

UNITED STATES OF AMERICA  
CONSUMER FINANCIAL PROTECTION BUREAU

In the Matter of:

Financial Data Exchange, Inc.

Application for Recognition

2024-CFPB-PFDR-0001

**DECISION AND ORDER**

The Financial Data Exchange, Inc. (“FDX”) has submitted to the Consumer Financial Protection Bureau an application for recognition as a standard setter under the Personal Financial Data Rights Rule.<sup>1</sup> Subject to the terms and conditions in Section II below, the application for recognition from FDX is **APPROVED**.<sup>2</sup>

This recognition order is based on the CFPB’s assessment of FDX’s application, FDX’s practices and procedures, and additional FDX documentation, including the organization’s certificate of incorporation and bylaws. The CFPB has also considered the comments received from interested parties following publication of FDX’s application. The basis for the order is further outlined in Section III below.

**I. Applicant**

On September 16, 2024, FDX submitted an application for recognition as a standard setter, pursuant to the Personal Financial Data Rights Rule, which implements Section 1033 of the Consumer Financial Protection Act. FDX is a standard-setting organization, operating in the United States and Canada. It has over 200 member organizations, including depository and non-depository commercial entities; data providers and data recipients; data aggregators; service providers to open banking participants; trade and industry organizations; and other non-commercial members, including consumer groups. Members include many of the largest participants in the open banking system, as well as a number of smaller participants.

The organization’s primary stated purpose is to develop, improve, and maintain a common, interoperable standard for secure consumer and business access to financial records. To this end,

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<sup>1</sup> 12 C.F.R. pt. 1033.

<sup>2</sup> This order is independently authorized by each of the following: 12 U.S.C. § 5533, as implemented by 12 C.F.R. § 1033.141 & Appx. A; 12 U.S.C. § 5512(b)(1); and 5 U.S.C. § 554(e). *See* 89 Fed. Reg. 49084, 49086 (June 11, 2024). Some elements are also independently authorized under 12 U.S.C. § 5512(c). This recognition is not “contingent” as that term is used in the final rule. (*See* Appx A, 12 C.F.R. § 1033.141.) Full recognition is effective from the date of this order, subject to the terms and conditions noted.

FDX has developed, and maintains on an iterative, ongoing basis, the FDX API standard. FDX also maintains the Open Financial Exchange standard.<sup>3</sup>

Over time, FDX has significantly changed its structure and governance. Started as a subsidiary of the non-profit Financial Services - Information Sharing and Analysis Center, it is now a non-profit, nonstock organization under section 501(c)(6) of the Internal Revenue Code, incorporated in Delaware. In April 2024, its board approved a resolution directing a number of significant governance and organizational reforms. These reforms are now grounded and reflected in FDX's current bylaws as well as in other documents, such as board resolutions.<sup>4</sup>

The CFPB published the application for public comment and reviewed it in accordance with the criteria outlined in the final rule. The CFPB made certain supplemental information requests to the applicant, including meeting with the applicant, including some of the applicant's officers and directors. Based on the representations made by the applicant, the CFPB made a favorable determination based on the criteria for recognition, subject to certain conditions.

## II. Terms and conditions of recognition

Recognition is subject to the following terms and conditions. The CFPB may revoke or modify recognition for failure to observe these conditions or as otherwise described in the rule.

### *A. Basic terms*

1. Recognition is effective upon entry of this order. The recognition period lasts through January 8, 2030, unless extended before that date.
2. Recognition is limited to FDX and does not apply to any other persons, including FDX members.
3. The FDX application describes a standards issuance process that the CFPB assesses, as described further in Section III, as providing the openness, balance, consensus, due process (including appeal procedures) and transparency required for recognition under the rule. As a general matter, therefore, recognition is conditioned on the continued accuracy of representations made in the application.<sup>5</sup>

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<sup>3</sup> In addition to developing standards, FDX maintains a registry of participants, provides white papers and other resources relating to open banking, and is developing a program to allow open banking data providers to certify that their data interfaces for third-party access conform to the FDX API standard.

<sup>4</sup> While aspects of the resulting member governance and participation structure remain to be fully built out, the record and extent of reform to date, including its reflection in core documentation, support recognition, subject to the noted conditions.

