Consumer Finance Monitor (Season 5, Episode 39): A Close Look at Open Banking and the Role of Data Aggregators, with Special Guests Julian Alcazar, Payments Specialist, Federal Reserve Bank of Kansas City, and Adam Maarec, Senior Director and Associate General Counsel, Capital One

Speakers: Alan Kaplinsky, Julian Alcazar, and Adam Maarec

Alan Kaplinsky:

Welcome to the award-winning Consumer Finance Monitor podcast, where we explore important new developments in the world of consumer financial services and what they mean for your business, your customers, and the industry.

I'm your host Alan Kaplinsky, former practice group leader for 25 years and now, senior council of the consumer financial services group at Ballard Spahr and I'll be moderating today's program. For those of you who want even more information, don't forget about our blog, which is also called Consumer Finance Monitor. We've hosted our blogs since 2011, when the CFPB got stood up and there is a lot of relevant industry content there. We also regularly host webinars on subjects of interest to those in the industry, so to subscribe to our blog or to get on the list for invitations to our webinars, visit us at ballardspahr.com. If you like our podcast, let us know about it. Leave us a review on apple podcast, Google, or wherever you obtain your podcast. Also, please let us know if you have ideas or other topics for podcasts, anything that we should be covering or speakers that you would like to recommend that we consider as guests for our program.

Today, the topic is going to be open banking, or sometimes, it's referred to as data aggregation, and I'm very pleased to be joined by two special guests today, Julian Alcazar and Adam Maarec. Let me first introduce Julian.

Julian is a payment specialist at the payment strategies division at the federal reserve bank at Kansas City. He received his bachelor of arts and sociology from California State University, San Bernardino, and a master's from the Georgetown University. His research focuses on consumer protection and the payment ecosystem. He is the recent co-author of an important article, very relevant to the topic we're going to be talking about today. It's entitled data aggregators, the connective tissue for open banking, published by the federal reserve bank of Kansas City. You can obtain a copy of that article, and I absolutely suggest that you do that by either going on the website of the federal reserve bank of Kansas City, or it will appear in the show notes of our podcast.

A warm welcome to you, Julian.

Julian Alcazar:

Thank you, Alan. It's a pleasure to be a part of this. Very excited for the conversation.

Alan Kaplinsky:

Okay. And let me now introduce you to Adam Merrick.

Adam is a Senior Director and Associate General Council at Capital One. He serves as business council to several teams that leverage the latest technology to build new and innovative financial products and services. He regularly strategically legal advice as a member of the agile development teams that operate across the product life cycle, from product development to marketing and production. Before joining Capital One, Adam represented banks and non-bank financial services companies of all sizes in private practice, including most recently, at my law firm Ballard Spahr.

Adam, always a pleasure to welcome you when you were with our firm and now, at Capital One.

Adam Maarec:

Great to be with you again, Alan. Really looking forward to the discussion. Thanks for having me.

Alan Kaplinsky:

Okay. I have a lot of questions for the two of you today. Let me start with you, Adam. You are in house council at Capital One. One of your responsibilities is to serve as business council for the bank's, quote, connected finances, unquote, team that handles its interactions with data aggregators. When we talk about data aggregation, what exactly are we talking about?

Adam Maarec:

In the current data aggregation ecosystem, there are really three key players to keep in mind. The first are data holders who are data providers, and these are companies that have information about a consumer's use of financial products and services. Usually, a bank providing data about a checking account or a savings account or credit card, auto loan or mortgage account. And then, you have data users or receivers and these are the companies that are authorized by consumers to receive data about their financial products or services. That's usually a FinTech of some sort.

And then, the third player here is data aggregators. These are companies that collect data from the data holders of financial institutions and provide it to data users. They're middlemen in that flow of information. And in sitting there, they often will standardize the data from multiple different sources and then push it out in a single format. In that role, they have this really interesting ability to view data at scale across consumers and small businesses that are sharing their data.

Alan Kaplinsky:

Okay, but let me just ask a quick follow up question to that. Let's say, I am a consumer. I'm just wondering, why I would be interested in giving someone access to information about me could be, let's say, I have a loan? Why would I want that? How is that going to ultimately benefit me? You said that I'm authorizing a FinTech company to use a data aggregator to get information on me and about all the loan accounts I have and deposit accounts, et cetera.

