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Attorney-Client Privileged, Confidential Communication

April 18, 2014

Jerry Pluard
President, SDBIC, LLC
25 South Grove
Suite 101
Elgin, IL 60120

**Re: Review of Safe Deposit Box Insurance by the
Consumer Financial Protection Bureau**

Dear Mr. Pluard:

You asked us to summarize the feedback we recently received from staff at the Consumer Financial Protection Bureau (CFPB) concerning their review of Safe Deposit Box Insurance Company's (SDBIC) insurance product (the product), which protects the contents of safe deposit boxes. The feedback, which SDBIC proactively sought in a meeting with CFPB staff, can be summarized as follows:

- CFPB staff recognizes the market need for the product given consumers' lack of understanding of the risks to the contents of safe deposit boxes that the product insures against;
- The CFPB's Office of Supervision Policy determined that, when compared to the numerous risks to consumers posed by other products on the market, neither the product nor its marketing methods and materials raised any concern sufficient to warrant further review; and
- CFPB staff said the product poses minimal risk of consumer harm because it is a niche add-on product narrowly marketed to safe deposit box holders.

Safe Deposit Box Insurance

SDBIC's safe deposit box insurance provides coverage for all property of any character that is legally stored in a safe deposit box, up to the limits selected by the box holder. Coverage insures against most natural and man-made disasters, including fire, water damage from flood, robbery, burglary, and terrorist attack. The exclusions are for damage due to shaking from earthquakes and "mysterious disappearance" of the property where the manner of loss is unknown. A policyholder is not required to disclose the contents of the box or obtain an appraisal of those items to obtain coverage. Each policy offers up to \$3,000 as part of the coverage amount to replace important documents, such as deeds, titles, wills, and passports. There is no deductible, the amount of coverage may be changed at any time, and the policy can be canceled at any time. Upon cancellation, the consumer receives a refund of any unearned premium.

SDBIC is approved to underwrite and sell safe deposit box insurance in every state and the District of Columbia. The product is currently being offered to customers in 30 banks across 13 states, representing over 300 branch locations. Marketing materials are typically provided to bank customers at the time a safe deposit box is initially being leased and then with a notice for renewal of the safe deposit box lease.

View of the CFPB

In February, we met with Elizabeth Ellis, the CFPB's Deputy Assistant Director in the Office of Financial Institutions and Business Liaison, to discuss the product and to seek the agency's view of the product and the marketing materials. We discussed the terms of SDBIC's safe deposit box insurance and how the product is sold. Copies of the marketing materials, including the Affirmative Election Program documents, were provided to the CFPB (attached as Exhibit A.) We stressed both the void this insurance fills in the market and the educational benefit it provides to the large percentage of consumers who mistakenly believe their safe deposit box is insured by the bank, the FDIC, or another governmental entity. There was a thorough discussion about the product, how it is marketed, the marketing materials, and the unique features and consumer benefits that the product provides – including the basis on which a patent was granted on the product.

Ms. Ellis did not express any objections or concerns about SDBIC's product and concurred that such insurance indeed fills a gap in coverage for consumers. Moreover, she agreed that a bank, by offering the insurance, could be viewed as making an appropriate disclosure that educates its safe deposit box holders consistent with the mandates of the CFPB to educate consumers. Ms. Ellis agreed to provide the product information and marketing materials to the CFPB's Office of Financial Education for review as a financial education tool that attempts to fill a gap in consumer knowledge about the lack of government-provided insurance coverage for the contents of safe deposit boxes.

After our meeting, Ms. Ellis shared SDBIC's product information and marketing materials with the CFPB's Office of Supervision Policy (Supervision Office). The Supervision Office advised Ms. Ellis that, the CFPB does not formally review or pre-approve any type of products, marketing methods or product materials for companies. Rather, the CFPB takes a "risk-based" approach to examinations, which considers the significance of the market for a product and any previously identified consumer harm, such as complaints. Specifically, the CFPB focuses on protecting consumers from financial products and marketing practices that are unfair, deceptive or abusive. The Supervision Office advised Ms. Ellis that it had reviewed the safe deposit box insurance product, its marketing methods and marketing materials and determined that the product is so different – they referred to it as a "niche product" – from the large landscape of products that are currently on the market and have been of concern to the CFPB that the product is "simply not a supervisory priority for the Supervision Office." This is consistent with the scope of the CFPB's enforcement actions alleging unfair, deceptive or abusive (UDAAP) trade practices, which have focused on "big ticket" add-on products that, because of their nature or the manner in which they are offered, raise concerns about the potential for widespread and significant consumer harm.