<sup>5</sup> The CFPB recognizes that productive standard-setting organizations continuously work to improve their governance and functioning. This order does not stand as an obstacle to such continuous improvement on FDX's part. Minor deviations from FDX's application representations, therefore, will not necessarily negate recognition so long as FDX continues to satisfy the underlying requirements for recognition.

4. As soon as practicable, but not to exceed 180 days from recognition, FDX will adopt a written conflicts of interest policy. Prior to finalization, FDX will provide a copy of the policy to the CFPB for review. The policy shall include reasonable procedures regarding the disclosure of conflicts of interest by any FDX staff member. As part of that policy (or as a separate policy also issued within 180 days from recognition) FDX will adopt a written policy that sets out guidance to prevent FDX standards from being impacted by a member or other party as a result of that member or other party making additional payments to FDX beyond standard dues or fees.

*B. Representation of recognition*

1. FDX will represent the fact of recognition in a manner that accurately reflects the terms of the rule. Similarly, to the extent FDX describes to members or others the effect of CFPB recognition, FDX will do so in a manner that accurately reflects the terms of the rule.<sup>6</sup>
2. FDX shall not make any representation that the CFPB has endorsed FDX. FDX will not use the CFPB's logo.

*C. Self-monitoring*

1. FDX will review its policies and practices on a regular basis to ensure that it continues to meet the underlying requirements for recognition. This includes, but is not limited to:
  - a. assessment of membership fees or dues to ensure that they do not cause standard-setting processes to lack openness, balance, or consensus;
  - b. assessment of the effectiveness of the non-commercial and smaller entity councils in working to meet openness, balance, and consensus requirements, including the effective representation of consumer interests in the standard-setting process; and
  - c. assessment of FDX's request for comment (RFC) process to ensure that it provides for open and balanced input to a consensus standards development process.

*D. Standards development and issuance practices*

Identification and availability of consensus standards

1. No standard issued by FDX before recognition is a consensus standard, as that term is defined in the rule. Only standards adopted during the recognition period can be consensus standards.<sup>7</sup>

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<sup>6</sup> See, e.g., 89 Fed. Reg. 90838, 90862 (Nov. 18, 2024).

<sup>7</sup> For the avoidance of doubt, this would include any reoption by the board, post-recognition, of standards that FDX originally adopted pre-recognition. See also II.D.6 & note 10.

2. FDX will clearly identify its consensus standards, including distinguishing them from any non-consensus standards that it continues to maintain after recognition. FDX will also clearly identify whether any standard continues to be maintained by the organization as a consensus standard.<sup>8</sup>
3. FDX will make freely available to the public any consensus standards that it adopts and maintains, subject only to reasonable safeguards. The requirements that any party seeking access clear an Office of Foreign Asset Control and Know Your Customer check and agree to FDX's current license agreement are reasonable for these purposes.
4. FDX will ensure that non-members seeking to use the organization's consensus standards have the same access to those standards as members do. FDX will not impose, relative to member access to maintained consensus standards, additional conditions on non-member access to such standards.
5. FDX will make readily available to the public information that describes its standards development and issuing practices.<sup>9</sup>

#### Adoption of consensus standards

6. For board approval of standards to confer consensus status, FDX will use the same board procedures to approve any readoption of standards originally adopted prior to recognition as it would to approve adoptions of new or amended standards.<sup>10</sup>
7. The FDX bylaws state that standards can be adopted only by a 2/3 majority of voting power represented at a board meeting at which a quorum is present, with the board being composed of up to 12 data provider group members (at least one of which will be a small member), up to 12 third party group members (at least one of which will be a small member), and up to two directors that are non-commercial group members.<sup>11</sup> CFPB recognition is conditioned on:
  - a. Board composition including: (i) equal voting representation from third party and data provider group members; (ii) voting representation from two directors from non-

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<sup>8</sup> For example, if FDX adopts a consensus standard and then subsequently adopts an updated version of that standard, it will make clear whether the new version is the only FDX consensus standard on point or whether the earlier version also continues to be maintained as a consensus standard.

<sup>9</sup> As a membership organization where membership is broadly open and subject only to reasonable limitations, FDX is not required to enable non-members to participate directly in standard-setting.