Adam Maarec:

There's lots of interesting use cases out there and I think we'll get into some of the benefits that could come about from these kinds of services.

But I think the simplest example is a consolidated view of your accounts. Let's say, you've got a checking account at Bank of America, you've got a credit card with Capital One and a mortgage with Chase. Today, you'd have to go and log to each of those institutions to check the status of each of those loans, to check your balances and recent payments and transactions. I think the most basic use case here, and this is really where I think the industry started is to say, "All right. Well, let's get a single service where a consumer can log into just one app and have a view of those accounts with multiple financial institutions." And then, once you do that and you start bringing the data into a single place, that's where the insights can really start to be derived. That's where we start see things like budgeting apps come into play where you can start analyzing the customer's complete financial picture, things like debt repayment optimization and savings optimization.

Alan Kaplinsky:

You say it's a way for a consumer to get advice about budgeting, whether they're spending too much money or they're paying too high an interest rate on a loan they ought to consider refinancing alone, it's that kind of information?

Julian Alcazar:

It can be. Most consumers, the on ramp with data aggregators, it is a FinTech app as Adam mentioned, the use case here is personal financial management tools that can range from nudging for savings to getting a holistic view of all of my credit

cards, so I can maximize my rewards to even things like my credit score and getting that type of line of sight. What these personal financial management tools do is give that consumer a holistic view of their financial life. And as Adam mention, I no longer have to log in into my six different checking accounts. I could just log into one place and get a real time view into how much money I have, how much money is going out and where are my big spend categories. I'm a big coffee guy, so a lot of my spend goes to coffee. What these tools do is say, "Hey, Julia. Lay off the coffee."

Alan Kaplinsky:

Right, okay. And it's actually a computer algorithm, I take it that is responding. There's no actual human who's giving that advice.

Adam, let me get back to you and Capital One's role as a holder of data in the data aggregation ecosystem. Can you give us some background about that?

Adam Maarec:

Yeah, and I think our brief discussion here leads us down the path to talk about where this originally started. It started with this effort to allow consumers to have a consolidated view of their accounts. The way that originally began was that data aggregators and some FinTechs were obtaining the data using credentialed screen scraping where consumers would give their usernames and passwords to a third party and that third party would then go onto the data holder's website. And using algorithms, enter the username and password on the website as if it were a consumer, log in and then use screen scraping technology to read the HTML of what was being produced on the consumer facing site and extract the data. That's called screen scraping.

Alan Kaplinsky:

That sounds very dangerous.

Adam Maarec:

Right. It posed risks for us at Capital One and many other similarly situated banks for a number of reasons. And first and foremost, we don't want username and passwords floating around out in the public domain. That's not good for our customers, it's not good from a cyber security perspective. There was also a point in time where a substantial portion of website traffic was from these screen scrapers. There was data being produced upwards of 50% at some banks. Their traffic was coming from screen scrapers, so that put load on banks' websites, degraded their performance for real consumers. It also made it difficult to tell who was a real consumer and who was a robot. That would put stress on our cyber-

Alan Kaplinsky:

So that went away, the screen scraping is a historical item.

Adam Maarec:

Well, we're not there yet. Seeing screens scraping as a substantial risk, Capital One invested in an alternative, which is an API based data sharing program. With an API based sharing ecosystem, instead of the consumer giving their username and password to the FinTech, instead, the FinTech and aggregator is going to redirect the consumer to Capital One or the bank, authenticate directly with the bank and then say, "Hey, bank. Please share my information with this FinTech." And then, as soon as the consumer gives the authorization, then a direct connection is made using an API which is an application program interface. It's basically just a common language between two computers so that they can speak and exchange information. And then, the data can be shared in a more secure bank sanctioned manner. We really put a big emphasis on getting companies that were screen scraping, our website to sign agreements with us, to access data via API and use those technical protocols that were much more secure than screen scraping and would really reduce the sharing of credentials across the ecosystem.

