

# OPEN BANKING

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# What is “open banking”?

Basel Committee definition:

- ▶ “the sharing and leveraging of **customer-permissioned data**
- ▶ **by banks**
- ▶ **with third party** developers and firms
- ▶ to build applications and services,
- ▶ such as those that provide real-time payments, greater financial transparency options for account holders, and marketing and cross-selling opportunities.
- ▶ Individual jurisdictions may define open banking differently.”

Source: BCBS report on open banking and application programming interfaces (November 2019) <https://www.bis.org/bcbs/publ/d486.pdf>

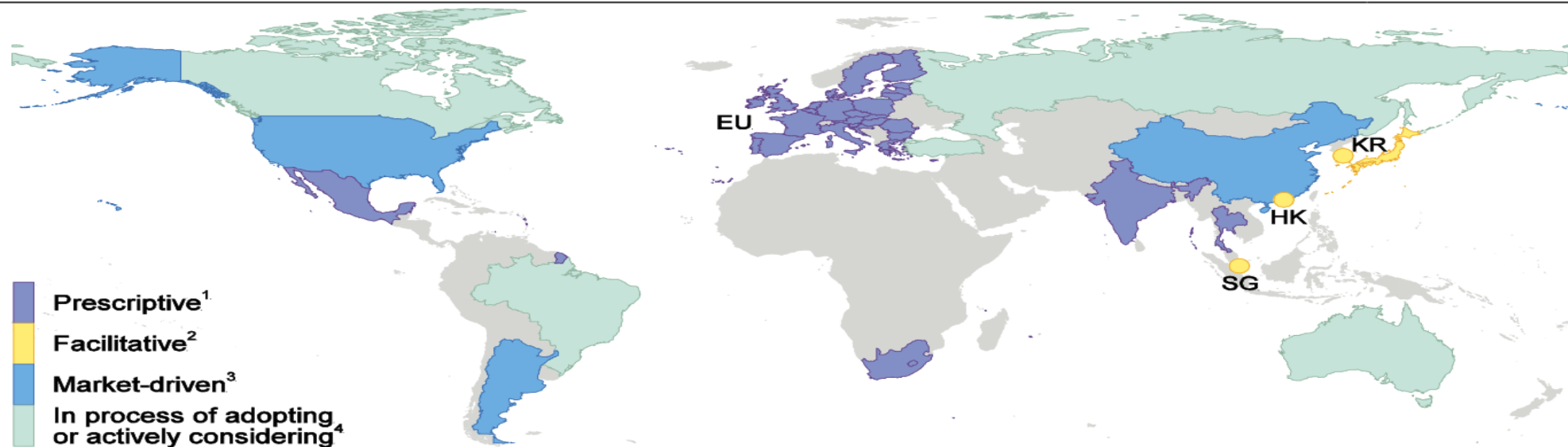
# New Financial Ecosystem

- ▶ Before:
  - ▶ Banks: Integrated delivery of financial services
- ▶ Now: services are segregated and bundled into “stacks”
  - ▶ Bank customer - provides consent
  - ▶ Banks – data holders (data owners?)
  - ▶ Data processors – financial data aggregators
  - ▶ Nonbank fintechs

# Govt. responses (BCBS report)

Global view of open banking developments

Figure 1



The boundaries shown and the designations used on this map do not imply official endorsement or acceptance by the BIS.

EU = European Union, HK = Hong Kong SAR, KR = Korea, SG = Singapore.

<sup>1</sup> Requires data sharing, <sup>2</sup> Encourages data sharing, <sup>3</sup> No explicit rule/guidance requiring data sharing, <sup>4</sup> In process of adopting or actively considering adopting.