<sup>10</sup> For purposes of this order, adoption of standards is generally understood to include readoption as well as any other mechanism that the board intends as conferring consensus status on a given standard.

<sup>11</sup> The application, bylaws, and board resolutions provide further specification of FDX's steady-state board structure.

commercial group members; and (iii) voting representation from at least one small<sup>12</sup> third party group member and at least one small data provider group member;<sup>13</sup>

- b. Requirements for quorum at a board meeting that adopts consensus standards including the attendance of, at a minimum: (i) a majority of the directors then in office; (ii) at least three data provider group member directors; and (iii) at least three third party group member directors;
- c. Retention by the board of final decision-making authority with respect to consensus standards adoption, including standards modification and standards maintenance decisions;
- d. Board members are subject to election, within defined member group designations, on a one member-one vote basis.<sup>14</sup>

#### *E. Membership self-designation and appeals*

- 1. FDX allows members to self-designate into third party or data provider groups (and/or into other designations and sub-designations, as applicable), subject to challenge by other members and resolution by appeal for any challenged designations. The FDX appeal mechanism will take account of the ownership of a member in resolving any challenge to a member's self-designation. FDX will ensure that these procedures are reflected in its bylaws or other governing documents.

#### *F. Substantive standards areas*

- 1. Recognition is not conditioned on the substance of any specific FDX standard now or in the future. It is conditioned on FDX's continued adherence to the procedural attributes required for recognition and on FDX's record of adopting and maintaining standards of relevance to open banking in the United States.

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<sup>12</sup> The bylaws' definition of "smaller entity" is consistent with "small" as used in II.D.7.a(iii) and in the final rule.

<sup>13</sup> For these purposes, voting representation means that the organization provides for representation as indicated in the conditions. If the organization so provides, but members from the relevant group choose not to make themselves available for selection, this condition is still satisfied.

<sup>14</sup> This condition is subject to the limited exceptions noted in the bylaws for appointment of smaller and non-commercial members from relevant councils, at least so long as these councils: (i) make the appointments by appropriately democratic means; and (ii) are open to members within that group. This condition does not require FDX to conduct three staggered elections, each for one third of the board, before it can adopt consensus standards. So long as FDX holds the first such election described in the bylaws, which the CFPB understands will be conducted shortly, and can represent accurately that the resulting board meets the voting representation requirements reflected in the bylaws and specified in condition II.D.7.a, consensus standards may be adopted by the resulting board from that point, with elections continuing to be held thereafter on the staggered basis described in the bylaws.

### G. *Regulatory engagement*

1. Starting in the first quarter of 2026, FDX will provide a written report, at least quarterly, to the CFPB on market adoption of its standards. The report will list all market entities that, post-recognition, properly have access to any consensus standard that FDX maintains. This reporting condition is waived for any period in which FDX makes available a public transparency facility that allows any party that accesses FDX consensus standards to publicly represent its use of such standards. To the extent that FDX offers any form of certification to parties using its standards, any such public transparency facility will also enable a party to publicly represent its certification status.<sup>15</sup>
2. FDX will establish a mechanism for regular engagement with the CFPB and any other federal financial regulators that have interest in its practices and standards. Such engagement shall serve to inform the CFPB (and, as applicable, other federal financial regulators) about FDX standards development and implementation activity, as well as FDX's ongoing alignment with rule requirements for recognition.
3. FDX will respond to CFPB requests for information within 15 days or another reasonable, mutually agreeable time period.
4. FDX will provide the CFPB, within 10 days, written explanation of:
  - a. any material change to information that was submitted in connection with FDX's application; or
  - b. any reason FDX may no longer meet underlying requirements for recognition.

### III. Grounds for recognition

This section further outlines the basis for this order. It reflects the CFPB's consideration of comments received on the FDX application after its publication.

#### A. *Attributes*

The CFPB's final rule states that the CFPB will not recognize a standard-setting organization unless the organization's standard setting procedures satisfy five specific attributes: openness, balance, consensus, transparency, and due process and appeals. These are addressed below.

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<sup>15</sup> The primary example of a "public transparency facility" would be a publicly accessible website that includes a directory or registry of users of the standard, including whether users have certified or attested to their adherence to any supplemental requirements (e.g. compliance with data protection standards).

