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Re: Canada Gazette, Part I, Volume 160, Number 26: Consumer-Driven Banking Regulations (the Regulations)

FAIR Canada appreciates the opportunity to provide comments in response to the above-referenced consultation.

FAIR Canada is a national, independent, non-profit organization known for balanced and thoughtful commentary on public policy matters. Our work includes advancing the rights of investors and financial consumers in Canada through:

- Informed policy submissions to governments and regulators
- Relevant research focused on retail investors
- Public outreach, collaboration, and education
- Proactive identification of emerging issues.[1]

A. Introduction

FAIR Canada supports the Government of Canada's initiative to develop a consumer-driven banking framework (the Framework) that will enable Canadian consumers to securely share their financial data with service providers of their choice. The Framework has the potential to give consumers greater control over their financial information, expand access to innovative tools for budgeting, saving, borrowing, payments, and financial planning, and promote greater competition in the financial sector. The Framework could help consumers compare products and services more easily, make more informed decisions, and choose financial services that better meet their needs.

Notwithstanding these benefits, sharing personal financial data can expose consumers to significant risks. These risks include unauthorized access, data misuse, fraud, cybersecurity incidents, confusion about who is responsible when problems arise, and the use of financial information to influence consumer behaviour in harmful ways. Although the Framework includes

[1] Visit www.faircanada.ca for more information.

important safeguards, these protections must be supported by strong oversight and compliance monitoring, rigorous enforcement, and accessible, timely redress mechanisms. A consumer-driven banking regime should not simply facilitate data mobility; it must also ensure accountability and provide consumers with clear rights, strong protections, and effective remedies if they suffer harm.

Ensuring that these protections are effective in practice is critical to building and maintaining consumer trust in the Framework. The Framework's success will depend, in large part, on such trust. Consumers will only be willing to participate if they are confident that their financial data will be protected, that participating entities will be held to high standards of conduct and security, that oversight will be active and effective, and that they will have meaningful recourse if something goes wrong.

Our comments focus on areas where additional coordination, clarity and consumer protection will be important to the Framework's success, including federal-provincial cooperation, complaint handling, foreign entity participation, supervision and enforcement, consent and corporate changes, data deletion, consumer liability, fraud prevention, timeliness requirements, and safeguards relating to manipulative marketing, conflicted product steering, and advice-like activities that could confuse consumers.

B. Federal-Provincial Cooperation

The Framework is federally legislated, but it will operate in a financial services environment where many institutions and activities fall under provincial or territorial jurisdiction. The Framework allows provincially regulated financial institutions to opt in, which will broaden participation and give consumers more consistent access to consumer-driven banking services. Because provinces and territories will retain the authority to impose requirements on entities within their jurisdiction, it will be important to ensure that any such requirements align with the federal Framework and do not undermine its coherence or effectiveness. Close coordination among federal, provincial, and territorial governments will therefore be essential.

From a consumer perspective, the Framework and any related provincial or territorial regimes should operate harmoniously. Consumers should not face different rights, protections, or complaint processes based on where they live, the type of institution they use, or whether an entity is federally or provincially regulated. Divergent requirements could create uncertainty for consumers and businesses, complicate compliance for participating entities, and weaken accountability across the ecosystem. Consistent standards will be critical to protecting consumers and supporting broad participation in the Framework.

In this context, the Consumer-Driven Banking Act (the Act) establishes a federal-provincial committee to advise the Minister of Finance (the Minister) and the Bank of Canada (the BoC) on the implementation and evolution of the Framework.[2] The committee should promote regulatory alignment, identify coordination issues, and ensure the Framework functions effectively in Canada's shared financial regulatory landscape. We also recommend that the committee have a clear mandate to support consistent consumer protection outcomes across jurisdictions and to help prevent gaps, duplication, or fragmentation as the Framework is implemented.

[2] Act, s. 135.

C. Complaint Handling

Fair, effective, and timely complaint handling will be central to protecting consumers and building trust in the Framework. Consumers will only participate with confidence if they know that, if something goes wrong, they can easily access a fair, efficient complaint resolution process. This is particularly important in an environment where data sharing may involve multiple participants. Without clear complaint-handling and redress mechanisms, consumers may face uncertainty about where to turn and how their concerns will be addressed.

