

February 11, 2019

The Advisory Committee to the Open Banking Review
Financial Institutions Division
The Financial Sector Policy Branch
Department of Finance Canada
90 Elgin Street
Ottawa, Ontario
K1A 0G5

Submitted via email: fin.OBBO.fin@canada.ca

Advisory Committee Members,

Electronic Transactions Association (“**ETA**”) submits these comments in response to the invitation for submissions issued by the Department of Finance (the “**Department**”) in respect of a consultation document: A Review into the Merits of Open Banking (the “**Consultation Document**”).

ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services. ETA’s members include financial institutions, mobile payment service providers, data aggregators, mobile wallet providers and non-bank online lenders that make commercial loans to small businesses, either directly or in partnership with other lenders. ETA member companies are creating innovative offerings in financial services, revolutionizing the way commerce is conducted with safe, convenient and rewarding payment solutions and business lending alternatives.

ETA is dedicated to continuously driving innovation in the payment space and values the importance of a Canadian financial ecosystem whose participants ensure that consumers and businesses are provided with financial products and services that are convenient, secure and reliable. In this regard, ETA commends the Department’s commitment to investigating the merits of open banking through an inclusive process that invites input from the public and other stakeholders and welcomes the opportunity to be part of the dialogue and to working with government, industry participants and other stakeholders to achieve a uniquely Canadian open banking system.

Access to financial data and information is an important issue that involves consumers, traditional financial institutions, financial technology companies (FinTechs) and other financial service providers, including data aggregators and third-party application providers. And, the Canadian ecosystem consists of multiple stakeholders, each with differing roles within data aggregation.

ETA and its members recognize the increased convergence between these groups and the need to preserve consumer access, choice, and control. To preserve market dynamism, ETA strongly encourages the Department to be sensitive to the risk of applying a prescriptive regulatory framework. As we elaborate further in these comments, ETA considers that industry is best-positioned to lead the open banking evolution to market in addressing these diverse interests. In particular, ETA and its members support an industry-led and principles-based framework for open data access that promotes innovation and competition among all industry participants in the financial data marketplace, that permits consent-based sharing and use of financial data, and that is that is protective of consumer interests.

A. Would open banking provide meaningful benefits to and improve outcomes for Canadians? In what ways?

As outlined in the Consultation Document, there are clearly many potential applications of open banking and many benefits to be realized by consumers, FinTechs and financial institutions alike.

First, open banking is consumer-centricity. It helps improve efficiency and customer services in the financial services industry by helping parties share data more effectively and increasing not only consumer control over their own information and data but also choice. ETA shares the prevailing view that consumers already benefit from financial innovations that rely on direct access to their personal and financial data.

Second, open-banking drives innovation. In fact, over the past several years, ETA members, who are FinTech companies, have developed innovative open-banking enabled products and services that help consumers manage their financial lives, expand financial offerings and access to financial services, lower costs, improve financial management, provide more affordable options, and increase transaction security. As is also recognized in the Consultation Document, these developments have resulted in a number of benefits for consumers:

- Consumer convenience.
- Protecting consumers from fraud.
- Empowering consumers to understand and control their financial lives, make useful decisions, monitor spending and debt, and set and achieve savings goals.
- Providing consumers with a holistic financial picture of their financial health/product mix.
- Helping consumers communicate effectively with their financial service providers.
- Helping consumers solve financial problems in timely ways.

These benefits extend across a diverse and growing universe of financial products and services, including personal financial management software, online lending platforms, mobile wallets, and fraud and identity theft systems, to name just a few. In addition, there are a wide range of use cases for open banking beyond information aggregation and payment initiation, including account opening (identity verification and authentication), loyalty integration, account information analytics, as well as tailored marketing solutions, among others.

More specifically, in other jurisdictions, including in the United States, technological advances have allowed financial institutions and ETA member FinTech companies to use consumer account data from multiple accounts held at multiple financial institutions to develop new products and services that empower consumers to manage their finances. At the same time, consumer-permissioned (or consent-based) data access allows financial services providers also to see a “full financial picture” of the consumer and to target the right financial products and services to that consumer. These products and services include:

- Personal financial management tools that allow consumers to use a single account to manage all of their financial accounts.
- Savings apps that facilitate automatic savings by consumers.
- Budget tools that help consumers set and follow budgets.
- Lending services that provide consumers with access to simple loan application and underwriting processes.
- Bill payment services that allow consumers to manage all of their bills through a consolidated service.
- Investment management services that facilitate investment or education.

In many cases, access to consumer and financial institution data is crucial to the success of these new products and services. While ETA supports industry access to and use of consumer-permissioned data, the critical point is that consumers must have *choice and control* over how their data is used and shared. The many benefits of innovation should not come at the expense of consumer protection. In this regard, the question of increased access and control over financial data and information must balance important issues such as data security, control, transparency, and disclosure.

