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California Department of Financial Protection and Innovation
Legal Division
300 S. Spring Street, Suite 15513
Los Angeles, CA 90013

Re: Comments on Proposed Rulemaking PRO 01-21

Point Digital Finance, Inc. (Point) thanks Commissioner Hewlett for the opportunity to comment on the DFPI's proposed registration requirements under the California Consumer Financial Protection Law (Proposal). The proposed registration requirements would apply to four consumer financial products and services: (i) debt settlement services; (ii) student debt relief services; (iii) education financing; and (iv) wage-based advances. Point respectfully requests the DFPI adopt a registration and data reporting requirement for a fifth industry — home equity investment products because they are rapidly growing consumer financial products that fall under the core purview of the DFPI.

I. Introduction to Point and its Home Equity Investment Product

Point was founded in 2014 in Palo Alto with a mission to provide an alternative to traditional HELOCs and second mortgages. Point offers homeowners a Home Equity Investment contract (HEI) under which the homeowner receives cash on day one in exchange for a share of the equity in their home, as well as a percentage of the future upside or downside. Initially, Point entered into 10-year contracts and have moved exclusively to 30-year contracts in 2019. Since then, Point has originated more than 4,200 HEIs, totaling about $387 million invested into homes, with more than 1,700 of these investments with Californian homeowners. Point has since moved into 18 other states and territories, although the majority of Point's investments are in California homes. HEI is structured as a real estate option purchase agreement that offers immediate liquidity to customers without some of the downside risks of traditional loan products.

Here's how Point's HEI works for the typical customer:

- Point will invest in a portion of a customer's home equity. Point's average investment to a typical California consumer is 16 percent of the home's current value. Point will typically appraise a customer's house to determine its current value.

- Customers enter into a real estate option agreement with Point for a 30-year term. Point is not included on the customer's title, though it does file a deed of trust. The agreement is a non-recourse transaction.
- Point disburses funds to customers after a three-day rescission period that Point elects to provide to all consumers.
- Customers do not make monthly payments to Point, and there is no interest.
- Customers can elect to exit at any time over the 30-year term, and there are no lockout periods or early exit penalties. The most common exit paths are via a property sale or mortgage refinance.
- When the customer exits, the share due to Point is proportional to the percentage share the customer agreed to with Point with one significant exception. Point caps its share if the property has appreciated beyond a preset percentage. Point's downside loss, however, is not capped if the property loses value.

Point's product is not the only version of HEI in the marketplace. Several other companies exist, and there are variations between each company's products.

Having offered HEIs for several years, Point has collected data[1] showing how HEIs benefit consumers:

- **HEI decreases debt.** Point's customers decreased their non-mortgage debt by an average of 30 percent in the first month after origination. Most customers maintained this reduction 24 months after initiating their HEI.
- **HEI helps improve FICO scores.** Though Point does not market HEI as a credit improvement product, Point has observed that 75 percent of Point's customers increased their FICO scores after obtaining an HEI. The average increase was 53 points (measured from origination through program exit). In the 36 months after origination, about 50 percent of Point customers see a FICO increase of fifty points or more, and about 30 percent of customers see an increase of 75 points or more.
- **Many customers have a positive experience**. Point has received few complaints from its customers and has a 4.6 rating on Trustpilot.[2]
- **HEI improves cashflow**. HEIs provide consumers access to liquidity who may be unable to obtain traditional forms of financing, such as a home equity line of credit. Because HEIs do not carry a monthly payment, many consumers immediately pay down high-interest debt, increasing their cash flow and improving their financial situation.

Just as importantly, Point's HEI product creates a natural alignment between Point and its customers — both share in the property's upside and downside. This alignment coupled with the fact that HEIs are non-recourse prevent the homeowner from ever being "underwater" with Point. Point has never foreclosed on a homeowner.

[1] Data is on file with Point.
[2] *See* https://www.trustpilot.com/review/point.com (accessed on December 16, 2021).

II. DFPI Should Treat HEIs Like the Other Products in its Proposal.

In its invitation for comments, the DFPI explained it was issuing regulations to regulate the four industries in the Proposal because:

> the DFPI aims to strengthen its ability to protect California consumers through compliance examinations of registrants and regular reporting. The DFPI may also better detect risks to California consumers and understand emerging markets for consumer financial products and services.[3]

As we explain below, the same logic applies to HEIs, and the DFPI should consider including HEIs in its registration regulation.

A. Like Other Products in the Proposal, HEIs Do Not Fit Within Existing Regulatory Regimes.

California principally regulates real estate lending under the California Residential Mortgage Lending Act[4] and the California Financing Law.[5] These laws impose licensing, disclosure, and other substantive requirements in connection with making loans secured by real property. Several federal laws, such as the Truth In Lending Act (TILA), likewise impose disclosure and substantive requirements on extensions of credit secured by real property or a dwelling.[6] For decades, these laws have protected consumers by prohibiting harmful and unfair terms and requiring consistent disclosures that empower consumers to compare different offers and understand product features. However, these laws are strictly limited to credit products, and TILA explicitly excludes option contracts from the definition of "credit."[7]

Other than general prohibitions on unfair and deceptive conduct at the state and federal level, no specific legal regime applies to HEIs with respect to licensure or registration and disclosure. While the question of what the final scope of any regulation of HEIs might look like is beyond the scope of the Proposal, the DFPI should seek to include HEIs for the same reasons it is including the products listed in the Proposal:

- **Oversight**: Established and transparent HEI providers, like Point, are currently subject to the DFPI's jurisdiction because they voluntarily obtained a license. New firms entering this market may decide against obtaining a license, perhaps to avoid the DFPI's attention. A segmented market, where some firms are regulated under regulations that may not fit their product offerings and some are not, leads to an uneven playing field that puts consumers at risk. Creating registration requirements tailored to the HEI industry will correct this imbalance and enable the DFPI to respond quickly to potential harms caused by the firms under its jurisdiction.