1) Equivalent Provincial Complaints Body

The Act authorizes the Minister to permit participating entities to use a "substantially similar" provincial complaints body instead of the designated external complaints body (ECB).[3] This flexibility helps accommodate Canada's federal-provincial regulatory structure, but it must be implemented carefully. The overarching objective should be a complaint-handling system that is coherent, easy for consumers to navigate, and capable of delivering consistent protection and redress.

Exemptions from using the designated ECB should be granted sparingly to avoid fragmentation and consumer confusion. Multiple complaint bodies operating under different standards could create a patchwork system that is difficult to understand and navigate, lead to inconsistent outcomes for similar complaints, and weaken accountability across the Framework. Any exemption should therefore be granted only where it preserves equivalent consumer protection outcomes and does not undermine the coherence of the Framework.

Moreover, the criteria for recognizing a substantially similar provincial equivalent should be transparent. Consumers, participating entities, regulators, and complaint bodies should understand how equivalency will be assessed and monitored. Recognition criteria should address, at a minimum, accessibility, independence, impartiality, timeliness, investigative powers, procedural fairness, transparency of outcomes, and the ability to recommend or require effective remedies. The Framework should also provide for ongoing review so that provincial complaint bodies continue to meet these standards.

2) Complaints Involving Multiple Participants

The Framework should clarify how complaints involving multiple participants will be handled. Consumer-driven banking complaints may involve overlapping conduct by banks, fintechs, and service providers. The Framework should establish how complaint bodies will coordinate where different participants belong to different complaint bodies, which body will take the lead, and ensure consumers receive a single, timely response rather than being passed between entities.

3) No-Wrong-Door Complaint Handling

The need for clear coordination is closely linked to the principle that consumers should have access to a seamless, "no wrong door" complaint process. They should not be expected to determine which complaint body has jurisdiction. The burden should rest with complaint bodies and regulators to coordinate internally, identify the appropriate forum, transfer complaints where

[3] Act, s. 119(1).

necessary, and keep consumers informed. A no-wrong-door model would reduce confusion, improve access to redress, and help ensure that legitimate complaints are not delayed or abandoned because consumers went to the wrong place.

4) Binding Decisions

We are disappointed that the Act does not grant the designated ECB the authority to make binding decisions. For many years, FAIR Canada has advocated for binding decisions by the Ombudsman for Banking Services and Investments (OBSI) for investment complaints. Consumers need more than access to an external complaint process; they need confidence that the process will deliver effective redress. If ECB recommendations are not binding, consumers may be left without a practical remedy even where the ECB finds that compensation or other remediation is warranted.

Encouragingly, the policy landscape is shifting. The Canadian Securities Administrators have proposed an ECB with binding authority for investment complaints, and various provinces have enacted legislation empowering an ECB to make binding decisions.

These developments reflect a growing recognition that a fair, effective dispute resolution system requires outcomes that are not merely recommendations, but enforceable decisions. Binding authority would encourage participating entities to resolve complaints fairly and promptly, strengthen accountability, and build trust in the Framework. It would also help prevent participating entities from offering low settlements that consumers may feel compelled to accept, for fear that, without a binding outcome, they could receive nothing at all. FAIR Canada therefore recommends that the Act ultimately be amended to empower the designated ECB to issue binding decisions.

D. Foreign Entity Participation

The Framework permits foreign entities to participate if they satisfy the accreditation requirements and maintain a place of business in Canada. Foreign participation may support competition, consumer choice, and innovation. However, it also raises consumer protection, privacy, supervisory, and enforcement risks that the Framework should address.

These risks are particularly acute where consumer data is stored, processed, or accessed outside Canada. Although the Regulations require an applicant for accreditation to disclose all countries in which it, or its third-party service providers, store or process — or plan to store or process — consumer data,[4] disclosure alone is insufficient. Participating entities should be required to obtain express, informed consumer consent before storing, processing, or permitting access to consumer data outside Canada. That consent should clearly explain where the data will be handled, the types of service providers involved, the potential implications of foreign laws or access requests, and any limits on Canadian regulatory oversight or consumer recourse.

The Framework should also address the practical challenges Canadian authorities may face in supervising and enforcing obligations against foreign entities and their third-party service providers. A Canadian place of business is an important baseline requirement, but it may not be sufficient to ensure effective oversight where key operations, personnel, or service providers are

[4] Regulations, s. 25(l).

in another jurisdiction. Without additional mechanisms, Canadian regulators may have limited practical ability to obtain information or investigate misconduct.