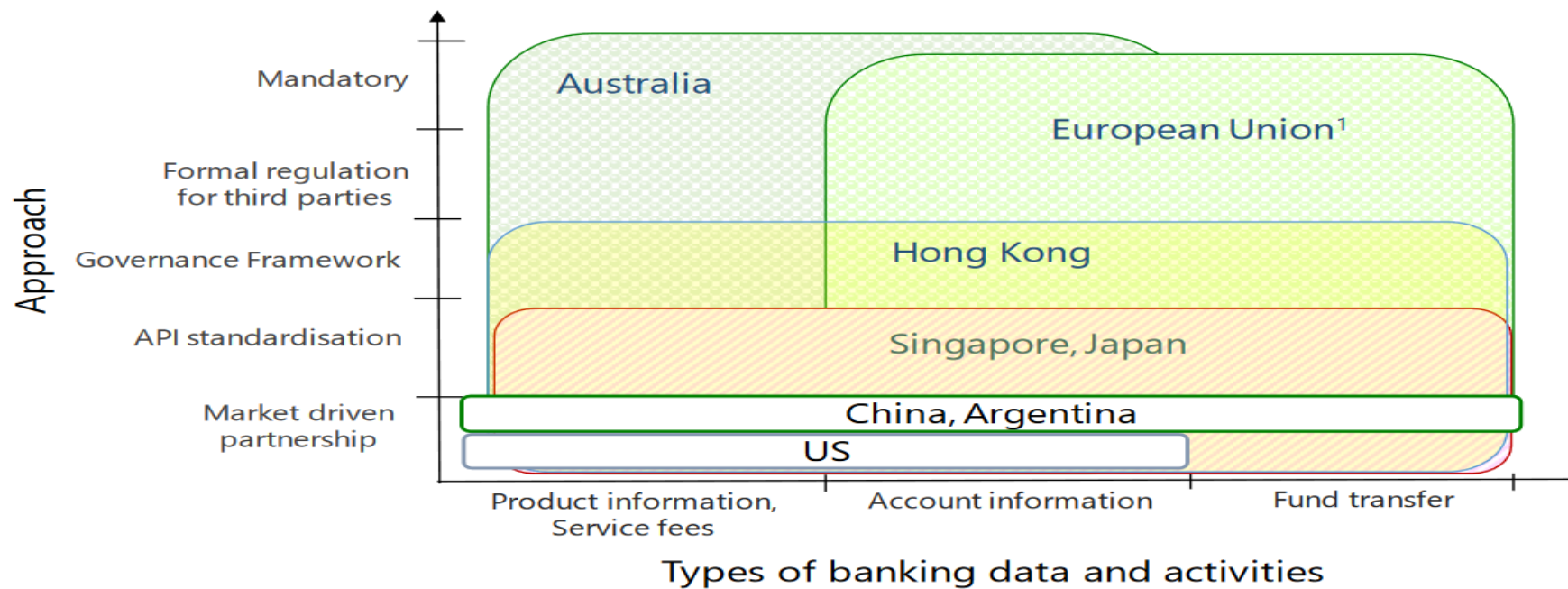
Source: Based on information gathered from Committee jurisdictions



# Different approaches (BCBS report)

Comparison of open banking frameworks

Figure 2



<sup>1</sup> EU: perimeter depicted in this figure represents the scope of the EU's PSD2, which only applies to payment services. Individual jurisdictions within the EU may choose to broaden the scope of their open banking frameworks beyond the requirements of PSD2 (eg FR and UK).

# Key findings (BCBS report)

- ▶ Open banking frameworks vary across jurisdictions in terms of stage of development, approach and scope
- ▶ Assigning liability in the event of financial loss, or in the event of erroneous sharing or loss of sensitive data, is more complex with open banking, as more parties are involved
- ▶ Oversight of third parties can be limited, especially in cases where banks have no contractual relationship with the third party, or where the third party itself has no regulatory authorization
- ▶ Data privacy laws can provide a foundation for an open banking framework

# Data privacy & open banking

## Comprehensive data laws: some examples

- ▶ EU's *General Data Protection Regulation 2018 (GDPR)* – leading the way
  - ▶ first comprehensive data law
  - ▶ Principle: You own and control your own data
  - ▶ Principle: Right to be forgotten
- ▶ Australia's proposed Consumer Data Right Bill 2018
  - ▶ Integrated with open banking requirements
  - ▶ Banking sector first, then energy and telecom, eventually economy-wide
- ▶ India's proposed Personal Data Protection Bill 2018
  - ▶ Based on Supreme Court of India in *Justice K.S.Puttaswamy (Retd.) v. Union of India* [Writ Petition No. 494/2012] upheld that privacy is a fundamental right, which is entrenched in Article 21 [Right to Life & Liberty] of the Constitution.

