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OPEN FINANCE – FSCA POLICY RECOMMENDATIONS

MARCH 2024

Contents

1. EXECUTIVE SUMMARY

The legislated responsibility of the Financial Sector Conduct Autority (FSCA) is to enhance the efficiency and integrity of financial markets, promote fair customer treatment by financial institutions, provide financial education and promote financial literacy, and assist in maintaining financial stability.It therefore has a crucial role to play in ensuring appropriate risk mitigation by financial institutions and service providers that participate in the Open Finance ecosystem.

This Open Finance – *FSCA Policy Recommendations 2024* report (Open Finance Policy 2024) outlines the FSCA's policy approach regarding Open Finance.In doing so, it reflects the comprehensive stakeholder engagement that has taken place since the publication of the FSCA's *Draft Position Paper on Open Finance* in 2023 (*Draft Position Paper*), incorporating comments received on that paper and submissions made in terms of the October 2023 Information Request.

The FSCA continues to support mandating Open Finance in future, noting that the foundational Open Finance Programme of Work will likely need to take place in preparation to optimise the value to be derived from Open Finance and mimimise market disruption.

The policy recommendations contained in this document can be summarised as follows:

- **Recommendation 1 –** Participants in Open Finance should be regulated, and a mandatory approach implemented.
- **Recommendation 2 –** Participants in Open Finance should be licensed and regulated.
- **Recommendation 3** – A suitable data-protection and consent framework must be put in place.
- **Recommendation 4** – Appropriate risk management and disclosure frameworks must be developed.
- **Recommendation 5** – Data protection and sharing standards must be developed.
- **Recommendation 6** – Consumers must have access to information and recourse mechanisms.
- **Recommendation 7 –** An Advisory Group for Open Finance comprising industry participants and other experts, should be established.

As this document is the culmination of a comprehensive process that the FSCA started in 2020, a brief background and introduction is provided, as well as definitions of Open Finance, Open Banking and the data-sharing ecosystem. We covered policy considerations and risks, and publish the list of respondents and proposed programme of work in Annexure B and C.

The FSCA thanks stakeholders for their constructive and high-quality feedback and reiterates its commitment to continue collaborating with relevant regulators and industry to enable a safe and secure Open Finance environment for consumers and market participants.

2. BACKGROUND AND INTRODUCTION

This document is the culmination of a comprehensive process which started in 2020 with the FSCA's *Regulating Open Finance Research and Consultation Paper*[1]. The research paper reviewed the local as well as international Open Finance landscape.

In 2021, the FSCA held two public workshops. The first workshop focused on (i) consent, (ii) customer protection, and (iii) dispute resolution mechanisms. The second workshop later that year focused on (i) data-sharing standards, (ii) commercial models and (iii) data protection. With the further insights and inputs gained from the consultations, the FSCA went on to develop the *Draft Position Paper on Open Finance* which was published in 2023.

This in turn was followed by the *Information Request No 2 of 2023* in October 2023[2] which led to yet more consultation and more submissions from financial sector role players.

This document, the *2024 FSCA Open Finance Policy Recommendations report*, reflects the comprehensive stakeholder engagement that has taken place since the publication of the FSCA's *Draft Position Paper on Open Finance*[3] in 2023 (*Draft Position Paper*), incorporating comments received on that paper and submissions made in terms of the October 2023 *Information Request*.

As stakeholder submissions informed the policy recommendations herein, we gladly acknowledge the entities that submitted comments, suggestions and recommendations, as listed in Annexure B.

By encouraging consent-based sharing of customers' financial data with third-party providers, Open Finance offers potential benefits such as increased competition, innovative financial services and enhanced value for customers.

These benefits are, however, not free from risk. In practice, customers have limited control over how third parties share, use, or handle their credentials and data – this exposes them to numerous risks, for example data privacy breaches, breaches of contractual agreements, and fraud.

Data sharing is already taking place across the sector, and is likely to grow as financial institutions and fintechs adapt their business models to the opportunities of big data.

Seeing that there is, at present, no tailored regulatory framework for financial institutions already participating in the emerging Open Finance ecosystem in South Africa, it means that risks deriving from data-sharing and data-use are not being specifically addressed.

[1] https://www.fsca.co.za/Documents/Regulating%20Open%20Finance%20Consultation%20and%20Research%20Paper.pdf

[2] FSCA Information Request 2 of 2023 (General), https://www.fsca.co.za/Notices/FSCA%20Information%20Request%202%20of%202023%20(GENERAL).pdf

[3] https://www.fsca.co.za/Regulatory%20Frameworks/FinTechDocuments/Draft%20Position%20Paper%20on%20Open%20Finance.pdf

The situation is exacerbated by the fact that most most third-party providers are not licensed as financial institutions. Third-party providers, therefore, fall outside of the FSCA's regulatory framework.

It is, however, important that any legislative regulatory intervention maintain an appropriate balance between enabling and supporting Open Finance and mitigating the associated risks in a proportional yet robust manner.

As noted in the *Draft Position Paper*, the FSCA is but one of the regulatory role players. It contributes towards the national policy debate, within its defined market conduct parameters, through the Intergovernmental Fintech Working Group (IFWG) and Open Finance Integration Working Group (OPI WG).

3. UNDERSTANDING OPEN FINANCE, OPEN BANKING AND THE DATA SHARING ECOSYSTEM

As with any framework, definitions are critical to ensure that there is a common understanding of the subject matter.

In the *Draft Position Paper*, the FSCA described Open Finance as "the practice of consent-based financial data sharing and payment initiation with suitably authorised third parties, safely and ethically".