## 1. Openness

For reasons reflected in the application, other FDX documentation, and/or additional FDX engagement with the CFPB, FDX's standards process satisfies the openness requirement, subject to the conditions noted above.

By becoming a member, any interested party is eligible to participate fully in all of FDX's standard setting and other activities. This includes FDX's established request for comment process. The RFC process allows any member to initiate, and/or provide input to, FDX work on a potential adoption or modification of a standard. The process includes designated periods for review and assessment of comments before proposed adjustments or additions to standards move towards final resolution. Procedural or other disputes arising under the RFC process are subject to resolution via the formal FDX appeals process.<sup>16</sup> Overall, the RFC process is structured to enable appropriately open member participation in standards development.

As specified in the bylaws, membership is contingent on agreeing to FDX's Membership Agreement and paying membership fees. As further specified in the bylaws, membership is otherwise open to entities supportive of the organization's broad purposes.<sup>17</sup> These requirements are reasonable and do not place an undue burden on any interested party's full participation in FDX. Accordingly, interested parties are able to participate meaningfully in standards development on a non-discriminatory basis.<sup>18</sup>

Any member is free to run for election to the Board on a one member-one vote basis. The bylaws establish a number of councils intended to further support participation in standard setting by smaller data providers, smaller third parties, and non-commercial entities, including consumer groups. Similarly, the bylaws provide for board committees (open to members of the board) and working groups (open to all members), each of which may form task forces (also open to all members) to work on any matter within the authority of the establishing body. FDX currently maintains a sizeable number of committees, working groups, and task forces. Integrated with the RFC process, these bodies help to maintain the open and participatory nature of FDX's standards development process.

Openness is also reflected in the availability of FDX standards to any entity—member or non-member—that agrees to the applicable license agreement and passes an OFAC/KYC check. So long as the applicable license agreement continues to be as open as the current license agreement, these conditions are appropriately open. Further supporting the organization's openness, FDX has stated to the CFPB it will ensure that board, board committee, council, working group, and taskforce meeting agendas are made available to members prior to meetings, and that meeting minutes are made available to members. FDX has also committed to circulating

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<sup>16</sup> See III.A.5 below.

<sup>17</sup> Membership eligibility is also subject to reasonable security and confidentiality restrictions; this encompasses a requirement that members meet OFAC/KYC requirements.

<sup>18</sup> In addition, FDX has no prohibition on non-members working through members to submit RFCs.

voting records to members, including how each member voted on any given standards adoption or amendment proposal.

## 2. Balance

For reasons reflected in the application, other FDX documentation, and/or additional FDX engagement with the CFPB, FDX's standards process satisfies the balance requirement, subject to the conditions noted above.

The organization's bylaws make clear that the FDX board of directors has final decision-making power with respect to standards adoption. Pursuant to the recent reforms, the board consists of 26 seats, of which 12 are reserved for, and subject to election by, data providers; 12 are reserved for, and subject to election by third parties; and two are reserved for, and subject to election by, non-commercial entities, including consumer groups.<sup>19</sup> The CFPB understands that this governance structure operates and is intended to continue to operate with equal representation for third parties and data providers, and for consumer groups to be represented as non-commercial entities. That understanding is reflected in a limited number of specific conditions, attached to this recognition, applicable to board composition and functioning with respect to consensus standards adoption. The governance structure thus described ensures that standard setting is not controlled by any one set of interests, and, as a general matter, reflects the broader interests of the membership as a whole.

Combined with the bylaws' requirement that board adoption of standards requires supermajority support, this decisional model (together with a number of associated procedural safeguards<sup>20</sup>) supports balanced decision-making—including, critically, by ensuring that no single interest or set of interests dominates decision-making. FDX has also reserved one board seat for smaller data providers, which is subject to election by such providers, and another board seat for smaller third parties, which is subject to election by such third parties.<sup>21</sup> This supports meaningful representation for small commercial entities in FDX's decision-making with respect to standards.

Board representation of two non-commercial entities, which can include public interest representation, provides further support in connection with the required attribute of balanced decision making. The CFPB determines that the organization's formal governance structure—including the operation of the non-commercial council provided for in the bylaws, which will be the source for consumer group representation on the board—can appropriately work to reflect and represent consumer interests adequately.<sup>22</sup>

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<sup>19</sup> Board members are elected solely by members in the same member category. There are no other requirements for members to be elected to the board, such as a membership length-of-tenure requirement.

