Consumer-directed finance could provide freedom of choice in accessing or using financial products or services and has the potential to be of particular benefit to small business owners, consumers having difficulty managing finances, and those with limited or non-traditional credit histories.

- **Canadians are already sharing their data.** The Committee received information from stakeholders indicating that up to 4 million Canadians are using data-driven services (often referred to as “screen-scraping”) to manage their finances and their businesses. Many stakeholders are of the view that screen-scraping poses serious security and liability challenges. While there is consumer demand for data-driven services, the liability and uncertainty surrounding the use of these applications impact their ability to provide greater benefits to participants in the financial services sector (e.g., consumers and innovators) and the Canadian economy.
- **Widen the lens.** Consumer-directed finance must be viewed in a broader context, accounting for the rapid transformation in the global economy as a result of technological innovation. There is a growing expectation that consumers should have the ability to control and leverage their data. While Canada has the potential to lead consumer-directed finance, it risks falling behind if it does not take action to implement a framework.
- **Consumer-directed finance framework.** A consumer-directed finance framework should be designed to account for cyber security, privacy and consumer protection risks. Screen-scraping is the most common current method of data sharing, with security and liability risks for customers and financial institutions. A framework could mitigate these risks. The framework must be developed in a manner that protects privacy, integrating consumer privacy and consumer protection at the outset. Factors to consider in developing the framework include:
 - Risks in the marketplace today that are not addressed in the screen-scraping environment (e.g., consumers are increasingly using technologies in an environment that is not secure or permissioned).
 - Existing risks could be addressed and mitigated through an accreditation framework (e.g., data-driven services providers should be accredited and supervised by a regulator or independent expert body).
 - Privacy is a key risk. The consent process is central to consumer-directed finance and existing mechanisms need to be enhanced to establish meaningful, opt-in consent by consumers (e.g., clearly define what the consumer is agreeing to, providing control levels over data sharing, and providing control over cancellation of permissions at any point by a consumer).
 - The role of the Canadian government, in collaboration with a variety of stakeholders.
 - Consideration of how liability will be attributed among the various participants (e.g., consumers, financial institutions, and the data-services providers).
- The Committee recommends the development of a framework with appropriate safeguards that protect consumers and participants that, at the same time, allows for innovation.

There is No Going Back

The Committee recommends that Canada move forward to enable consumer-directed finance – “there is no going back.” Implementing consumer-directed finance will be complex and require collaboration from provincial and territorial governments and multi-sector engagement. The Committee recommends that the federal government use the following principles to guide its approach to consumer-directed finance:

- Consumer-directed finance should be focused on enabling consumer choice and meaningful control.
- Consumer-directed finance should give consumers confidence and engender trust; it should be secure, respect and enhance privacy, and an improvement over the status quo.
- Innovation should guide the development of consumer-directed finance, founded on a safe, secure and standardized data-sharing mechanism.

What's Next?

Concurrently with the release of the Report, the Minister of Finance announced that the Committee will undertake a second phase of work to continue examining the merits of consumer-directed finance with a particular focus on data security in financial services.

Beginning in the spring of 2020, the Committee will work with stakeholders across Canada to consider potential solutions and standards to enhance data protection in consumer-directed finance. The results of the Committee's findings are anticipated to be released to the Minister of Finance in late 2020.

In developing the anticipated legal and regulatory framework, Canada will need to navigate a legal landscape that includes prescriptive laws, a complex financial services ecosystem, and stakeholders with different interests to align.

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