Alan Kaplinsky:

Okay. Julian, I've got a question for you. Nowadays, it's hard to find any adult who doesn't use some type of banking app as part of their personal finances. In the paper that you wrote that I referred to when I was introducing you, you assert that the rules that data aggregators play in the background of open banking are not very well understood by the general public. Why do you think that's the case and why do you feel that it's important for the public to understand

Julian Alcazar:

Thank you, Alan. Well, because how easy it has become to link your personal account to a FinTech app or even a merchant nowadays. Although, the days of micro deposits to verify that you own the account itself is not gone, but they're on their way. The data aggregator exists as that bridge between a consumer account, personal financial account and the FinTech app. However, the role that they play there, it's really an intermediary in between the FinTech app and the bank. If the connection is broken, if there is a massive breach of information, a consumer is going to be left with a lot of questions. Do I, as a consumer, have my rights with... Who is protecting the consumer here? Is it the bank, is it the FinTech app, or is it the data aggregator that facilitated that connection? Because it's so many layers that are here in between consumer account and FinTech app, that's what makes it murky and that's why it's not so well understood by the general public.

In addition, not all banks are as forward leaning as my wonderful colleague here on the podcast is. There's banks out there that are still not investing in API architecture, that don't have those permissions set. And so, a FinTech app can really just be like the wild, wild west and grab as much information as they so choose even though it might just be a budgeting app or it might just be a saving app. There's no real necessity for this FinTech app that has one distinct job to start aggregating things like my account statements for the last eight months. That's why we feel that it's important to get this out in the broader public space and share with consumers, with merchants and with other banks of the important role that they have, data aggregators have, and FinTechs have here.

Alan Kaplinsky:

Julian, the environment that you explore in your study, certainly isn't all negative. There are certain benefits and conveniences for us as consumers and considering myself a consumer for purposes of our podcast, can you describe some of the ways that this type of data aggregation actually enhances our financial services experience?

Julian Alcazar:

Absolutely. There are multiple benefits that can come about of this. One quick example would be, as we mentioned at the top, the consumer today has a very complicated financial life. They have three different accounts, they could have seven different FinTech apps and they could have an investment account with a Robinhood or a SoFi and so, it's a lot of things to manage. What a personal financial management tool here does, is give the consumer one holistic view of their financial life. And then, through machine learning, through algorithms can get nudged to live a better, more financially healthy life.

The second example can be around mortgages. When it's time to fill out the loan application, it used to be that you had to print out your account statements for the last three months. You had to print out your W-2s, you had to print out your two most recent pay stubs, take these paper files to a bank so they could run a pre-qualification on you. As technology has progressed, it went from taking these physical paper files to a bank to emailing it to a bank, which is a small step in the right direction.

But now with data aggregators, I can make a simple call, a connection point between a mortgage bank and my financial accounts. And therefore, the information that the bank, the mortgage bank is getting is the most up to date. It's the most up to date, it puts the consumer less at risk because there's not so many files out there of them in the world and the bank itself can re really be assured that the information that they're getting is real time, hasn't been tampered with. And so, they gain efficiencies here as well, because it's not such a manual process, it's an automated flow in of information.

And then, the third example here, if you have a car payment, we are pretty used to typing in our debit account, or even our checking and savings account information. I have fairly fat thumbs and so, I will mistype a one, add an extra zero, not because I'm trying to avoid my car payment, just because I have fat thumbs. And so, what a data aggregator here does is actually

facilitate the connection between my car loan provider and my checking account by allowing me to directly log into my checking account and then, my car loan servicer can just pull the information or pull the payment directly from my account.

And a auxiliary benefit of that is that say, I'm running low on cash, I went crazy on coffee one month, the car loan provider can actually ping me and say, "Hey, Julian. We tried to take out money. You're running low on funds. Let us know when we could pull out our funds." And that leads to a better consumer outcome because the consumer is not going to be hit with an overdraft fee, which can be very expensive. Those are just three quick examples of how data aggregators have improved a consumer's life and even mortgage loan to car loan businesses' life.

Adam Maarec:

Can I layer in here? I think on the last example, Julian, an auto lender using these data aggregation tools, I think for two things that you touched on.

The first is to gather payment credentials, an account number and routing number and that's a use case we've seen come about that's quite popular right now. It gives a company that wants to initiate an ACH debit, higher level of assurance that the account number and routing number are right, that you haven't fat fingered the account number.

But it's really just sharing the account number and routing number, so that the entity can initiate a payment using existing rails. That's not so much open banking as it is sharing data in the current data aggregation ecosystem. I think you raised a really-

Julian Alcazar:

Great point, Adam.