Third, it helps the Canadian business-to-business (“B2B”) context. By way of example,

- Open banking would facilitate B2B payments between companies and reduce the use of cheques by providing transparency in the payment, provide invoice details with the payment as well as allow for the automatic reconciliation of accounts. By way of example, a company would be able to send a virtual invoice to a client, and through a simple click of a button, the client could pay the invoice. In this example, the client’s bank account would be automatically debited, and the company’s account would be credited, with accounting reconciliation for the company occurring simultaneously.
- Open banking could also facilitate treasury functions by aggregating bank account information to:
 - facilitate movement of money between corporate accounts
 - integrate to an ERP solution
 - facilitate international real time payments for large corporations at a lower cost than current SWIFT systems.
- Open banking could also provide an easy know your customer process by utilizing known bank account information and avoiding screen scraping practices.

B. In order for Canadians to feel confident in an open banking system, how should risks related to consumer protection, privacy, cyber security and financial stability be managed?

With the wider range of market participants accessing consumer financial data, ETA recognizes that the increased choice and improved access to, and enhanced quality of, financial offerings has raised concerns, including around informed consent, privacy, cybersecurity, liability and safety and soundness of the financial sector. Given these concerns, ETA and its members believe that the adoption of safe and secure data access methods across the Canadian ecosystem and other minimum standards and

best practices for the industry will be necessary to alleviate security concerns and corresponding risks, including the risk of fraud in the event of a data breach.

Consumer confidence is directly related to the perception of privacy, security and protection of financial information and data. Consumers need to be confident in the safety and security of the overall system, and trust that their financial information and data is being used in accordance with their wishes, for their best interests, and that the data and information used is accurate and up-to-date.

Data security is an important consideration that should be addressed in any regulatory framework for data access to consumer-permissioned data. Security and cyber-security risk is increased when financial data is shared with multiple parties and is stored in multiple places, with varying levels of security. Absent an agreement between the parties sharing data, or use of a secure API or other technology, some service providers rely on other methods to obtain data access information. Current methods of data sharing are not consolidated or principles-based and include, for example, screen scraping as well as API based access. While all of these methods, and their security, may vary from company to company, it is important that they meet industry best practice standards. ETA supports a performance-based standard that allows for flexibility and innovation, rather than a prescriptive requirement that necessarily favors one method over another.

Security performance standards need to be developed to ensure technology is sufficient (and continually reviewed), access is limited, consent-based, and storage of data occurs. However, it is imperative that technology standards do not mandate a specific type of technology, but remain flexible enough to ensure industry leading safeguards, and also allow for innovation.

In order to foster confidence, consumers must have safe and secure access to their financial information. Any industry-developed solution that allows for access and storing of consumer financial information through safe and secure means should include industry best practices, allow for a tailored approach for different types of uses and companies, and be developed for all industry participants. Consumers must have confidence that their data is adequately protected by all applications, systems, and providers that have access to it. This includes use of technology such as APIs and tokenization; however, ETA cautions the adoption of one technology over another as the aforementioned technologies are not the only secure options available today. More importantly, technology will continue to evolve over time, so standards must not stipulate specific types of technologies, but rather provide that entities follow applicable laws and industry best practices with regard to data security. In order to fully achieve security, a shared set of standards is needed that can be applied and updated on an ongoing basis.

With respect to the specific issue of data access, ETA believes that access, use and sharing of financial information and data must be driven by the consumer's informed choice and consent. In that regard, Canada's privacy framework under the *Personal Information Protection and Electronic Documents Act*, which imposes principles-based legal requirements on all commercial entities, already sets parameters requiring industry participants to obtain a consumer's meaningful consent through transparent opt-in mechanisms prior to any collection, use, sharing and/or disclosure of personal information. It also limits the uses and sharing of such information as well as other protections, all of which are described using guidelines from the Office of the Privacy Commissioner of Canada. ETA is of the view that the best way to address data use, access and sharing concerns related to open-banking is for industry participants to continue to work together, and with the Department, to develop solutions and standards that are based on and leverage the existing privacy framework to ensure that consumers provide informed consent for

the use and sharing of their financial data safely and securely rather than having the Department mandate requirements through rulemaking or other regulatory means.

Among the principles that should guide the development of the open banking framework generally, and any data access standards specifically, includes avoiding duplication and overlap with existing government or industry requirements. Rather than issue prescriptive requirements, the Department should encourage industry to take the lead in developing solutions that preserve industry flexibility to continue to develop new and innovative products and services that benefits consumers while providing appropriate consumer protections. In this regard, the financial services industry, including ETA member FinTech companies, have demonstrated a robust and sustained commitment to ensuring consumer access to information, the protection of customer information, and the integrity of financial systems and networks.

Specifically, ETA believes that industry solutions that take into account the unique circumstances of the parties and the functionalities being contemplated will be more effective in addressing the risks and opportunities being presented. It is important to recognize that this is a highly dynamic space where players, technologies, and services offered may differ widely and present different or evolving risks. A one-size fits-all regulatory approach or solution will not keep pace with the dynamic nature of this space and will stifle innovation.