Globally, there is no general consensus on the definition of Open Finance. Table 1 provides examples of descriptions used in the international community.

Table 1: Open Finance descriptions

Institution	Description
Consultative Group to Assist the Poor (CGAP)	Open Finance is the sharing of consumer data from banks and financial services providers (FSPs) with other FSPs and/or TPPs, such as fintechs, with the consent of the customer. Although payment initiation is often introduced in the same legislative framework as Open Finance, it is not essential to the functioning of Open Finance and, therefore, is not part of the definition[4].
Bank of International Settlements (BIS)	Open Finance allows financial services to be provided through third parties with potential competitive advantages regarding: (i) the reach of their current network of users. (ii) the trust that the public already places in them for the management of their information; and (iii) the convenience and familiarity of their user base, thanks to a simplified and intuitive user experience[5].
Organisation for Economic Co-operation and	Open Finance could be described as the next stage in the evolution of Open Banking data sharing arrangements. Building on existing frameworks, Open Finance expands data access and sharing to data

[4] CGAP (2023), "*Combining Open Finance and Data Protection for Low-Income Consumers*", available here.
[5] BIS (2020), "*Enabling Open Finance through APIs*", available here.

Development (OECD)	sources beyond payment data while also including other areas of financial activity[6].
Think Tank European Parliament	Open Finance describes an environment in which providers licensed through the European Union "'s (EU) Payment Services Directive (PSD) gain access to a customer's data, with prior consent, to design, offer, and monitor alternative financial products. It extends Open Banking and the associated payments data sharing regime but falls short of an open data regime in which non-financial sectors would share and, in turn, draw on financial data[7].

In formulating a definition, the FSCA has taken into consideration the need to ensure general alignment with the terminology used by international standard-setting bodies and the international community.

Accordingly, the following working definitions are now proposed, subject to further engagement and refinement:

Open finance means the practice of financial institutions sharing their financial customer's financial data with third parties, subject to that customer's full consent, for the provision of open finance services by those third parties, and any activities connected therewith.

Open finance service refers to a service/s developed for a financial customer by using that customer's financial data, which rely on the provision and movement and/or use of that customer's data.

The proposed definition of Open Finance will include Open Banking, which is a model that enables Third Party Providers (TPPs) access customer data to facilitate banking transactions and aggregate banking information. Open Finance is therefore regarded as an evolution of Open Banking and extends beyond payment initiation for a broader scope of financial products and consumer services like insurance, credit, pensions, and wealth management.

It is also important to understand how the FSCA views the broader data-sharing ecosystem, including the actors in the ecosystem. Box 1 provides more context in this regard, while Figure 1 provides a visual summary of how data flows in an open-finance environment.

[6] OECD (2023), "*Open Finance policy considerations*", available here.
[7] Think Tank European Parliament (2023), "*Open Finance: What can an enabling framework look like?*", available here.

Box 1: Key entities and data sharing ecosystem in Open Finance

DATA SUBJECT

The Protection of Personal Information Act, 2012 (Act No.4 of 2012) (POPIA) defines a data subject as "*the person to whom person information relates*", where the definition of personal information is explained in Section 1, "**personal information**".

DATA HOLDER

A data holder stores the financial information of data subjects. This includes financial institutions as well as government agencies. From this, it is clear that data holders have data scattered in several storage managers where each data holder has its own standard. There is usually no consensus among data holders. Therefore, a relevant starting point for any potential data sharing Open Finance initiative is to standardise and harmonise data holders' methods of collecting data from repositories and associated services.

DATA USER

Data users are financial institutions or TPPs that would like to access data subjects' primary financial data, e.g., loan fintechs, personal finance managers, advisory bots, banks, etc. Their key aim is to provide customised services to the benefit for the benefit of their customers (data subjects).

DATA SHARING ECOSYSTEM

The data-sharing ecosystem is much more complex than the chain from customer to financial institution or TPP. The value chain also includes institutions that function as data intermediaries or aggregators.