Adam Maarec:

... a interesting point about monitoring a checking account balance to make sure that a debit will be authorized and go through and not result in an overdraft. It's a really interesting use case. But I raise it just to call out the difference because this podcast is about open banking, but here in the US, we've really been focused on data aggregation and sharing data for all these use cases whereas, open banking in other parts of the world does a bit more than that where it actually allows third parties to initiate payments and so on. That's not really what's happening here in the US just yet.

Alan Kaplinsky:

Right, right. Might be coming down the pike, I guess. Let me just ask you this question, Julian. When you have to fill out a mortgage and application for a mortgage loan, it's very detailed. Even to get an auto loan, it's pretty detailed. Are you saying that there will be a FinTech company that will be able to complete the application for me and all I've got to do is sign it and transmit it to the mortgage company or the auto finance company.

Julian Alcazar:

There's two instances that I've seen today here in the US. There's a FinTech company that will aggregate your consumer financial life and then, form it out to several different mortgage lenders and say, "Hey, Alan. Here's the top three mortgage offers that we have for you," and then, you make your choice and you go about your life in that fashion.

The second use case is actually directly from mortgage banks. Today, I want to say three to four out of the top 10 financial institutions here in the US actually use a data aggregator to gather a consumer's financial life, port it directly into their mortgage loan portal to automate a lot of that, fill out information, verify consumer account information, verify account balances. And so, data aggregators are no longer in the space of just playing with FinTech. They are now a part of large financial institutions and they are facilitating this flow of information between a consumer's financial life and that business.

Alan Kaplinsky:

Okay. Adam, are there any benefits to the bank, in your case Capital One bank, but it could be any bank, sees for its customers stemming from data aggregation?

Adam Maarec:

Absolutely. And I am personally very bullish on the potential that can come about from the sharing of data when it's done the right way. We've seen a segment of our customers that want to share their data with FinTechs and built this system to support the responsible sharing of customer transactions data in a way that allows us to control for some of those risks we started touching on.

I see promise in a lot of the use cases that are being developed. We touched on them, the personal financial management tools, budgeting tools that can bring together income and spending across different accounts, debt repayment optimization's really interesting, savings optimization, something that folks in this country could really use help with and then, underwriting using cashflow data for consumers that don't have traditional credit scoring profiles is another really interesting opportunity where there may be chances to expand the world of folks that are able to get credit.

But I think, we're really at the tip of the iceberg as we're exploring some of those uses of data. But I also want to mention that we are spending lots of time on our ability to share data with others, but at the same time, we're getting in on the action too, and seeing some benefits for our customers in collecting aggregated data. We're piloting features right now that will allow consumers and small businesses to use their transactions data from other financial institutions, much the way you describe, Julian, where instead of submitting pay stubs or copies of account statements for proof of income or for annual account reviews, we're enabling segments of our customers to try that out by connecting with their financial institutions, so we can get that data electronically and analyze it and make decisions in a much faster way.

Alan Kaplinsky:

Yeah. Julian, based on your study, what are the risks associated with data aggregators and what are the downside consequences that consumers might face?

Julian Alcazar:

We touched on some of them at the top, and there's no denying that there are benefits. However, I see the risk in three dimensions. One is competition, two is security and the third is privacy.

Competition because a data aggregator has, not a 10,000 foot view, they have 100 thousand foot view of a consumer's financial life across the US and they can make their own assumptions from that. In addition, they could just continue to collect information and guide it as a, we need it, to offer better products and services. Fine, but not really sure about the use case in getting every single piece of information.

Second is the security piece. There's no denying that financial institutions invest a ton of money in their security. Banks are constantly under attack from hackers from everyday consumers that are trying to scam information out of the financial institution, defraud everyday consumers, so there's a security aspect here. Some of our largest data aggregators have topnotch security, which is amazing and great. That's what we want. However, there's small startups that don't have that infrastructure in place that pose a risk for consumers and for banks.

And then, there's, again, the privacy aspect. Does a data aggregator need to collect that hundred thousand foot view of a consumer's financial life, or can they just be the simple bridge between financial institution and FinTech?

That's how I see it. Those are the three risks that are my red flags. It's competition, it's security, it's privacy.