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[3] DFPI, "Invitation for Comments on Proposed Rulemaking Under the California Consumer Financial Protection Law (PRO-01-21) at https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/11/PRO-01-21-11-17-21-Invitation-for-Comments-for-Publication.pdf.
[4] CAL. FIN. CODE §§ 50000 – 50706.
[5] CAL. FIN. CODE §§ 22000 – 22780.1.
[6] 15 U.S.C. §§ 1601 – 1665e; 12 C.F.R. part 1026.
[7] CFPB, Supplement I to Part 1026, Official Interpretation of 12 C.F.R. pt. 1026.2(a)(14)(1)(vii).

- **Data**: Without uniform and consistent oversight, the DFPI is at risk of not having sufficiently robust information to protect HEI consumers effectively. Requiring all firms to register is a critical first step, ensuring the DFPI staff is familiar with the products and practices of all HEI providers, not just the ones that voluntarily obtain a license. The second step is requiring firms to report standardized data on HEI transactions. Standardized data will enable the DFPI to monitor market changes, compare peer institutions, and identify potentially troubling terms and practices.

B. DFPI's Window of Opportunity Is Open.

There are currently several active HEI providers. Point and its competitors have worked diligently to establish an innovative and consumer-friendly HEI market and have partnered with the capital markets to fund an expanded number of consumer contracts. In addition to the growth in providers, consumer demand has increased substantially as home values have appreciated. This recent supply and demand side growth has established HEIs as a vital consumer finance product that warrants careful review from the DFPI. We firmly believe that it is in the best interest of consumers, homeowners, investors, and the marketplace for the DFPI to establish oversight while still maintaining that HEI providers are bringing an innovative financial solution to the market that uniquely addresses real consumer needs.

We, nonetheless, have concerns about the future of this market in the absence of appropriately-tailored DFPI oversight. The HEI market is growing. There is substantial consumer demand for HEI products due to the shortfalls of traditional financing products, and traditional financial services participants now more than ever seek to gain exposure to residential home price appreciation. As housing prices appreciate, demand will continue to grow, which will attract new entrants. As new companies enter, there is a serious risk of a "race to the bottom" that ends up harming consumers.

This potential consequence of an unregulated HEI industry should be a particular concern for the DFPI because it places vulnerable populations at risk. For example, Point provides HEIs to homeowners who do not have access to traditional loan products. Traditional HELOCs and prime mortgages require credit scores above 680 and often carry substantial debt-to-income requirements.[8] The average credit score of Point's customers is about 640. HEI, moreover, does not impair cash flow, so Point can serve many consumers who are locked out of the current financial services ecosystem. Point is proud that we substantially outperform traditional HELOC lenders in California based both on applications as well as fundings in majority Hispanic and African American census tracts as well as LMI tracts.[9]

While Point seeks to serve California residents responsibly, a bad actor could just as easily target these populations and use HEIs in a predatory manner. While Point's underwriting and valuation requirements are consumer-friendly, no regulation requires other HEI providers to offer services in a responsible manner. For example, while Point voluntarily caps its share of gains on a home's

[8] *See* Experian, "What Credit Score Do I Need to Get a Home Equity Loan," at https://www.experian.com/blogs/ask-experian/what-credit-score-do-i-need-to-get-a-home-equity-loan/.
[9] Data is on file with Point.

increase in value, no legal requirement mandates this product feature for other providers. As with all products secured by real property, consumer harms may not be realized until there is a market downturn, which could be far in the future. If bad actors enter the HEI market, there is little visibility into the predatory products they might provide until there is a market shift and foreclosures begin.

Providing ongoing data to the DFPI, like the providers of the other products covered by the Proposal, will allow the DFPI to monitor HEIs in a proactive rather than reactive manner. The DFPI can proactively monitor consumer complaints, outcomes, and other criteria through data collection. By collecting data and monitoring the industry but not imposing unwarranted substantive disclosure or product requirements, the DFPI will allow HEIs to continue to grow under its watchful eye. This framework will allow this innovative industry to mature and enable more Californians to access equity in their homes.

C. Suggested Amendments to the Proposal to Include HEIs.

We suggest the DFPI make two additions to the Proposal.[10] The first is to add a new definition to Section 1:

> "Home Equity Investment" means a product that allows a homeowner to obtain funding from a provider via a contract through which the provider has a contractual right to purchase its share of equity in a home upon one or more conditions subsequent.

Second, we suggest the DFPI amend Section 51 to add provisions regarding data collection from HEI providers. We suggest a final rule to collect the following categories of data in an annual report:

a) Number of HEI customers who entered into new contracts.
b) For those customers included in (a), the average amount paid by the HEI provider to each customer in (a).
c) For those customers included in (a), the average option percentage of home equity obtained by the provider.
d) Number of customers who exited their HEI.
e) The number of customers who entered foreclosure.

These data categories are suggestions; we would be happy to share feedback with the DFPI on what data Point has and can reasonably produce to the DFPI to allow it to provide effective oversight.

III. Conclusion

Point is grateful for the opportunity to provide feedback on the DFPI's proposed registration requirements. We strongly believe adopting a registration program for HEI providers is the best way for the DFPI to protect California consumers while fostering safe and responsible growth in

[10] DFPI will need to make additional edits in other sections of the proposal to incorporate the inclusion of HEIs and their providers.

this emerging and innovative market. We would be pleased to answer any questions you may have and provide any additional information you require to assist in this rulemaking effort. We appreciate your time and consideration of this letter.

Sincerely,

[redacted]

Matt Brady
General Counsel
Point Digital Finance, Inc.