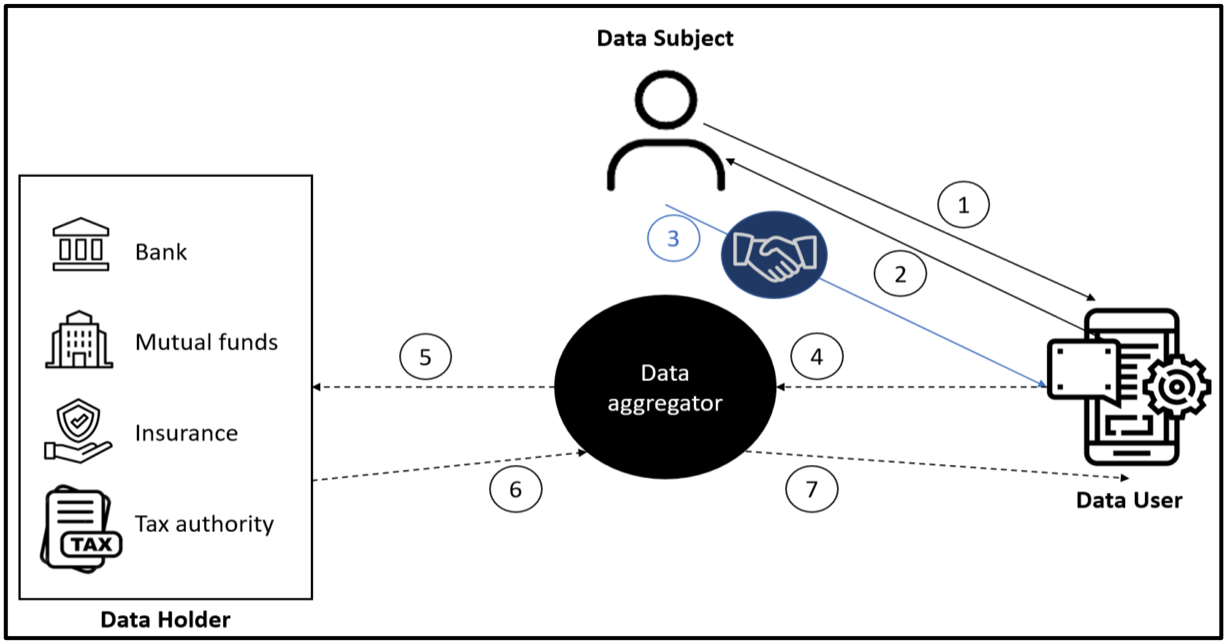
DATA AGGREGATORS

Data aggregators are intermediate technological platforms responsible for managing and transferring data flows between data holders and users. A key function of data aggregators is to develop interoperability between these participants. However, they are only intermediaries and cannot store or redirect the data to unauthorised institutions[8].

The key entities in Open Finance, in the order of their forward data flows, include the customer (data subject), the financial institution (data holder), data aggregator/data intermediary, financial institution/TPP e.g., fintechs (data user).

[8] BIS (2022), "*API standards for data-sharing (account aggregator)*", available here.

Figure 1: Data flow in Open Finance



1. The data subject (customer) requests a financial service from a fintech (data user), for instance, a loan.
2. The fintech processes the request and, within its flow, it requires access to data holders holding user information. The fintech shows the user the list of sources from which they need to add information (banks, insurance companies, government agencies, and others).
3. The data subject consents (providing an authentication factor) to access the data from the requested sources.
4. The fintech app connects to its back-end server, which has a secure, private, and encrypted connection to the data aggregator. The back-end server sends the query request to the aggregator, to whom it then provides meta-data, which guarantees that the data subject has consented.
5. The data aggregator validates the received data. It then proceeds to consume the Application Programming Interfaces (APIs) of all the data providers involved.
6. The data holders respond to the data aggregator. The aggregator proceeds to consolidate the data received.
7. The data aggregator responds to the fintech's back-end server with the results obtained.
8. Finally, the fintech can process the financial service offered to the client.

4. POLICY CONSIDERATIONS AND RISKS

Policy considerations and risks related to Open Finance have been thoroughly interrogated in past IFWG[9], FSCA[10] and National Payment System Department (NPSD) publications[11].

The FSCA's 2023 *Draft Position Paper* described the global context, highlighting differences between countries that have fostered a voluntary approach (Columbia, Hong Kong, Japan, Nigeria and the United States) versus those that have opted for a mandatory approach (Australia, Brazil, Chile, the European Union and the United Kingdom) (**see Annexure A**).

The draft Position Paper also gave preliminary insights into the South African experience, exploring how Open Finance can potentially support the strategic objectives of the FSCA[12] by providing benefits like:

- Supporting the financial resilience of customers by improving affordability and transparency of financial products and services, and by creating products and services that make it easier for consumers and businesses to make improved financial choices;
- Improving financial inclusion by augmenting or supplementing traditional data sources; and
- Promoting competition by enabling new market entrants to compete with current incumbents and allowing new entrants to use the available financial data to create personalised products.

To inform its approach towards Open Finance, the FSCA considered the following:

- The extent that Open Finance supports the achievement of the FSCA's objectives.
- The regulatory and institutional parameters currently in place to support Open Finance in the South African context.
- The extent to which Open Finance may be compelling for data holders and sustainably implemented.
- The appetite for Open Finance by consumers and small and medium enterprises (SMEs) and how to optimise their derived value.
- The appetite of innovators to use shared data.
- The consistency of Open Finance benefits.

The legislated responsibility of the FSCA is to enhance the efficiency and integrity of financial markets, promote fair customer treatment by financial institutions, provide financial education and promote financial literacy, and assist in maintaining financial stability.

[9] https://www.ifwg.co.za/IFWG%20Documents/IFWG_Articulating-the-policy-rationale-and-policy-imperatives-for-Open-Finance-in-South-Africa_November-2021.pdf

[10] https://www.fsca.co.za/Regulatory%20Frameworks/FinTechDocuments/Draft%20Position%20Paper%20on%20Open%20Finance.pdf

[11] https://www.resbank.co.za/content/dam/sarb/what-we-do/payments-and-settlements/regulation-oversight/Consultation%20Paper%20on%20open%20banking.pdf

[12] www.fsca.co.za/News%20Documents/FSCA%20 Regulatory%20Strategy%202021-2025.pdf

In support of this assessment, the FSCA considered the United Kingdom (UK) as a case study, showing significant adoption by suppliers and users, and net positive gains (Box 2).

Box 2: Open Finance/ Open Banking UK experience

The UK is an important case study as it was the first country to implement a mandated Open Banking system. In January 2023, 7 million consumers and SMEs used Open Banking services, including 1.2 million new users[13]. Of these users, SMEs range between 14% and 25%[14]. The Open Banking Implementation Entity's (OBIE) March 2023 Impact Report finds that:

- There were 159 fully regulated firms as of December 2022, which has been broadly flat since March of that year.
- The market is dominated by propositions addressing improved financial decision making, expanded payments choice and better borrowing.
- While the availability of services continues to expand, growth is increasingly coming from participants that are not regulated as TPPs, such as agents.
- Adoption continues to grow, with 10-11% of digitally enabled consumers now estimated to be active users, up from 7-8% in December 2021.
- This is surpassed by SME penetration of 16%.
- The split between types of usage is 64% data, 30% payments, with 6% of customers using both.
- SME demand is dominated by data usage and cloud accounting propositions are driving growth.
- In the six months to March 2022 there were 21.1 million Open Banking payments, compared with 6.1 million in the same period of the previous year. Month on month growth is around 10%, with a total of 68 million payments made for 2022 overall.