Alan Kaplinsky:

Yeah. What about you, Adam? Do you agree with Julian or do you see other risks involved?

Adam Maarec:

Yeah, I think those are three of many risks that exist in this space today. I'll touch on a couple that are top of mind for us. Starting with the consumer, the lack of transparency to the consumer about what's happening in the data aggregation ecosystem is a real challenge. There's some data that the clearing house has published on a survey of data, privacy and financial app usage. They say 80% of consumers were unaware that apps use third party aggregators to gather their financial data.

Consumers may be unaware that aggregators are even involved in the flow. They are those middle men, operating in the background.

Most consumers are unaware that once they grant access, that access will live on until it's revoked. Even if a consumer stops using whatever personal financial management tool it is that they authorize access to, that company can still obtain the data on an ongoing basis until the consumer expressly revokes the authorization or it somehow breaks. If the consumer deletes the app on their mobile device, they might think, "Oh, well. Now, that I've deleted the app, the data sharing's done, my relationship is over," but it's not. On the back end, the data sharing will continue.

I think part of this lack of consumer understanding is really driven by the fact that we don't have uniform disclosure obligations in the market. So, inconsistent disclosures and long consent periods are potentially problematic. And on that point about continued access, we have some internal data that suggests when access expires or customers are reminded about their outstanding connections, customers will often either not reauthorized the sharing or they'll revoke their consent once they're reminded of it. We think that really means that consumers aren't granting third parties this unfettered, unending access to their personal data but instead, that there should be some kind of reasonable time limits on how long an authorization should last and re-obtaining authorization to share on some periodic basis really makes sense. And that's actually the direction we've seen regulators in the UK and EU go where they require customers to re-authenticate or reauthorize their data sharing after 90 to 180 days.

One other risk here is around the protection of confidential information. The Dodd-Frank Act Section 1033 is the basis for consumers' access rights to their financial data and the Dodd-Frank Act actually has an exception that most of us aren't talking about that says data holders don't have to disclose any confidential commercial information, including an algorithm used to derive credit scores or other risk scores. And so, obtaining one customer's data and passing it to a data recipient, that's one thing. But when you pull back and see that this has evolved into a situation where a few aggregators are passing data on lots of consumers at scale, where they're able now to get a larger picture, such that they could reverse engineer confidential algorithms that belong to banks and those confidential algorithms form the bedrock of the bank's operations and their ability to price and assess risk.

Having one dot on a plot is one thing, but having three dots on the plot, you can start to form a line and having a thousand or 100 thousand allows an aggregator to get this really granular insight into a bank's underwriting algorithms.

Alan Kaplinsky:

That’s a good segue into what the CFPB is up to in this space. As I recall, included in the Dodd-Frank Act, which created the CFPB, there's a section 1033 that basically... It doesn't use the words data aggregation or open banking, but it says, essentially, as I recall and correct me if I'm wrong, that consumers have to have access to their own data. They own that data.

I'm wondering, Adam, if you can tell us about the history of the CFPB actions to date and where do you think they're going in terms of rule making and how far away is it?

Adam Maarec:

The CFPB has been looking at data aggregation for a while. Alan, as you mentioned, section 1033 is in the Dodd-Frank Act that was passed in 2010. CFPB was busy writing lots of other rules in the years that followed. It wasn't until 2016 that the CFPB put out a request for information, asking a host of questions about the industry and folks responded, the CFPB issued some principles in 2017 that addressed at a really high level consumer access rights, the data to be disclosed and how it should be used, some customer consent and disclosure terms and these principles were interesting, but very high level and non-binding.

In 2020, the CFPB convened a symposium with stakeholders from financial institutions, aggregators, FinTechs, and academia for a really interesting conversation in the basement of their building and then, it wasn't until early 2021 when the CFPB issued an advanced notice of proposed rulemaking on data aggregation. Again, they asked the whole series of questions and the industry's responded and so, now, we're waiting for their next step. We think that next step is going to be a Small Business Regulatory Enforcement Fairness Act panel, a SBREFA panel where the CFPB will convene smaller entities that could be

affected by the rule, share an outline of the rule with them and get their feedback and that's all in preparation for them issuing a proposed rule making, probably sometime in early or late 2023, depending on their other priorities.

