



Comptroller of the Currency
Administrator of National Banks

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April 15, 1998

**Interpretive Letter #838
November 1998
12 U.S.C. 36J**

Dear []:

This replies to your letter of February 12, 1998 addressed to Licensing Specialist Linda Pulley, which has been referred to the Legal Division for response. You have requested a legal opinion as to whether your bank's placement of certain equipment at a local shopping mall would require the filing of a branch application with the OCC.

The facts, as I understand them from your letter and subsequent telephone conversations with Senior Attorney Stephen B. Brown, are as follows. [] (" ") has its main office in [City], and has no branches. [] is considering placing three items of equipment in a local shopping mall. The items are an automated financial receiving station ("AFRS"), an automated change maker ("ACH") and an automated teller machine ("ATM"). These are freestanding, automated machines which are not attended by bank personnel. The machines would perform the following functions. The ACH would give change for currency fed into the machine by users. The ATM would allow a bank customer to withdraw funds from an account at the bank by using an ATM or debit card, but would not accept deposits. The AFRS would perform a deposit-taking function. A customer would physically deposit cash or checks into the AFRS for deposit to the customer's account at [], using a coded card to access the AFRS. The AFRS would electronically verify the customer's access code, and electronically record on a disc that a deposit had been made using that code. The AFRS would provide the customer with a receipt showing that a deposit had been made. Periodically, the deposits and the disc would be picked up and delivered to the bank. Bank personnel would then verify the deposit amounts, using the information on the disc to identify the customers by their access codes. The deposit amounts would then be credited to the customers' accounts. It is my opinion that these machines are not branches, and thus are not subject to the branching restrictions imposed on national banks.

National bank branching is governed by the McFadden Act (“Act”), 12 U.S.C. § 36. The Act provides that a national bank may, with the approval of the Comptroller of the Currency, establish and operate new branches at such locations as are authorized to state banks under the law of the state where the national bank is located. *See* 12 U.S.C. § 36(c). A “branch” is defined as including “any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent.”¹ *See* 12 U.S.C. § 36(j). This definition was amended by section 2204 of the Economic Growth and Regulatory Paperwork Reduction Act (“EGRPRA”) (effective September 30, 1996), which added the proviso that: “[t]he term ‘branch,’ as used in this section, does not include an automated teller machine or a remote service unit.” *See* P.L. 104-208.

Prior to EGRPRA, a national bank required OCC approval under 12 U.S.C. § 36 to own and operate an ATM or a customer bank communication terminal (“CBCT”). *See Independent Bankers Ass’n of America v. Smith*, 534 F.2d 921 (D.C. Cir.) (finding that CBCTs are branches under section 36), *cert. denied*, 429 U.S. 862 (1976). The revision to section 36(j) now clearly provides that ATMs and RSUs are no longer subject to the branching restrictions and related approval requirements imposed by or through section 36. Accordingly, the OCC has determined that national banks have authority to establish ATMs (and RSUs) without geographic restriction in a given state. *See* Comptroller Staff Interpretive Letter No. 772, reprinted in *Interpretations and Actions*, Vol. 10, No. 3 (March 1997) (“Interpretive Letter No. 772”). Therefore, in the present case, [] may establish the ATM without regard to location or application requirements.² The ACH may also be established at any location, since it is not a branch because no core banking functions are performed at the site.

As previously noted, the AFRS will receive deposits, which is a core banking function. However, the AFRS is an automated, unstaffed banking facility which will be owned and operated by [], and which will record the deposit information electronically.³ It is therefore an ATM for purposes of the interagency definitions developed to implement the Community

¹ These are known as “core banking functions,” and the application of 12 U.S.C. § 36 is dependent upon one of the functions being performed at a given location.

² Under [State] law, a bank may establish an ATM at any location. *See* [] Ann. §§ [] and[]. Accordingly, the establishment of the ATM does not raise any state law preemption issues.

³ The AFRS thus differs from a deposit drop box, which is considered a branch for purposes of OCC licensing requirements. *See* 12 C.F.R. § 5.30(d)(1)(i).

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Reinvestment Act (“CRA”). *See* 12 C.F.R. § 25.12(d) (OCC definition), 12 C.F.R. § 228.12(d) (Federal Reserve Board definition), and 12 C.F.R. § 345.12(d) (FDIC definition).⁴ These definitions describe automated, unstaffed facilities that engage in one or more of the core banking functions. The OCC has determined that facilities that operate in this manner are ATMs or RSUs within the meaning of section 36(j) and are not subject to branching limitations. *See* Interpretive Letter No. 772. It is my opinion that under this standard, the AFRS is an ATM or RSU under the revised section 36(j). Accordingly, [] may establish the AFRS at the proposed location without filing an application with the OCC.⁵ *See id.*

A copy of Interpretive Letter No. 772 is enclosed for your information. Should you have any questions concerning this matter, please contact me or Mr. Brown at (214) 720-7012.

Very truly yours,

/s/

Randall M. Ryskamp
District Counsel

Enclosure

⁴ The OCC and the Federal Reserve define an ATM to mean an automated, unstaffed banking facility owned or operated by, or operated exclusively for, the bank at which deposits are received, cash dispersed, or money lent. The FDIC uses identical language to define a remote service facility (“RSF”), which includes an ATM.

⁵[State] law permits a banks to establish a “consumer banking electronic facility” (“CBEF”) at any location. A CBEF means any electronic device owned or operated by a bank to which a person may initiate an electronic fund transfer, and includes ATMs and other similar electronic devices. *See* [] Ann. §§ [] and []. It is understood that the State of [State] does not require an application to establish a CBEF. Therefore, the establishment of the AFRS does not raise a state law preemption issue.