An earlier 2019 study, "Consumer Priorities for Open Banking[15]", showed that Open Banking has had an impact on financial inclusion in the UK, providing evidence that people "on the margins" (who do not have an account or only have a basic account) will probably pay lower commissions in an Open Banking system, with savings equivalent to 0.8% of their income. In the case of people who are "over-stretched" (who have one or more accounts and are heavily indebted), the study showed that Open Banking allows them to save the equivalent of 2.5% of their income.

A 2021 report however cautions that benefits cited may be over-stated, especially relating to consumers and competition.

The Joint Regulatory Oversight Committee (JROC)[16] - comprising His Majesty's Treasury, the FCA, the Payment System Regulator and the Competition and Markets Authority - has prioritised the following five themes to be progressed over two years:

- levelling up availability and performance
- mitigating the risks of financial crime

[13] Data reported to Open Banking Limited, otherwise known as the Open Banking Implementation Entity (OBIE), which was established by the banks and building society mandated by law to implement Open Banking in the UK – www.openbanking.org.uk
[14] See for example www.statista.com and OBIE reporting (including annual reports and impact reports).
[15] Reynolds and Chidly, 2019, "Consumer priorities for Open Banking," available on www.openbanking.org.uk.
[16] The JROC was established in March 2022 to ensure that open banking supports innovation and drives greater competition, delivering benefits to consumers and businesses in the form of new and improved products and services, as well bringing benefits to the wider economy.

- ensuring effective consumer protection if something goes wrong
- improving information flows to TPPs and end users
- promoting additional services, using non-sweeping variable recurring payments (VRP) as a pilot

The JROC also committed to establishing a new body to replace the OBIE and expand the existing Open Finance framework.

More recently, CGAP shows that the use of gender-disaggregated data in credit scoring in South Africa and Zambia can be used to increase credit for women without increasing credit risk for providers.[17] Evidence from Brazil shows that Open Finance data led Banco do Brasil to raise credit limits by more than 700 million Brazilian real for their customers who were early adopters. Box 2 below reflects the Indian experience.

Academic research assessing the impact of Open Banking is also favourable. For example, studies published since 2019 confirm a positive impact on competition, small business financing, faster mortgage application times and customer centricity.[18]

Box 3 :Open Finance / Open Banking India experience[19]

Findings in India are impressive. Driven by the Reserve Bank of India's regulated Account Aggregator Framework, every Indian manages on average four financial accounts across financial sectors. The Account Aggregator Framework places the control and agency of "Data Capital" in the hands of consumers. Through consent managers, known as Account Aggregators (AA), consumers consent to the purpose, extent, and duration of data sharing with a chosen financial services provider in a secure, digital manner.

Four hundred financial institutional integrations span four key financial sector regulators, including the Reserve Bank of India, Securities & Exchange Board of India, Insurance Regulatory and Development Authority of India. These together with the Pension Fund Regulatory and Development Authority, the Department of Revenue, and Ministry of Finance, are active on the AA network. They empower over 1.94 billion financial accounts, constituting 56% of the total in India, to share data through the Account Aggregator framework. Over 34 million accounts have

[17] These country results of Zambia, South Africa and Brazil derive from a March 2024 Blog "*Open Finance Can Reduce Financial Inclusion Gaps: Here's How*", by Maria Fernandez Vidal and Sophie Sirtaine, that forms part of CGAP's Blog Series and Leadership Essay Series.

[18] Refer to the following illustrative publications:

- He, Huang and Zhou (2023) *Open banking: Credit market competition when borrowers own the data*
- Fang and Zhu (2023) *The impact of open banking on traditional lending in the BRICS*
- Vives (2019)
- Fuster et al., 2019; Gopal and Schnabl, 2022; Tang, 2019
- Gozman et al., 2028; *Open Banking Emergent Roles, Risks & Opportunities*
- Zandamela (2021) :*The benefits of Open Banking to Consumers, Banks and Fintech companies*
- F Data North America (2022*) : Opportunities in Open Banking*

[19] These findings derive from a report prepared by the DigiSahamati Foundation (Sahamati) in January 2024, *"Growth of the AA Ecosystem in 2023."* Sahamati is a member-driven industry alliance formed to promote and strengthen the Account Aggregator ecosystem in India.

already been linked, representing 1% of the total financial accounts. Consumers are sharing their data to access loans, securities, insurance, and advisory services.

Adoption of account aggregators is expected to have a multiplier effect on the growth of the financial sector – the following data reflects developments over 2023:

- 120-140 billion Indian Rupees worth of credit was disbursed till December 2023, utilizing data via AA for underwriting.

- Over 40% of the loans disbursed targeted Medium Small and Micro Enterprises (MSMEs), significantly reducing the credit gap in this crucial sector.
- A prominent private sector banks achieved a 25% reduction in application process costs by seamlessly incorporating Account Aggregators into their procedures.
- Lenders have reported zero fraud rates on bank statements shared via the Account Aggregator framework, streamlining processes and enhancing overall speed and efficiency.
- An investment advisor observed an estimated 60% increase in user engagement as individuals linked their financial accounts via Account Aggregators, fostering continued visibility and better control over their financial planning.