Accordingly, where foreign entities participate in the Framework, the BoC should have memoranda of understanding (MoU) in place with relevant foreign regulators or government authorities. These arrangements should support information sharing, supervisory coordination, enforcement cooperation, and timely action when issues affect Canadian consumers. In addition, there should be practical mechanisms to investigate misconduct, compel compliance, impose sanctions, and secure consumer redress when foreign entities are involved. MoU would help ensure that foreign participation does not create gaps in accountability, weaken consumer protection, or compromise the integrity of the Framework.

E. Supervision and Enforcement

The Framework relies significantly on accreditation and annual reporting to ensure that participating entities comply with their obligations. While these are important components of the regime, they are insufficient on their own to protect consumers or maintain confidence in the Framework. The success of consumer-driven banking will depend on active, ongoing supervision that can identify risks early, address non-compliance promptly, and ensure that participating entities remain accountable after accreditation is granted.

FAIR Canada welcomes the consultation's indication that the BoC will issue guidelines for consultation to clarify its supervisory expectations and provide greater transparency regarding its supervisory role. The BoC should adopt a robust, risk-based supervisory framework that goes beyond the initial review of accreditation applications. Participating entities will vary significantly in size, business model, technical capacity, use of third-party service providers, and the volume and sensitivity of consumer data they handle. The supervisory framework should therefore allow the BoC to allocate resources and supervisory intensity based on the risks posed by each entity. Higher-risk entities should be subject to more frequent compliance reviews and other supervisory interventions.

In addition, the BoC should have adequate resources, expertise, and tools to conduct continuous oversight of the Framework. This includes the ability to monitor emerging risks, assess cybersecurity and data governance practices, review the role of third-party service providers, and identify patterns of consumer complaints or operational failures. Effective supervision should not be limited to reviewing annual reports or responding after harm has occurred. It should be proactive and capable of detecting issues before they result in significant consumer harm.

Transparency will also be important for promoting accountability and building public confidence. The BoC should publicly communicate its supervisory expectations, common compliance deficiencies, and examples of good practices. Public reporting of this nature would help participating entities understand expected standards, support consistent compliance across the ecosystem, and give consumers confidence that the Framework is being actively monitored.

The Act allows the Minister to designate a provincial agency or department to supervise certain provincial financial institutions.[5] Where supervisory responsibilities are delegated or shared with

[5] Act, s. 124(1).

provincial authorities, strong coordination will be essential. Consumers should receive consistent protection regardless of whether an entity is supervised federally or provincially. To achieve this, the BoC and provincial authorities should establish clear coordination mechanisms, including information-sharing arrangements, common supervisory expectations, and processes for addressing cross-jurisdictional risks. Harmonized supervisory standards are necessary to preserve the coherence of the Framework and ensure that consumers benefit from strong, consistent protections across Canada.

The Framework should also clarify how enforcement responsibilities will be coordinated. The Act contemplates information-sharing and supervision agreements between the BoC and provincial authorities,[6] but it does not explain how regulators will coordinate where misconduct crosses jurisdictional lines or involves multiple participants. The Framework should set out clear processes for sharing information, coordinating investigations, and allocating enforcement responsibility.

F. Consumer Consent and Corporate Changes

The Regulations require a participating entity to renew a consumer's express consent where there has been a significant change to the consumer's circumstances or the participating entity that would reasonably call into question whether the consumer would provide consent.[7] FAIR Canada supports this requirement. Ongoing consent is essential because consumers authorize access to sensitive financial data and may not fully appreciate how changes in a participating entity's business, ownership, operations, or data practices could affect their rights and pose risks.

However, the Regulations or guidance should clarify what constitutes a "significant change." Without further guidance, participating entities may interpret the requirement inconsistently or too narrowly, resulting in consumers not being asked to renew consent in circumstances that materially affect how their data is handled. To promote consistent application and reduce ambiguity, the Regulations or guidance should include examples or a non-exhaustive list of circumstances that automatically trigger renewed consumer consent. These triggering events should include, at a minimum: mergers, acquisitions, amalgamations, or other changes in ownership or control; material changes to the participating entity's business model; an expansion in the purposes for which consumer data is used; changes to key third-party service providers; significant cybersecurity incidents or data breaches; and material changes in data storage, processing, or access arrangements.