In sum, as technology and innovation are constantly evolving and continue to shape how information is created, accessed, stored, and disposed of, regulation must remain adaptable and should not impose rigid rules that have the effect of unnecessarily restraining innovation or imposing unnecessary costs or burdens on industry. For example, if the Department were to mandate a specific requirement in this area, there is no guarantee the method would improve upon existing methods, but there would be a significant risk that any such method would quickly become outdated, all while imposing significant costs on industry to conform their existing practices to a government-regulated approach

C. If you are of the view that Canada should move forward with implementing an open banking system, what role and steps are appropriate for the federal government to take in the implementation of open banking?

ETA and its members encourage the Department to facilitate the implementation of open banking in Canada based on a federal level framework that achieves widespread adoption by the various industry players across Canada. In this respect, we confirm our willingness to commit the necessary resources collaborate closely with the Department in developing a framework that protects consumers, encourages innovation, and supports Canadian businesses.

The Department should move forward collaboratively with the relevant stakeholders and with careful consideration. As noted in the Consultation Document, the reality is that many Canadians are already using in-market products and technologies that facilitate open banking and operate in a largely unregulated environment. Creating an open banking framework to allow Canadians to be able, upon request, to obtain timely information about their ownership or use of a financial product or service from their product or service provider. The framework should rely upon API's and other technology to create minimum standards and best practices that apply to, and within which, all industry participants can operate in would not only address security and related concerns surrounding open banking in Canada, but it would also create a more level playing field for the various participants while encouraging, and not

stifling, innovation. At the end of the day, it is the consumers that benefit from any consent-based access to their financial data – and the industry, as a whole, must be committed to working together to provide such access.

Although the federal government will undoubtedly play an instrumental role in guiding the dialogue, determining the governance structure of the framework as well as facilitating implementation, ETA believes the industry is best-positioned to lead the evolution into this market and that an industry-led and standards-based approach will ensure that market players are incentivized to participate in the system.

Industry standards will be most successful if all of industry participants, regardless of size or type of service, collaborate to develop standards and then commits to follow the standards.

ETA is encouraged by the government's inclusive consultation process and pragmatic approach in investigating the merits of open banking as it is important to consider existing financial institutions and service providers as well as new and non-traditional market participants. As such, ETA strongly encourages the government to be sensitive to the risk that applying a uniform regulatory framework to all financial products and services, without any appreciation of differences in products and services and consumer needs, will likely stifle creativity and innovation in the market. The Competition Bureau has touched on this point in its report *Technology-led innovation in the Canadian Financial Services Sector* (December 2017), where it noted that "it is important that the regulatory frameworks applicable to the financial services and banking sectors do not inadvertently deter innovation and the competitive benefits that follow." ETA echoes this sentiment and strongly believes that in order for open banking to flourish in Canada and to build consensus, consumers need more choice but any technology or other standards or principles adopted should not pose a barrier to entry for new participants or undue financial burden on existing ones. In addition, while we strongly support proportionate compliance obligations to ensure compliance and to guarantee that consumers are protected at all times, the implications of excessively rigorous compliance requirements will create disadvantages and could be cost prohibitive for new or smaller market entrants and participants. If firms lack the capabilities to ensure compliance and to meet high standards of consumer protection, they should not be able to participate in the open banking environment.

As the type of consumer financial data that is being accessed in the market varies depending on the application provider, type of service, and the underlying data access agreements/consumer consents, it is clear that a one size fits all approach to regulation would not be appropriate. In fact, ETA submits that the diversity of products and services in the market calls for a flexible regulatory and more principles-based approach. Financial institutions and FinTech companies are in the best position to develop standards – as they have done in other areas – that protect consumers while preserving the benefits of competition and innovation in the market. ETA is therefore supportive of and encourages a light-touch approach to regulation that is based on a standardization methodology and governance strategy that manages access to consumer data and financial information in a manner that is sufficiently flexible so as to keep up with the rapidly changing pace of technology and open banking enabled products and services. In that regard, developing guiding principles, best practices and guidelines along with security standards that are product/service-agnostic and that can be adopted by all industry participants across the financial ecosystems will be key to ensuring continued safety and soundness of the financial system is maintained as open banking continues to evolve in Canada.

Additionally, ETA members operating globally have already been involved in the creation of open banking frameworks in other jurisdictions, like the UK and the US, and are determined to share their

experiences and challenges, and provide their expertise to help securing the best outcome for Canadian customers and businesses. ETA therefore strongly encourages the Department of Finance to continue its stakeholder engagement and again consult with the industry when detailing the regulatory requirements of the Canadian open banking framework.

Canada is uniquely positioned to learn from the open banking experience and regulatory proposals being adopted or considered by its international counterparts in other jurisdictions and to adopt best practices and market-led initiatives using examples from those jurisdictions that can be adapted to work within Canada's unique regulatory environment and market structure. Canada should carefully consider implementing a governance framework designed to drive specific market outcomes over a strictly rules-based approach.

* * * * *

ETA thanks you for the opportunity to submit these comments.