In terms of identifying and considering risks, the FSCA's 2023 *Draft Position Paper* highlighted the risks as summarised in the table 2 below.

Table 2: Open Finance risks

Customers	**Risk**
	Financial exclusion
	Inadequate privacy and protection of personal data
	Low level of financial literacy and awareness compounded by low levels of digital literacy
	Lack of suitable customer recourse channels
TPPs	**Risk**
	Market exclusion, eroding fair competition
	Operational risk and threats to cybersecurity
	Fraud by rogue operators
Financial Institution	**Risk**
	Reputational risk from being associated with rogue operators and fraud
	Limited regulatory oversight and monitoring of TPP activities
	Disintermediation by TPPs
	Changes in competitor business models can compromise competitiveness

5. COMMENTS RECEIVED ON DRAFT POSITION PAPER

The FSCA received 16 submissions from stakeholders across different industry segments (see **Annexure B**). We thank stakeholders for their constructive and high-quality feedback.

A comments matrix with responses will be shared with stakeholders for engagement.

The following is a high-level summary of responses: the FSCA may follow up with commentors for additional insights in support of the proposed Open Finance Programme of Work:

- **Approach to Open Finance:** The majority of respondents prefer a voluntary approach to Open Finance, favouring organic market development and testing the impact of regulator interventions. Respondents believe that ongoing and rigorous stakeholder engagement is necessary before any regulatory obligations can be considered or introduced. Should a mandatory approach to Open Finance be implemented, respondents recommend that the regulator outline a clear plan of action which details the following: the sectors that will be impacted; the dates for roll-out in the various sectors; the benefits, obligations, and costs involved. Such a plan must be shared, using suitable channels, with all market participants. As expected, stakeholder positions are typically linked to their respective roles within the data sharing ecosystem, especially the extent that compelling data sharing is likely to bring them benefits or perceived competition and costs.
- **Customer experience and value should drive design:** Respondents believe that the industry already implements responsible consent and disclosure practices. More research work may be needed to understand how to optimise value-to-customers derived by Open Finance in the South African context. It is also important to identify which market segments are developing more rapidly and what the main drivers of development are. Financial inclusion benefits may rely on improvements in electronic payments for the SME sector.
- **Promoting a competitive landscape:** Respondents support the principle of "same activity, same risk, same rules" and strongly agree with proportionate regulatory oversight. They raised concerns about prioritising or driving Open Finance over Open Data, as this could lead to an unlevel playing field. Some stakeholders emphasised the need to adopt reciprocity principles in data sharing to ensure fairness and transparency. The cost of technology should be carefully considered as this could become an anti-competitive hurdle for smaller institutions, and impede their participation. Respondents suggested that support be offered to smaller entities; this could be through a central data repository that simplifies consent structures (noting, however, that the risks associated with centralisation of data must also be carefully managed).
- **Aligning Open Finance to POPIA and other governing legislation:** Respondents remain concerned about potential duplication with other privacy and data security laws. Consistency with Promotion of Access to Information (PAIA) Act 2 of 2000, Data Governance Framework, Payment Card Industry Data Security Standard (PCI-DSS), must

be prioritised. In addition, respondents recommended that the terminology used in discussions and documents pertaining to Open Finance be aligned with the Protection of Personal Information Act (POPIA) No. 4 of 2013.

- **Liability and accountability framework:** Respondents support a clear liability framework that can foster trust. They favour a flexible approach that permits financial institutions and TPPs to contractually allocate liabilities arising out of data misuse or violation of laws. Certain stakeholders proposed the right to deny access and withhold data from third-party providers, this due to security concerns around unauthorised access. Greater guidance may be needed to outline the liability and accountability of each stakeholder within the value chain. This should complement avenues for complaints and dispute resolution. Stakeholders requested more detail about what the FSCA envisages in this regard.
- **Consumer financial literacy and education:** The discussion about Open Finance in South Africa should consider the country's unique context. Limited financial and digital literacy, including language barriers, could result in exclusionary and exploitative practices. Truly informed consent is not possible without adequate digital and financial literacy.
- **Learning from case studies:** Respondents made reference to various international approaches and also proposed learning from the experience of South African use cases.

Recommendations received from the Information Regulator are highlighted in Box 4. As the Information Regulator is a critical partner in the Open Finance journey, the FSCA will continue to seek its guidance and prioritise alignment with South Africa's privacy laws.

Box 4: Recommendations received from the Information Regulator

Recommendation 1:

(Building on existing POPI Act requirements on Section 11), the proposed framework on giving consent should ensure that when data subjects are presented with the option to share personal information for open finance purposes, a summary of all components that constitute 'informed consent' are incorporated into the framework proposed in the position paper.

This requires (at the very least) a clear outline of how communication about the nature of consent will be rendered, the impact it will have on data subjects, and how to withdraw consent after it is given. Section 11 of the POPI Act bears reference to this and can be used for further referral.

Recommendation 2:

The position paper should detail a requirement to undertake an impact assessment by TPPs. This will help to identify all risks associated with processing personal information of data subjects in open finance, understand how open finance could exacerbate the risk of harm to data subjects and propose measures to mitigate such risk.

Recommendation 3:

The position paper needs to properly dissect Section 22 of the POPI Act on handling security compromises and demonstrate how risks – that are likely to occur due to fraudsters taking advantage of open finance – will be managed. The need for appropriate technical and organisational measures by TPPs to safeguard the integrity and confidentiality of personal information obtained through open finance must be emphasised. It is important to assure data subjects that their personal information will be effectively secured to avoid the replication and even amplification of harm.