<sup>20</sup> These include, *inter alia*, quorum requirements, notice and agenda requirements, and a prohibition on board delegation of the authority to make final decisions on standard adoption.

<sup>21</sup> These reservations do not limit the election of additional small entity representatives to the board.

<sup>22</sup> The CFPB has set a condition on recognition that requires FDX to review its procedures to monitor their effectiveness in achieving the required attributes. *See especially* II.C.1.b. If the current formal structure provided in

The CFPB has also determined that the member self-designation process, including associated procedural safeguards, entails sufficient recognition that, while members may play multiple roles in the open banking system, the weight of each member’s commercial concerns may align primarily with one set of interests.<sup>23</sup> After consultation with the CFPB, the FDX board has adopted a formal resolution to clarify that ownership of a member is a relevant consideration in determining whether any challenged self-designation is correct, which aligns with rule requirements in connection with balanced decision making.

FDX has also taken steps to enable the various internal groups to which the FDX board delegates or assigns authority, including committees, working groups, and task forces, to reflect appropriate balance in the standards development and adoption process. This includes requiring that each such group has a data provider and third-party co-chair, and that quorum requirements call for specific attendance levels from members of each such group. As noted, the bylaws provide for three internal councils—for smaller data providers, smaller third parties, and non-commercial entities including consumer groups—that, among other roles and responsibilities, provide a formalized avenue for these groups to play a significant role in FDX standard-setting work. Along with the associated procedural safeguards, including a limitation on the Board’s ability to delegate to internal bodies substantive final decisions on approving material changes to and/or new versions of FDX standards, the CFPB has determined that the procedures provide for balance at all levels of FDX.

### 3. Consensus

For reasons reflected in the application, other FDX documentation, and/or additional FDX engagement with the CFPB, FDX’s standards process satisfies the consensus requirement, subject to the conditions noted above.

For key substantive decisions, including adoption or modifications of standards, the bylaws provide that two-thirds of the board then present must reach agreement. Given the balanced structure of the board noted above, this approach is broadly reflective of the required consensus. For standards work to advance internally, majorities are also required within task forces, working groups, and board committees.<sup>24</sup> Each such FDX group must also satisfy relevant quorum

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the bylaws proves, in practice, insufficient to cause consumer interests to be appropriately taken account of in the standard setting process, the CFPB will consider whether additional conditions on public interest group representation should be imposed as a formal condition of continued recognition.

<sup>23</sup> A core safeguard is that self-designations may be challenged by other members and that such challenges are then resolved pursuant to an internal appeals process. In addition, some categories of self-designation are subject to initial approval by FDX; the CFPB understands that these FDX decisions are also subject to challenge and resolution via appeal. The appeals process is set out in FDX’s written appeals policy, which also applies to any other FDX action or inaction, including RFC matters.

<sup>24</sup> Board committees and working groups will have one data provider co-chair and one third-party co-chair, ensuring broadly balanced leadership of such groups, and the FDX bylaws do not provide co-chairs with the kind of authority that would allow them to block standards development that is generally agreed upon by members.

requirements in order to take action.<sup>25</sup> Along with the balance provided by the small entity and non-commercial councils, these measures further help align FDX's standards development and adoption work with the required attribute of consensus.<sup>26</sup> Finally, FDX's RFC process means that FDX standards development provides opportunity for members to comment and object, and for those comments and objections to be considered in a consensus process of standards development and finalization.

#### 4. Transparency

For reasons reflected in the application, other FDX documentation, and/or additional FDX engagement with the CFPB, FDX's standards process satisfies the transparency requirement, subject to the conditions noted above.

FDX's core procedural and governance documents, including those governing procedures and processes for participating in standards development and the development of standards, such as its bylaws, its membership agreement and license agreement, and its policy to add agenda items to board meetings, are published on FDX's webpage, ensuring that they are publicly available.<sup>27</sup> Additional documents and information that ensure members can participate in standards development are available in a central, online repository to which all members have access.