Corporate changes warrant particular attention. Before an entity seeks renewed consent, it should inform consumers of changes in ownership or control of the entity that holds or accesses their financial data, especially where the change results in data being stored or accessed outside Canada. Consumers should have sufficient information to decide whether to continue sharing their financial data with the participating entity after the transaction. Consumers should receive plain-language disclosure explaining the nature of the corporate change, how it affects the handling of their data, whether new affiliates or service providers will have access to their information, and whether foreign laws or limits on Canadian regulatory oversight could affect their rights.

[6] Act, s. 124(3).
[7] Regulations, s. 44(1).

G. Data Deletion

The Regulations should establish stronger, more consumer-protective requirements for deleting consumer data, particularly when an entity ceases to participate in the Framework. Under the Regulations, a former participating entity must inform consumers that they must request deletion if they do not want the entity to continue retaining their data.[8] FAIR Canada is concerned that this approach places too much responsibility on consumers at precisely the point when protections should be strongest.

When an entity exits the Framework, consumers may reasonably assume that their data will be deleted. Many consumers may not understand that their data remains in the possession of a former participant unless they take affirmative steps to request deletion. Others may miss the notice or misunderstand its significance.

In our view, the default rule should be that a former participating entity must delete consumer data within a prescribed period after it ceases to participate in the Framework, unless the consumer provides renewed, express consent to continued retention or retention is required by law. This would better reflect the sensitivity of the data involved and the importance of ensuring that consumers retain control over their financial information.

The Regulations should also require former participants to provide periodic reminders to consumers when data is still retained. These reminders should clearly state that the entity is no longer a participant in the Framework and that the consumer may request deletion of their data. Ongoing reminders would help ensure that consumers remain aware of their rights and that continued retention does not occur simply because a consumer missed or misunderstood a single notice.

The Regulations should also strengthen the requirements for deletion confirmation. The Regulations provide that where a consumer requests deletion and the participating entity is unable to delete the data, the entity must provide written reasons as soon as feasible. If the data is being retained temporarily to comply with a legal requirement, the entity must inform the consumer when the data can be deleted and confirm that deletion will occur without the consumer having to make another request.[9] FAIR Canada supports this approach, but it does not go far enough.

Consumers should also receive written confirmation once deletion has actually been completed. Confirmation is important because consumers should not be left uncertain about whether their sensitive financial data remains in an entity's possession. A confirmation requirement would promote accountability, create a clear record of compliance, and provide consumers with assurance that their request has been fully acted upon.

H. Consumer Liability

The Act appropriately limits consumer liability for financial loss arising from the loss of, unauthorized access to, or unauthorized use of their data, unless the consumer has demonstrated

[8] Regulations, s. 31(d).
[9] Regulations, s. 45(2).

gross negligence (or in Québec, gross fault) in safeguarding their authentication information.[10] FAIR Canada supports this high threshold. Consumers should not bear responsibility for losses resulting from unauthorized access to or misuse of their financial data unless their own conduct clearly warrants such a result.

The Regulations require participating entities to advise consumers of "reasonable measures" they can take to safeguard their authentication information.[11] The Regulations or guidance should clarify what constitutes "reasonable measures." Without further guidance, participating entities may apply inconsistent standards or place unrealistic expectations on consumers.

Any guidance should assess reasonable measures from the perspective of an ordinary consumer, not a financial institution, technology provider, or cybersecurity expert. Reasonable steps may include keeping authentication information confidential, using strong passwords, enabling multi-factor authentication, and promptly reporting suspected unauthorized access. Participating entities should communicate these measures prominently and in plain language.

I. Fraud Prevention and Consumer Awareness

The Act prohibits any individual or entity that is not a participating entity from holding itself out as part of the Framework and establishes penalties for contraventions.[12] However, the Framework should go further by establishing clear measures to identify and deter entities that falsely claim accreditation or otherwise misrepresent their participation in the Framework. This risk may be especially acute where bad actors operate from outside Canada, where enforcement and consumer recovery may be more difficult. The Framework should include mechanisms to detect false claims of participation, respond quickly to misleading representations, and alert the public where necessary.

Participating entities should also play a role in supporting fraud prevention. They should be expected to monitor for impersonation, misuse of their names or brands, and other unauthorized use of credentials by non-participants. This would help protect consumers from scams, preserve the reputation of legitimate participants, and maintain public confidence in the Framework.