The following statement from Steven Antonakes, the CFPB's Deputy Director, is helpful in understanding why the Supervision Office has expressed no interest in the product:

In terms of our supervisory approach, it encompasses an assessment of potential consumer risk, as well as a number of quantitative and qualitative factors. These factors include: (1) the size of the overall market in which a regulated entity's product line operates; (2) the potential for consumer risk related to a particular product market; (3) a regulated entity's level of activity in the marketplace, or more specifically, its market share; and (4) field and market intelligence that encompasses a range of issues including, but not limited to, the quality of a regulated entity's management, the existence of other regulatory actions, default rates, and consumer complaints.

In sum, according to Ms. Ellis, the Supervision Office believes the program does not present a level of regulatory concern that would necessitate supervisory scrutiny.

Review of SDBIC's Marketing Materials

SDBIC also retained our firm to provide a compliance review of the product's marketing materials.

McIntyre & Lemon, PLLC has previously met with CFPB staff on numerous occasions and in various contexts. During those meetings, we have discussed marketing practices and marketing materials the agency has determined to be unfair, deceptive or

abusive during enforcement actions.¹ We have also reviewed the CFPB bulletin concerning the marketing of “add-on” products to bank customers.²

We reviewed SDBIC’s marketing materials and practices against the CFPB’s past guidance, enforcement actions, and mission to “ensur[e] that consumers get the information they need to make the financial decisions they believe are best for themselves and their families—that prices are clear up front, that risks are visible, and that nothing is buried in fine print. In a market that works, consumers should be able to make direct comparisons among products and no provider should be able to use unfair, deceptive, or abusive practices.”

Based on our review, none of the problematic practices previously identified by the CFPB are present in the SDBIC Program or marketing materials. SDBIC’s three-page marketing solicitation is given to new renters of safe deposit boxes in bank branches. Marketing solicitations are mailed at the time the product is introduced and with annual box renewal notices. The materials include a comprehensive disclosure of the coverage terms, including cost, benefits, limitations, and exclusions, among others. The solicitation contains a link to obtain the complete product terms online, which anyone can access at any time without purchasing the insurance coverage. The marketing materials also include an enrollment form that requires the consumer’s express written authorization to be charged based on the amount of coverage the consumer selects. Finally, given that the product is an insurance product, which has been subject to insurance regulation, the consumer is directed to contact SDBIC’s licensed insurance agents with any questions.

These disclosures in the marketing materials educate consumers on the lack of government- or bank-provided insurance coverage of safe deposit box contents and clearly explain the coverage’s material terms. The product’s simplicity, coupled with these disclosures, significantly decreases the risk of confusion or misrepresentation in the sales process, which is the CFPB’s primary concern. Moreover, the product is not marketed via telephone, so how it is marketed does not raise any of the telemarketing-related concerns of the type the CFPB has focused on in recent enforcement actions.

We have also analyzed the product and marketing materials against the CFPB’s Supervision Manual, which directs examiners to take a risk-based approach to their examinations. Our analysis reveals that SDBIC’s safe deposit box poses few, if any, risks from a bank examiner’s perspective.

¹ The following consent orders identify various practices that the CFPB considers unfair, deceptive or abusive with respect to the marketing of “add-on products”: In the Matter of: Capital One Bank, (USA) N.A., File No. 2012-CFP-0001 (2012); In the Matter of: Discover Bank, File No. 2012-CFPB-0005 (2012); In the Matter of: American Express Bank, FSB, File No. 2012-CFPB-0003 (2012); In the Matter of: U.S. Bank National Association, File No. 2013-CFPB-0003 (2013); In the Matter of: GE Capital Retail Bank, Care Credit LLC, File No. 2013-CFPB-0009 (2013); and In the Matter of: American Express Bank, FSB, File No. 2013-CFPB-0012 (2013).

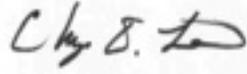
² CFPB Bulletin 2012-06.

Conclusion

Based on our review of the product and the marketing materials as well as our conversations with the CFPB and how the Supervision Office views the product, the safe deposit box insurance product, including the marketing materials alongside the affirmative election requirement, does not raise any concerns or present risks of the type that are traditionally the focus of CFPB's guidance, enforcement actions, or examinations. The feedback received from the CFPB staff during both our discussions, along with the Supervision Office's disinterest in the product, supports our view. There is no indication the CFPB has concerns with SDBIC's safe deposit box insurance or the marketing materials. Moreover, the CFPB has not expressed any interest in regulating this type of add-on product. The CFPB does appear interested in the educational aspect of the product when offered by the bank, as it is a tool to address the widespread consumer misunderstanding that the rental of a safe deposit box includes some form of government or bank provided insurance for the contents.

Sincerely,

McINTYRE & LEMON, PLLC



Chrys D. Lemon
James T. McIntyre

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