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GOVERNOR

STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE SERVICES
DEPARTMENT OF LABOR & ECONOMIC GROWTH
ROBERT W. SWANSON, ACTING DIRECTOR

LINDA A. WATTERS
COMMISSIONER

May 9, 2006

Ms. Kimberly Baber
Varnum Riddering Schmidt Howlett, LLP
Bridgewater Place
P.O. Box 352
Grand Rapids, MI 49501-0352

Dear Ms Baber:

I am writing in reply to your April 17, 2006 letter on behalf of [BANK] in which you requested "confirmation" "that the Bank's plans to expand the size and scope of its current safe deposit business is clearly permitted by Section 4102 of the Michigan Banking Code of 1999" (Code).

As described in your letter, the bank is proposing to expand its existing safe deposit and safekeeping services into a dedicated facility that would offer customers a range of safe deposit box/compartment sizes with differing security and accessibility features. Under the proposal:

1. Smaller safe deposit compartments would be located in an interior vault accessible only during fixed business hours and only through the bank officer-staffed lobby area. Access to compartment contents would be via either a combination of customer-controlled and Bank-controlled keys or, in the case of some larger units, a combination lock.
2. Larger safe-deposit compartments would be located on the perimeter of the building and each is proposed have its own exterior door accessible at any time via a single customer-controlled key or combination lock.
3. The facility, including customer parking, would be surrounded by a security fence and would be under surveillance or otherwise protected by a third party-provided security system. Customers would be provided with access devices to enter the security gate.

Section 4101(1) of the Code (MCL 487.14101) states, in pertinent part, that a bank chartered under the Code "shall have and exercise the powers and means appropriate to effect the purpose for which the bank is incorporated, powers conferred by former 1969 PA 319 and by this act. . .". State-chartered banks' authority to conduct safe deposit activities

originates in Section 188(1) of the Banking Code of 1969 (former MCL 487.488(1)), which allowed “any bank” to “operate a safe deposit and storage department or invest an amount not exceeding in the aggregate 15% of its unimpaired capital stock and surplus in the stock of not more than 1 safe and collateral deposit company organized under the laws of this state.” Section 4102 of the Code (MCL 487.14102) limits the liability of a bank operating a safe deposit and storage department and establishes parameters for the handling of unpaid rental and storage charges.

While the majority of banks engaging in safe deposit activity in Michigan traditionally have limited this service to the provision of boxes in a contained, secure area inside bank or branch premises requiring assistance of bank staff for customer access to a dual-keyed box, Michigan law does not preclude provision of the service in alternate formats. One may presume that the Legislature intended by its use of the separate terms “safe deposit” and “storage” to distinguish these services. Both the 1969 and 1999 banking codes addressed bank safe deposit and storage activity in terms of a “box or compartment” and, as well, provided that the activity might involve “property accepted for storage outside a box or compartment.”¹ Neither statute prescribed the physical location at which this activity was to be conducted, the nature or level of security to be afforded stored property, the nature of property acceptable for storage, or department users’ ease or method of access to their stored property.

I have concluded that Michigan’s Banking Code of 1999 does not preclude [BANK] engaging in the proposed activities. As you are aware, this determination also is subject to a determination by the Federal Deposit Insurance Corporation that the proposed activity is permissible for state-chartered banks. Should the bank receive such a determination from the FDIC, in accordance with the public policy enunciated in section 1102 of the Code,² this agency expects that [BANK] will have in place prior to commencement of the proposed safe deposit and storage activities procedures and controls designed to:

- i. comply with applicable laws and regulations.
- ii. minimize risk associated with conduct of the proposed activities, including reputational risk to [BANK].
- iii. promote the conduct of the proposed activities in a safe and sound manner.

¹ MCL 487.14102, former MCL 487.488

² It is the policy of this state that the business of all banking organizations shall be supervised and regulated in a manner that insures the safe and sound conduct of business, to conserve their assets, promote competition among banking organizations, to maintain public confidence in the business, and to protect the public interest and the interests of depositors, creditors, and shareholders. MCL 487.11102

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You may direct questions regarding this communication to Deputy Commissioner Peggy Bryson at 517/373-9552 or pbryso@michigan.gov.

Sincerely,

/ss/

Richard D. Lavolette
Chief Deputy Commissioner

cc: John Stevens, FDIC