Recommendation 4:

The Regulator therefore submits that POPI Act complaints procedures also be incorporated as one of important mechanisms in handling complaints and dispute resolution emanating from an open finance ecosystem.

Recommendation 5:

The position paper should include a strong requirement on TPPs to provide evidence (e.g., through an impact assessment) that any form of algorithmic decision-making does not exploit data subjects' vulnerabilities, biases or information asymmetries.

6. INFORMATION REQUEST No 2 of 2023

During October 2023, the FSCA surveyed industry participants to garner insights regarding the uptake, usage, and practices by financial institutions and TPPs that participate in Open Finance related activities in South Africa.[20] More than 400 submissions were received[21] in response to the FSCA's *Information Request No 2 of 2023*.

Initial assessment of the response data reveals a wider and deeper spread of Open Finance activities than anticipated. It shows an Open Finance regime in early stages of development, but making in-roads.

Around 50 financial institutions claim to generate more than 5% of revenue from Open Finance activities.

A small number of entities generate above 5% of revenue from Open Finance and have total annual revenue (from all business lines) of more than R1 billion; these include a bank and an insurer. Of this group, one entity does only one Open Finance activity (namely payments) while the rest of the entities do multiple Open Finance activities.

Most entities target the retail market, with payment activities being the most popular. Other popular services are insurance, lending/borrowing, and know-your-customer (KYC).

There are entities that focus on the corporate market and these provide services related to account aggregation, financial management and financial planning. The well-established entities offer mixed tools to grant, track and withdraw consent, but mainly employ consent management dashboards.

Responses from banks show that income generated from Open Finance activities vary considerably, while the number of contracts with third-party providers is mainly between 1 and 10, and 11 and 50. Some banks have already developed APIs. None of the insurers that responded have developed APIs.

The range of services offered by non-financial institutions was also notable, varying by target market, product demand and earnings. Most respondents confirmed that more data would be made available if there was an open API developed, but views on whether it would save on costs were mixed.

It appears that various risk management and customer protection frameworks are being employed, suggesting a willingness towards responsible Open Finance. A maturing market will need increased consistency in use and application of these frameworks.

The FSCA commits to engaging further with respondents regarding their business models and views relating to Open Finance, going forward. A report detailing the findings from the October 2023 Information Request will be published and workshopped with stakeholders in due course.

[20] Where a financial institution contracts with a TPP to provide Open Finance Services to its financial customers, the financial institution was requested to convey the Information Request to such contractors, for their submission. This was done with mixed effectiveness and the FSCA will be following up with financial institutions and TPPs in this regard.
[21] Only financial institutions and TPPs that participate in Open Finance were required to complete the survey. However, the high response rate suggests that some regulated persons, mainly FAIS FSPs, may have nonetheless responded to the Information Request even if not an Open Finance market participant.

7. FSCA OPEN FINANCE POLICY RECOMMENDATIONS

The FSCA aims to promote responsible Open Finance and recommends the following:

- **Recommendation 1 – Regulated Open Finance regime**

Persons participating in Open Finance should be regulated for the safe and ethical sharing of user consent-based financial data to TPPs. Supporting voluntary adoption is proposed as a first step, with protective measures outlined below (**Proposals 2 – 6**).

Subject to ongoing engagement with the Prudential Authority (PA) and the South African Reserve Bank (SARB), and guidance from the anticipated Open Finance Advisory Group, a mandatory approach is proposed over the longer term, with phased implementation. It will require careful consideration of complexity and costs. Factors to be considered in the design of a mandatory Open Finance regime include:

  - Which entities are required to share data? Is data portability considered a right for all customers or are only large entities compelled to share?
  - Who can access the data and for what purpose?
  - What types of data are shared?
  - Which sectors are covered? Does it cover only banking or are other financial institutions like insurance and asset managers also included?
  - Who bears the cost of the regime, including for the consumer consent, data exchange and the set-up of the relevant infrastructure?
  - Is the data sharing reciprocal?
  - What is the distinction between primary vs value added customer data?

- **Recommendation 2 – Tailored and proportionate regulatory oversight over participants in Open Finance**

Three types of participants are identified for regulatory oversight, being financial institutions, TPPs and other service providers. On the principle of *same activity, same risk, same rules,* entities that provide financial products and services should be licensed and regulated for such, even if not a traditional financial institution. Consideration will be given how to suitably oversee entities that participate in Open Finance but do not provide financial products or services.

The need for proportionate requirements to foster positive competition and customer outcomes is emphasised.

- **Recommendation 3 – Explicit informed consent when using customer data**

A suitable data protection and consent framework is integral to a fair and trusted Open Finance regime. Comprehensive consent requirements provide a greater level of control for the financial customer. The FSCA believes that increased control will assist in preventing unfair outcomes that may arise when using innovative technologies through the sharing of financial customer data.

A request for consent should clearly convey the information through the user interface in a customer-centric manner, allowing for explicit informed consent. However, overly complex consent processes are also a challenge, as providers may combine a comprehensive amount of information in the consent form to mitigate regulatory and legal risk.

