



Interpretive Letter #1165
August 2019
12 USC 36
12 CFR 5.30

June 28, 2019

Subject: Legal Requirements for the Establishment of Interactive Automated Teller Machines

Dear []:

This is in response to your letter to Randy Ryskamp, Southern District Counsel, dated April 8, 2019, as supplemented by email on May 22, 2019,¹ inquiring whether []'s ([] or Bank) establishment of an Interactive Automated Teller Machine (Interactive ATM) in a commercial location open to the public will require the Bank to follow the procedures in 12 CFR 5.30 and 12 USC 36 for the establishment or relocation of a branch by a national bank (Request Letter).

As discussed below, we conclude that the Interactive ATM described in your letter is not a branch under 12 USC 36(j). Therefore the requirements in 12 USC 36 and 12 CFR 5.30 for the establishment, relocation, and operation of national bank branches do not apply.²

Facts

The Request Letter described the Interactive ATM as an electronic device owned and operated by the Bank that would have the ability to process withdrawals, accept deposits, cash checks, accept loan payments, transfer funds between other accounts, and otherwise function as an automated teller machine (ATM).

According to the Request Letter, the customer would have the ability to perform essential banking transactions—including making a deposit, withdrawal, or balance inquiry, and transferring funds between [] accounts—without the involvement of bank personnel. The

¹ Email from [] to John Carse and [], Re: Interactive Teller Machines, (May 22, 2019).

² This letter only addresses national bank branching. The OCC separately addressed branching of federal savings associations in Interpretive Letter 1161 (Nov. 28, 2018), concluding that the Interactive ATM described in that letter, was an electronic means or facility pursuant to 12 CFR 155.200 and not a branch office under 12 CFR 145.92, and so, based on the facts and circumstances discussed, the requirements in 12 CFR 145.92 and 12 CFR 5.31 were not applicable.

customer initiates such a self-operated transaction by inserting a debit card. The customer can also decide to initiate an interactive session in which case bank personnel situated remotely assists the customer in carrying out the relevant banking transaction. In these transactions, the remote personnel can assist the customer with the operation of the machine to process deposits, cash checks, process loan payments, and make withdrawals of cash and coins.

Discussion

National banks may retain or establish and operate a branch on conditions set forth in 12 USC 36. Section 36 requires that a national bank receive the approval of the OCC to establish a new branch.³ Section 36 provides a definition of “branch” that explicitly excludes a remote service unit (RSU) and an ATM without defining those terms.⁴ The OCC has defined RSU by regulation to be an automated facility (including an ATM) that is operated by a customer of a bank, conducts banking functions, and may be equipped with a telephone or televideo device allowing contact with bank personnel.⁵ The OCC’s regulatory definition of RSU recognizes that an RSU (i) allows the customer to perform banking transactions that the customer could engage in at a branch, and (ii) is primarily operated by the customer.⁶ Thus, the definition of RSU recognizes that while an RSU and a branch may deliver the same banking functions to a customer, there is a difference in the nature of interaction between the customer and bank personnel in the two contexts, with delimited interactions in the case of an RSU relative to a branch.

The OCC has not defined the term “ATM” by regulation. An OCC interpretive letter has used the definition of the term “ATM” that exists in the OCC’s CRA regulation as a proxy for understanding the term for purposes of section 36.⁷ The inclusion of ATMs in the regulatory definition of RSU is consistent with, and a recognition of, the delimited nature of the interaction to be expected between a customer and bank personnel in the RSU context because, as unstaffed and automated machines generally, ATMs afford little to no opportunity for interactions between customers and bank personnel.

It follows from the legal provisions described above that the Bank does not need to follow the branching requirements for establishment of an Interactive ATM if the machine (i) meets the definition of an ATM used for purposes of section 36 consistent with OCC interpretations, and

³ 12 USC 36(c).

⁴ 12 USC 36(j) provides that “[t]he term ‘branch’ as used in this section shall be held to include 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. The term ‘branch’, as used in this section, does not include an automated teller machine or a remote service unit.”

⁵ See 12 CFR 7.4003. The OCC’s Community Reinvestment Act (CRA) regulation defines the term 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.” 12 CFR 25.12(d).

⁶ This aspect of the definition recognizes that the functions of an RSU would render it a branch, if the RSU performed one of the branch functions set out in section 36(j), but for the explicit exclusion of an RSU from the statutory definition of “branch.”

⁷ OCC Interpretive Letter #772 (Mar. 6, 1997).

(ii) the nature of the interactions between the customer and remote bank personnel are delimited as would be the case with an RSU. Here, consistent with the OCC's understanding of an ATM, the Interactive ATM that the Bank proposes to establish is automated, owned and operated by the bank, and capable of conducting banking functions. Moreover, we note that no bank personnel are physically present at the Interactive ATM, and it is the customer who engages Bank personnel stationed remotely to assist the customer in operating the machines to effectuate banking transactions. The types of interactions between a customer and remote bank personnel outlined in the Request Letter reflect that the customer has sole discretion whether to initiate the interactive session and, in such instance, accomplishes a given transaction by directing and retaining significant control over the machine.⁸ These facts are consistent with an understanding that these machines are primarily operated by the customer with delimited assistance from remote bank personnel.

Conclusion

In light of the foregoing, we conclude that the Interactive ATM described in the Request Letter is not a branch for the purposes of 12 USC 36(j). Therefore, the requirements for national bank branches under 12 USC 36 and 12 CFR 5.30 do not apply.

This conclusion is based on the facts and circumstances as represented in the Request Letter. Different facts and circumstances or different applicable laws and regulations, could result in a different conclusion.

I trust this is responsive to your inquiry.

Sincerely,

/s/

Jonathan V. Gould
Senior Deputy Comptroller & Chief Counsel

⁸ The OCC has previously considered a separate question regarding an ATM at a location where bank personnel are present. For example, an automated machine may be located in a facility that houses other non-branch operations, such as a loan production office (LPO) or a deposit production office (DPO), that are physically staffed by bank personnel. Under OCC regulations, a combination LPO, DPO, and ATM does not constitute a branch for purposes of section 36(j) under the reasoning that if none of these independently are considered branches, then any combination of these facilities at one location does not create a branch. 12 CFR 7.4005. *See also First National Bank of McCook, Nebraska v. Fulkerson*, Civ. No 98-D-1024, 2000 U.S. Dist. LEXIS 21459, 2000 WL 33914121(D. Colo. Mar. 7, 2000); OCC Interpretive Letter #843 (Sept. 29, 1998). As bank personnel are physically present at the location in such a circumstance, the OCC has determined that in such a case it is necessary to consider whether and to what extent such bank personnel may be considered to be "staffing" the ATM. Bank personnel who are physically present will not be considered to be staffing the facility provided that "withdrawals undertaken at the ATM will be accomplished by depositors, not by bank personnel" and bank personnel "cannot operate the ATM on behalf of a [c]ustomer." *See* Conditional Approval #313 (July 9, 1999).