Consumer awareness and understanding will also be critical to the Framework's success. Consumers should receive clear, accessible guidance explaining how the Framework works, what benefits and protections it provides, and how they can verify whether an entity is an accredited participant before sharing financial data. Public-facing materials should also explain common fraud risks, warning signs of impersonation, and the steps consumers can take if they suspect that an entity is falsely claiming to participate in the Framework.

J. Timeliness Requirements

Several provisions in the Regulations require participating entities to act "as soon as feasible." For example, a participating entity must initiate the consent renewal process as soon as feasible after becoming aware of a circumstance that triggers renewed consent.[13] Similarly, where a

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[10] Act, s. 103(1).
[11] Regulations, s. 52(b).
[12] Act, ss. 170 and 174.
[13] Regulations, s. 44(2).

participating entity does not delete consumer data after a deletion request because deletion is prohibited by law or otherwise not required, it must notify the consumer as soon as feasible.[14]

FAIR Canada is concerned that this standard may create uncertainty for consumers and participating entities. Without clearer expectations, entities may interpret "as soon as feasible" differently, leading to inconsistent practices across the Framework. We recommend that, once the Framework is operational and regulators have gained practical experience administering it, prescribed timelines be established for key consumer-facing obligations, such as consent renewal and responses to data deletion requests. Clear timelines would promote consistency, improve accountability, and ensure that consumers receive timely information.

K. Safeguards Against Data-Driven Consumer Harm

Consumer-driven banking significantly expands the capacity of participating entities to collect and analyze highly granular financial data. By aggregating information from multiple accounts, institutions, and financial relationships, participating entities can gain a more complete picture of a consumer's financial circumstances than any single provider would ordinarily possess. This increases the risk that consumer data will be used to develop behavioural profiles, engage in manipulative marketing, or steer consumers toward products and services that advance commercial interests rather than consumer welfare. Additionally, participating entities may offer tools and services that resemble financial advice without being subject to the corresponding regulatory obligations. Clear safeguards are therefore needed to ensure that data is used to benefit consumers rather than to exploit informational asymmetries or influence consumer decision-making in harmful ways.

Access to comprehensive financial data may enable participating entities to develop detailed behavioural profiles and deploy sophisticated marketing practices. By identifying a consumer's financial vulnerabilities, spending habits, or decision-making tendencies, firms may be able to target consumers with personalized offers designed to maximize commercial outcomes rather than improve consumer well-being.

Consumer-driven banking may also increase the risk that consumers perceive tools or services as financial advice, even though they are not subject to the corresponding regulatory obligations. Some participating entities may offer tools that analyze a consumer's financial data and suggest actions such as consolidating debt, changing investment contributions, or purchasing financial products. In a consumer-driven banking environment, this risk may be heightened because participating entities can access and analyze a more thorough picture of a consumer's financial circumstances than would typically be available to a single provider. Even where these services are framed as education or automation, consumers may be more likely to experience them as personalized advice, given the breadth and detail of the financial information on which they are based.

Although the Act requires express consent and disclosure regarding the intended use of consumer data, these measures alone are unlikely to adequately protect against manipulative or conflicted uses of that data. Although existing legal and regulatory frameworks, including privacy laws, securities laws, consumer protection laws, and conduct requirements applicable to regulated

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[14] Regulations, s. 45(2).

firms, may help address some of these risks, they were not designed specifically for a consumer-driven banking environment characterized by large-scale data aggregation and highly personalized digital interactions.

The Framework should therefore include explicit safeguards governing the use of consumer financial data. Participating entities should be prohibited from using consumer data to engage in manipulative practices or to advance their commercial interests when doing so would reasonably be expected to cause consumer harm. The Framework should also require clear and prominent disclosures where tools or other outputs are not personalized financial advice, and should prohibit participating entities from presenting such outputs in a manner that could reasonably lead consumers to believe they are receiving tailored advice. Such protections would complement, rather than replace, existing legal and regulatory requirements.

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Thank you for considering our comments on this critical issue. We appreciate the opportunity to share our perspective and help shape policies that put consumers first. We welcome ongoing dialogue and collaboration with the Department of Finance Canada and other stakeholders on the consumer-driven banking framework. If you would like to discuss our submission further, please reach out. We are committed to working together to support better outcomes for consumers.

Sincerely,

Jean-Paul Bureaud
President, CEO and Executive Director
FAIR Canada | Canadian Foundation for the Advancement of Investor Rights