The FSCA proposes the following principles to obtain and maintain consent:

- Consent by a customer for the collection and use of data should not be conditional on obtaining other bundled products and services unrelated to the initial purpose.
- The consent should be clear and distinct, not aggregated with other consent agreements or permissions.
- Customers should freely and voluntarily give and withdraw consent.
- Consent should be informed and specific to the purpose for which it is given.
- Consent should not be indefinite and it should be easy for a customer to withdraw consent.
- Providers may not continue to share or utilise consumers' data once consent is withdrawn.
- The consent message should clearly identify the risks to consumers.
- Consumers should be informed of how their specific financial data will be used and for how long, in line with the POPI Act.[22]

The FSCA will engage the sector in developing these standards, taking into account existing applicable requirements in the POPI Act and other applicable laws.

- **Recommendation 4 – Development of appropriate risk management and disclosure frameworks**

Leveraging customer financial data must be done in an ethical and responsible manner to limit customer exposure to privacy violations (through misuse of their data) and fraud. Innovation must therefore be balanced by suitable risk management and disclosure frameworks that take into account the knowledge and awareness of the target market.

Consideration should be given to designing a fair and transparent liability framework. This is important to foster legal certainty, accountability and trust. The FSCA proposes a flexible approach, envisaging that financial institutions and TPPs may contractually allocate liabilities relating to data misuse and the violation of laws related to obtaining and managing consumer consent.

The FSCA will engage the sector in developing these standards, taking into account existing applicable requirements and the COFI Bill[23].

- **Recommendation 5 – Development of data protection and data sharing standards**

Data sharing should be secure and standardised, to minimise friction, strengthen data quality, and promote interoperability between market actors. The FSCA proposes the development of agreed API standards, that must be met for sharing information in the Open Finance system.

[22] Acknowledging the existing protection of the POPIA, any intervention by the FSCA should align to that Act, avoiding duplications.
[23] The FSCA is considering how certain COFI Bill requirements may be implemented in terms of the existing legal framework, to support a phased transitioning.

Standardisation of information will allow the creation of an ecosystem that facilitates the connection of third-party providers and financial institutions, without having to develop interfaces for each case.

The Open Finance model will then be more scalable and have the flexibility to implement new developments. It is envisaged that these standards be embedded in law, although voluntary adoption may be a first step.

Matters for consideration in the open API design include:

- Optimising openness, usability and interoperability, leveraging existing standards and taxonomies where possible.
- Promoting API independence, insofar as avoiding dependency on any vendors or technologies.
- Promoting stability and transparency.
- Developing an approach towards data reciprocity between data holders

- **Recommendation 6 – Consumer awareness and recourse mechanisms**

Consumers will need to be educated about the purpose of and opportunities in Open Finance, in order to derive value and drive market development. However, they should also be empowered to hold Open Finance providers accountable. For consent and disclosure frameworks to be effective, consumers must understand the dangers of Open Finance. This will require targeted education initiatives by both the FSCA and market participants.

Consumers should also have access to fair and reasonable complaint and dispute resolution mechanisms, aligned to the liability framework. Financial institutions have existing requirements in respect of complaints, as provided by the relevant financial sector laws. The. The FSCA is also developing a harmonised complaints framework under the CoFI Bill, that will apply to all financial institutions and in respect of all licensed activities.

If a complaint cannot be resolved by a financial institution, the relevant Ombud scheme will apply (as per the use case and therefore the relevant licenced activity). Where a dedicated voluntary Ombud scheme does not exist in respect of the specific use-case, the statutory Ombud (FAIS Ombud) will be the appropriate avenue for external complaints resolution, until the National Treasury reforms are fully implemented.

- **Recommendation 7 – Establishment of Open Finance Advisory Group**

In executing its commitments towards Open Finance, the FSCA sees considerable value in leveraging sector insights and expertise. It therefore proposes the establishment of an Open Finance Advisory Group, comprising industry participants and other experts.

The responsibilities of the Advisory Group will include supporting the FSCA and other relevant regulators in relation to the Open Finance Programme of Work.

The FSCA will engage the Competition Commission to ensure that the Advisory Group upholds principles of competition and contestability and complies with South Africa's competition laws.

8. PROGRAMME OF WORK GOING FORWARD

The FSCA will hold a series of engagements and workshops with stakeholders to further unpack submissions made to date, in support of the following Programme of Work[24]: :

- Developing open APIs standards.
- Developing suitable consent, risk management and disclosure frameworks.
- Promoting the voluntary adoption of responsible Open Finance in support of positive customer outcomes.
- Developing a common view of use cases that could be prioritised in a mandatory regime, with considerations of impact and a suitable implementation roadmap.
- Assessing the legal framework for weaknesses and gaps, to inform how it may be strengthened.
- Building knowledge and awareness of responsible Open Finance in the sector, and seeking insights relating to what the sector expects from the regulator.
- Empowering consumers to respond to opportunities and risks in Open Finance.
- Institutional arrangements between all relevant/ impacted regulators.
- Developing the enabling environment and infrastructure such as sandbox environments, open finance directories, monitoring and data collection.

The FSCA Open Finance Programme of Work is likely to evolve as the market and the FSCA's understanding of the market matures. The programme is also subject to further discussion with market participants seeing that the FSCA plans to hold a series of engagements and workshops with stakeholders to further unpack submissions made to date.

Once the Open Finance Advisory Group has been established (as per Recommendation 7), the FSCA will engage with the group for guidance and advice.

[24] Refer Annexure C below for more specific details regarding the proposed Open Finance roadmap

9. ANNEXURE A: OPEN FINANCE APPROACH ACROSS VARIOUS JURISDICTIONS

Voluntary approach – Open Finance/ Open Banking in Singapore, the US, and Nigeria[25]

Singapore follows a voluntary approach to Open Finance with the Monetary Authority of Singapore (MAS) playing an active enabling role. The regime covers the banking, insurance, and payments industries and was initiated to provide a market environment that would reduce barriers to entry for innovators such as fintechs. Licensed TPPs can access the data according to private agreements entered into with financial institutions.