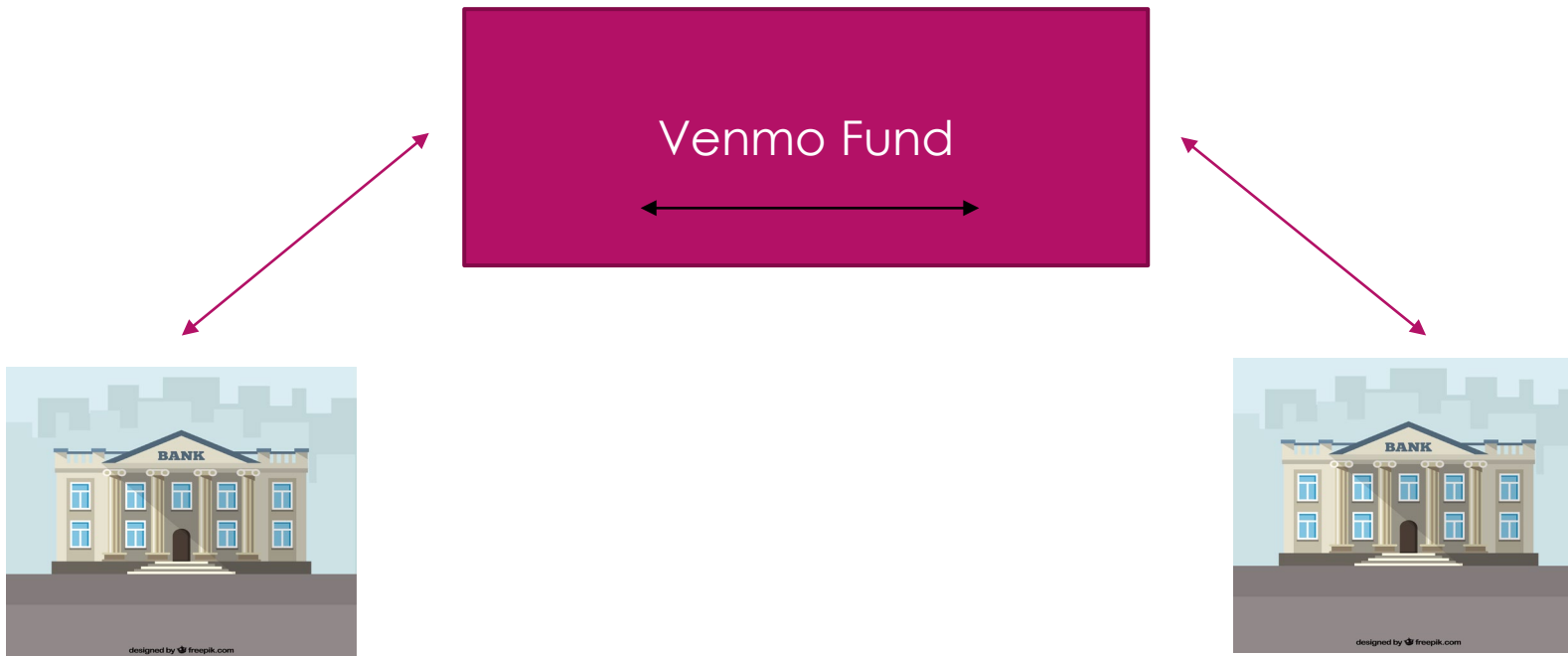
# U.S. - Customer liability protection

- ▶ Regulation E under the Electronic Fund Transfers Act of 1978
  - ▶ intended to protect individual consumers engaging in electronic fund transfers (EFTs).
- ▶ EFT services include transfers through automated teller machines, point-of-sale terminals, automated clearinghouse systems, telephone bill-payment plans in which periodic or recurring transfers are contemplated, and remote banking programs.