I'll mention one other regulatory activity that's really interesting. Just in August 2022, several banking trade associations submitted a petition for the CFPB to supervise larger data aggregators as larger participants. It's been a long journey so far, and the market in the US has continued to evolve and the market for open banking and the regulatory environment and open banking has evolved since the bureau's started exploring here.

Alan Kaplinsky:

Yeah. Wonder if you have any idea on timing for this rule making. You said they're getting ready to convene a SBREFA panel. That will be an important event because then, for the first time, we see an outline of what the proposed regulation is going to look like. When do you think that'll happen, before the end of the year?

Adam Maarec:

Maybe. Gotten some indications that the Bureau's trying to find participants for that small business panel, but..

Alan Kaplinsky:

And who's going to be on? I'm not asking you for specific names. Give me a profile of somebody who you think the CFPB would want on that panel.

Julian Alcazar:

As a proud CFPB alum, I'm glad you mentioned the basement, Adam. It's quite an upgrade from what it used to be.

The typical SBREFA participant, it could be a small business, it could be community bank credit union, and then, it could also be other data aggregators. We know the very large players because they're everywhere. But there's other data aggregators that are much smaller. Their voice and rightfully so, the CFPB wants to hear their voice and they want to ensure that as they are writing the rule, that everyone's voice is incorporated in what they hope to publish.

One important thing here is that rule making doesn't happen in a vacuum and that rule making is a very, very methodical process, a very thought out process that has structure in place. There's a 90 day comment period, and everyone is welcome to the comment period. And then, a team at the CFPB will carefully review and read every single comment letter and offer a summary. And remember, all of this information is public, so it's all going to be out there. Although a basement was mentioned, it just doesn't happen in the dark. Anyone that wants to take part in it will be invited too.

Alan Kaplinsky:

All right. I'm going to ask both of you to put on your prognostication hats and speculate, or maybe, I should say your speculation, hats. What do you think a regulation might look like or a proposed regulation? I take it part of it will be required disclosures of some type. I'd like to actually get both of your thoughts on that. Julian, you want to go first?

Julian Alcazar:

Sure. Something I should have said at the top and because we are being very, very forward looking, what I say today are the views of me, not the views of the bank, not the views of the Fed. Now, I could properly predict.

I think a thoughtful regulation here would be one that, as Adam mentioned, something that could mirror the UK in which a consumer has the ability to reauthorize a FinTech app. I know in my own personal financial life, I upgraded phones, I had no idea that FinTech app was still collecting information on me and still actually just pulling pennies out of my account as a savings mechanism. No idea until I got an automated message that said, "Hey, we haven't seen you in a while," yet they're collecting all types of information from me.

Definitely, I want a future rule to include something around reauthorization. The cadence of that reauthorization, I don't want it to be too cumbersome. Every three months, kind of a pain. Annually, why not? Banks have to do an annual disclosure about

their credit cards. Terms of conditions, those are all done annually. The bank has to do it. So following that same cadence, I don't see an issue with that.

Putting guard rails around how much information and data aggregator can grab and then also, giving banks a little bit more authority in this space. Not all banks are like Capital One that have their API structure already in place, that have a recipe, for a lack of a better term, that tells the data aggregator, "This is the information you are able to collect from us." Not all banks have that and not all data aggregators will follow that recipe. I want to be sure that it's an equitable rule that allows banks to have a voice and also predetermined. This is how much information you can get from the consumer, from us on behalf of the consumer because at the end of the day, it's still a consumer's information. The amount of information that is collected should be one that is determined by both the bank, the consumer. With that, I toss it over to Adam. I'm very curious about your predictions.

Adam Maarec:

Well, my thinking, personally is that we're going to see a lot more demand for customers' transactions data in the future and the number of parties and who they are, will change too. I think we've already seen an interest from the big technology companies to start accessing this data and crunching it and using it for their purposes. I think we have to be really thoughtful as we're crafting rules now, to make sure that they're going to enable the innovation that's coming, but also, protect consumers from the many risks that exist here.

As we think about what those protections should be, we've hit on consumer disclosures and consent standards already, periodic reauthorizations are important and you touched on a what timeframes. Maybe prescribing a single timeframe is not the right approach, but instead, it's context specific, and one app might warrant checks once a year, one app might warrant checks monthly.