APIs are standardised by MAS and the cost is borne by the regulator and all parties (TPPs) and financial institutions, who pay fees to utilize the APIX sandbox set up for this purpose. MAS fulfills the role of implementing agency. It has created an API Playbook to set out the rules for participation, as well as a Finance Industry API Registry. The Personal Data Protection Commission is also an active participant, given the role of the Personal Data Protection Act in the enabling environment for Open Finance.

In Nigeria, the Central Bank of Nigeria published a regulatory framework for Open Banking in 2021, which aims to facilitate Open Banking. Banks are not mandated to participate in the Open Banking regime, but once they opt to participate, they will need to comply with the data sharing and API standards being developed by Open Banking Nigeria. The regulatory framework provides a risk management maturity level and data services access levels that determines who can access certain types of data. The participants need to comply with different requirements depending on which type of data they want to access.

In the US there are no regulatory standards around APIs and financial data sharing. Various private sector initiatives are driving the adoption of Open Banking and APIs. For example, the Clearing House Payments Company created a Model Agreement that banks and TPPs can use as a guide in developing API-related data-sharing agreements; the FDX has aligned its member institutions in adopting a standard Open Banking regime; the National Automated Clearing House Association (NACHA) and the Financial Services Information Sharing and Analysis Center (FS-ISAC) have also developed APIs to enable the safe transfer of data between parties.

Mandated approach- Open Finance/ Open Banking in Brazil, the United Kingdom, and European Union[26]

The European Union implemented a mandatory version of Open Banking in September 2019 with the aim to increase pan-European competition and level the playing field. It covers the whole banking and payments industry across the European Union. The regime was implemented under the auspices of the European Commission and the European Banking Authority, with the latter established as the implementation agency. It is established across three regulatory frameworks: Payment Services Directive 2 (PSD2), the Regulatory Technical

[25] https://www.fsca.co.za/Regulatory%20Frameworks/FinTechDocuments/Draft%20Position%20Paper%20on%20Open%20Finance.pdf

[26] https://www.fsca.co.za/Regulatory%20Frameworks/FinTechDocuments/Draft%20Position%20Paper%20on%20Open%20Finance.pdf

Standards on Strong Customer Authentication (RTS-SCA), and the General Data Protection Regulation. APIs are not standardised and banks as mandated financial institutions bear the cost for the implementation of the regime in each country, as well as for creating their own APIs.

In the UK, in 2017 the Competition and Markets Authority ordered the nine largest banks to share their customer data with licensed TPPs. The main driving force was the need to mitigate anti-competitive behaviour among those large banks. The Financial Conduct Authority (FCA) plays a lead role alongside the Competition and Markets Authority. The banks were sanctioned for anticompetitive behaviour and were required to participate in the open banking regime as a penalty. The Open Banking framework and participation in it aimed to prevent and rectify the adverse effects on competition in the banking industry. After the banks were ordered to share their data, they were consulted in the setting of the rules of the regime. An Open Banking Implementation Entity (OBIE) was set up to create software standards and industry guidelines for open banking. The regime was modelled on the three core EU regulatory frameworks: the PSD2 was transposed into the Payment Services Regulations 2017, the RTS-SCA became the UK Regulatory Technical Standards (UK-RTS), and the GDPR. APIs are also standardised by the OBIE.

Brazil implements its version of Open Finance in 2021. The regulations establish that the measure is mandatory for the 12 main banks in Brazil, which are part of the largest financial conglomerates, as well as all authorized payment entities in the country. Participation is voluntary for all other financial institutions in the system (small banks, cooperatives, fund managers, etc.; subject to reciprocity in data sharing for all actors), and provided they have the technical requirements of API data transmission and are registered in the participant directory. Finally, the Central Bank has the authority to make participation mandatory for other institutions.

10. ANNEXURE B: LIST OF RESPONDENTS

1. The Association for Savings and Investment South Africa
2. The Banking Association South Africa (BASA)
3. Capitec Bank
4. Consultative Group to Assist the Poor (CGAP)
5. Circit
6. Discovery Bank
7. Francois Moller
8. Envestnet Yodlee
9. Financial Intermediaries Association of South Africa
10. Free Market Foundation
11. Information Regulator
12. Konsentus Group
13. OUTsurance Insurance
14. The South African Institute of Financial Markets
15. South African Institute of Stockbrokers
16. VISA

11. ANNEXURE C: PROPOSED OPEN FINANCE ROAD MAP

Action	Owner	Expected Delivery Date
Workshops and bilateral engagements with stakeholders	FSCA	31 October 2024
Establishing Advisory Group	FSCA in collaboration with IFWG members	31 March 2025
Developing API standards	Advisory Group	31 March 2026
Developing suitable consent, risk management and disclosure frameworks	FSCA	30 September 2026
Promoting the voluntary adoption of responsible Open Finance in support of positive customer outcomes.	FSCA in collaboration with IFWG members	31 March 2025
Developing a common view of use cases that could be prioritized in a mandatory regime, with considerations of impact and a suitable implementation roadmap.	FSCA in collaboration with IFWG members	31 March 2025
Assessing the legal framework for weaknesses and gaps, to inform how it may be strengthened.	FSCA	31 March 2026
Building knowledge and awareness of responsible Open Finance in the sector, including relating to regulator expectations.	FSCA	31 December 2026
Empowering consumers to respond to opportunities and risks in Open Finance.	FSCA	31 December 2026