# Case study: Venmo

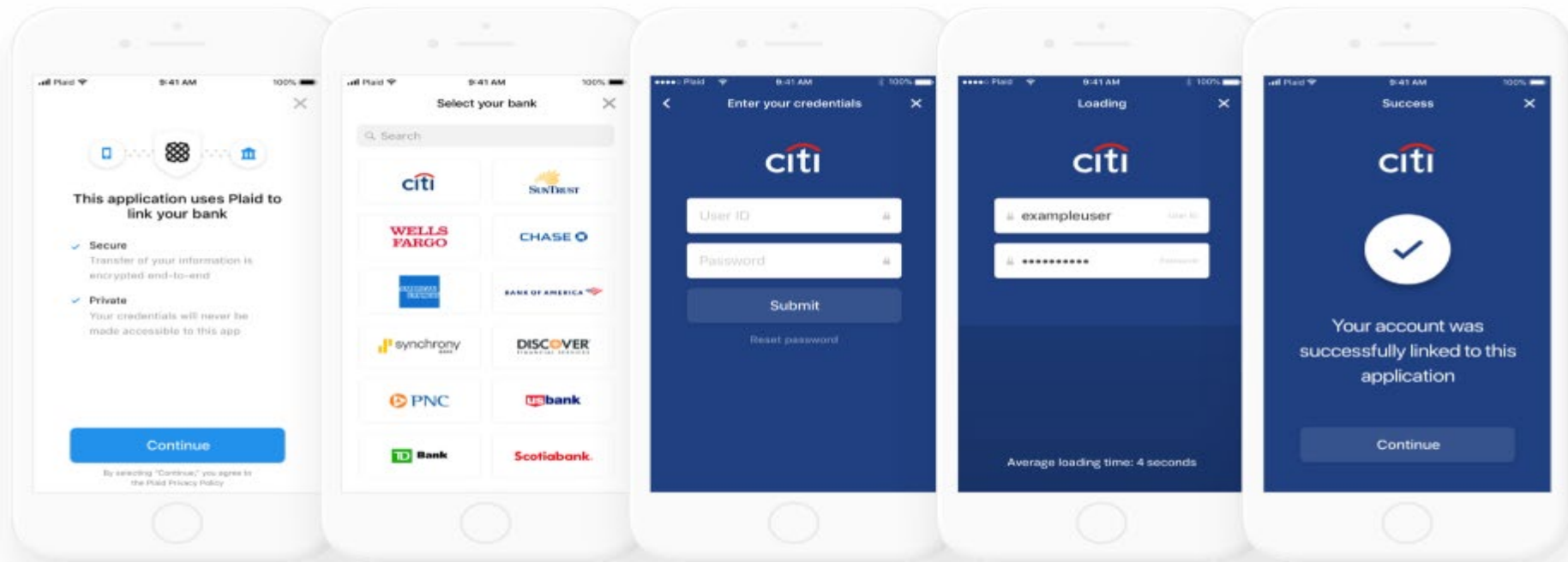
- ▶ Linda “venmos” \$50 to Lee. What’s covered under Reg E?



# CFPB Prepaid Card Rule

- ▶ CFPB Prepaid Rule – 2018 Amendments
  - ▶ Expands Reg E liability protections to digital wallets (eff. April 2019)
    - ▶ For fraudulent transactions
    - ▶ But what if you made an error? You typed in the wrong identifying email or phone#.
      - ▶ See NCLC's June 2018 comment letter. <https://www.nclc.org/images/pdf/rulemaking/cfpb-inherited-regs-and-non-lending.pdf>

# U.S. - What counts as informed consumer consent?



# Consumer consent, cont'd.

- ▶ Role of the consumer
- ▶ Role of the bank
- ▶ Role of the fintech
- ▶ Role of the data processor
  - ▶ Screen-scraping vs. APIs
  - ▶ Legality of “screen-scraping” - it's more gray than black and white
    - ▶ *hiQ Labs, Inc. v. LinkedIn Corp* (Ninth Circuit Court of Appeals, Sept. 9, 2019)



# Future of open banking

Open banking



Open finance



Open data

- ▶ Data is being called the new oil. But to build a strong economy based on leveraging data, a baseline of protections is essential.

# Key issues going forward

- ▶ Interoperability and data portability – open API standards
- ▶ Inconsistent or gaps in liability schemes
- ▶ Competition/antitrust review
- ▶ Data rights - natural person v. legal person
- ▶ Digital identity – govt/corporate v. self-sovereign



# Thank you

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