I think downstream limits on how the data's used and rediclosed is really important. The Gramm-Leach-Bliley Act generally has this concept that nonpublic personal information is subject to the GLBA as it's disclosed downstream and I think that process makes a lot of sense and the protections behind GLBA should continue to apply to the data as it's shared downstream.

Data security expectations should really be equivalent as the data moves from one entity to another and today, the banks are subject to different security expectations under the safeguards rule, promulgated by the FFIC versus the safeguards rule as it applies to others in the ecosystem to non-bank in the ecosystem. And so, to the extent that there's incongruity, we just want to make sure that the data is protected as it flows downstream, and that any recipient also has the same level of obligation to protect the data that banks do.

I mentioned the risks from reverse engineering. I think the bureau needs to spend time thinking about some of those exceptions that are in the statute and making sure that no player is given an unfair advantage in being able to see this view of data. I think the rule should really promote more secure methods of data sharing like APIs and encourage the industry to move away from scraping.

And finally, I think supervision of larger participants in this space is warranted given the risks that can be presented as aggregators hold on to all this data. But overall, very optimistic about this space. I think there's a lot of benefit for consumers and for industry that can come about here, as long as it's done in the right way.

Alan Kaplinsky:

What has been the reaction if you know, either one of you, to the request made by a number of banks for the CFPB to create a larger participant rule of data aggregators? Has the data aggregator industry push back on it?

Julian Alcazar:

Not necessarily. I think by being brought into the fold of regulated entities, it brings a level of validation to what they're doing, because they will become a regulated entity. That means that they're going to follow a certain set of rules, structures in place, so there won't be such ambiguity about what they're doing. Can they collect so much information because it will be a regulated entity, so it brings a sense of validation to what they're doing.

Alan Kaplinsky:

Well, it'll be interesting to see whether the CFPB honors that request because at least, at the last publication of their semi-annual agenda for rule making, they didn't say anything about any larger participant rules. And at one time, it was I guess, under the Kathy Kraninger directorship, the CFPB on that agenda as I recall, they were next going to look at installment lenders and they haven't done that yet.

I sort of wonder whether this may be too heavy a lift for the CFPB given number one, that it doesn't like regulations to be begin with it. It has to create a regulation here, dealing subsequently with the do's and don'ts, but is it really going to want to go through, what would be a separate rule making to create a larger participant rule for data aggregators? The other option, of course, I think that it could use is it could do it on a one off basis. If they think a particular data aggregator poses a significant risk to consumers, then under the guidance that they issued several months ago, they could try to sweep that company under their supervision. Either of you have a reaction to what I just said?

Adam Maarec:

Yeah, Alan, I think it's worth noting that the petition for larger participant rule making is open for comment until October 3rd, so we'll see who engages here. I do think some of the larger participants are willing or would welcome supervision given the robustness of their programs, which may be more difficult for some of the smaller players to absorb.

But I think you're spot on that this takes a lot of work to define a larger participant. The Bureau's got a lot of competing priorities, including writing a rule that will govern the substantive expectations of the players in this space. And so, you have to think with their limited resources, what's the best use of their time and imagine going through that-

Alan Kaplinsky:

And of course, the clock may be running out on director Chopra's term. If a new president gets elected, we could have a new director of the CFPB that's got entirely different priorities.

Well, I want to thank both of you for sharing your wisdom about this important subject that is going to become, at least in my view, increasingly important once the CFPB really gets into the rule making here and issues a notice of proposed rulemaking. My hope is at that time, there's more education of consumers. It seems to me, if you were to ask the average Joe on the street, what do you think about open banking or what do you think about data aggregation, I'm pretty sure that 99 out of 100, maybe even a higher percentage would give you a complete blank look. They wouldn't have a clue what that question related to. But anyway, thank you first, Julian and thank you, Adam.

Julian Alcazar:

Thank you for having me. It's been a blast.

Adam Maarec:

Yeah. Great discussion.

Alan Kaplinsky:

Once we do, a SBREFA panel gets organized and we have an outline of what they're thinking is, maybe it'll be time to do another podcast on this subject, so I may very well be inviting both of you to come back.

Well, I want to thank all our listeners today who downloaded our program, make sure you visit our website, www.ballardspahr.com, where you can subscribe to our podcast show. You can also subscribe an Apple podcast, Google, Spotify, essentially, any podcast platform that you may use.

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