With respect to the transparency of FDX standards to the public, the CFPB is satisfied as a general matter that there are no inappropriate restrictions on such access. This order contains certain conditions intended to ensure that consensus standards are clearly identified and available—subject to the limited restrictions noted—to members of the public that want to use them. FDX has indicated to the CFPB that they will work to ensure that non-members are fully aware that use of FDX standards is royalty-free (and otherwise free to use) and to improve the accessibility of standards on FDX's website. For the avoidance of doubt on these transparency points, this order includes a formal requirement that non-member access to currently maintained consensus standards be no harder than access is for members. To further advance transparency and enable monitoring of the standard-setting process, this order is also conditioned on FDX reporting to the CFPB on public use of FDX consensus standards or otherwise enabling users of FDX standards to disclose such use by means of a central facility.<sup>28</sup> The CFPB expects such transparency to benefit open banking participants, regulators, and the public.

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<sup>25</sup> FDX has emphasized to the CFPB that, notwithstanding any past practice, members must be present at an FDX meeting to be counted toward quorum requirements. The FDX bylaws support this position.

<sup>26</sup> The CFPB notes that there is no prohibition on FDX incorporating a standard of another standard setter, provided that, in doing so, FDX uses the same procedures it would use for issuing its own standards.

<sup>27</sup> The CFPB understands that RFC procedures are available to members but are not currently posted on the organization's public website. Given FDX's representation in its application that non-members can participate in the RFC process through a member, the CFPB expects a summary of the RFC policy to be made public as well.

<sup>28</sup> See II.G.1; see also 12 C.F.R. § 1033 Appx. A & 12 U.S.C. § 5512(c).

## 5. Due process and appeals

For reasons reflected in the application, other FDX documentation, and/or additional FDX engagement with the CFPB, FDX's standards process satisfies the due process and appeals requirement, subject to the conditions noted above.

As a general practice, FDX's policies and procedures are documented and publicly available, as described above. FDX's application and bylaws describe FDX policies that ensure members are given adequate notice of meetings and standards development, sufficient time to review drafts and prepare views and objections, and access to views and objections of other members, providing a fair process for resolving conflicting views. FDX also has a written appeals policy, which allows for the handling of procedural appeals, including safeguards to ensure the impartiality of appeals processes. The appeals process has wide application to internal disputes.

The CFPB understands that FDX is developing a written conflict of interest policy. The CFPB views the development of such a policy as a valuable means to protect due process and other procedural attributes required under the final rule, and this recognition order is conditioned on development of such a policy within a reasonable time period, not to exceed six months. The CFPB notes its concerns with standards organizations that have operated, at least in part, on a "pay-to-play" basis.<sup>29</sup> The CFPB recognizes that FDX's bylaws provide significant protection against "pay-to-play" conduct, and that the organization maintains a written code of conduct applicable to its staff and constituent bodies. Nonetheless, the CFPB views maintenance of a written policy that specifically targets "pay-to-play" conduct as important to the long-term protection of, *inter alia*, due process and balance within standard-setting organizations.

### C. *Other factors*

The final rule states that the CFPB may consider other information when reviewing an application for recognition, including whether the standard-setting body will adopt and maintain standards relevant to open banking. Without making any statement about the merits of any current FDX standard, the CFPB accepts that FDX maintains standards that are relevant to open banking in the United States, and, given FDX's membership and standard-setting processes, the CFPB sees no reason to expect that to change going forward.<sup>30</sup> Without requiring FDX to adopt any specific standard in any specific area, the CFPB encourages FDX to make use of the standards development procedures and associated governance structure that it has built (and continues to evolve) by looking to adopt further standards in areas of relevance to open banking in the United States.<sup>31</sup>

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<sup>29</sup> See <https://www.consumerfinance.gov/about-us/blog/asc-hearing-addresses-appraisal-bias-highlights-deficiencies-with-the-appraisal-foundation/>.

<sup>30</sup> Recognition is not based on the merits of any specific FDX standard. See II.F.1.

<sup>31</sup> Such standards could be developed by FDX, or FDX could use its decisional structure to assess—and if it so decides, adopt—standards developed, in whole or in part, outside of FDX.

**SO ORDERED.**

Dated: January 8, 2025

*Rohit Chopra*

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Rohit Chopra  
Director  
Consumer Financial Protection Bureau