



Office of Thrift Supervision  
Department of the Treasury

1700 G Street, N.W., Washington, D.C. 20552 • (202) 926-6000

December 19, 1994

[REDACTED]

Re: Status of Automatic  
Teller Machines  
12 C.F.R §§ 545.92(a), .96 and  
.141

Dear [REDACTED]:

This is in response to your letter, dated June 21, 1994, written on behalf of [REDACTED] (the "Holding Company"), and its savings association subsidiary, [REDACTED] (the "Savings Bank"). According to your letter, the Savings Bank is proposing to install advanced types of unstaffed, automated teller machines ("ATMs") in the offices of certain broker/dealer subsidiaries (the "Broker/Dealer Affiliates") of the Holding Company. You seek confirmation from the Office of Thrift Supervision (the "OTS") that such ATMs would be treated as remote service units ("RSUs") under Section 545.141 of the Regulations for Federal Savings Associations ("Federal Regulations"),<sup>1</sup> and not "branch offices" under Section 545.92 of the Federal Regulations.<sup>2</sup> In our view, based upon our review of the facts presented and the applicable legal precedents, such ATMs, in performing the activities described in your letter, would be considered RSUs within the scope of the RSU Regulation, and thus, would not be deemed branch offices under the Branching Regulation.

BACKGROUND

As we understand the facts, the Holding Company is a diversified financial services company that owns two asset management firms and a nationwide insurance agency in addition to the Savings Bank and the Broker/Dealer Affiliates. The Savings Bank was organized by the Holding Company to effectuate the 1994

<sup>1</sup> 12 C.F.R. § 545.141 (1994) (the "RSU Regulation").

<sup>2</sup> Id. § 545.92 (the "Branching Regulation").

acquisition of three offices of a failed institution in a transaction approved by the Resolution Trust Corporation (the "RTC") pursuant to section 13(k) of the Federal Deposit Insurance Act.<sup>3</sup>

In connection with the approval, the Holding Company received a partial override of certain state laws ("anti-affiliation statutes") prohibiting the affiliation of insured depository institutions, such as the Savings Bank, and insurance companies, such as the Holding Company's subsidiary insurance agency. In effect, the RTC approval overrode the anti-affiliation statute of Florida specifically and any other state in which the Savings Bank would not be deemed to maintain a branch office as defined in the Branching Regulation. Thus, the Savings Bank may establish branch offices in Florida and states without anti-affiliation statutes, but can do business in states with anti-affiliation statutes only if its activities do not rise to the level of the operation of a "branch office" as determined by the OTS.

According to your letter, the Savings Bank is proposing to establish unstaffed ATMs in the offices of participating Broker/Dealer Affiliates on a nationwide basis. The ATMs would make available traditional electronic services, such as accepting deposits, dispensing withdrawals, making account transfers and answering balance inquiries, to existing customers. These facilities would also incorporate some additional features which you describe as follows:

The ATMs would be equipped with two-way video-phone devices that would enable a potential or existing customer to speak with and see on the ATM's video monitor a member of the Savings Bank's staff, who would be physically located at the Savings Bank's main office (or at an authorized branch or administrative office of the Savings Bank). The ATMs would be attached to a printing device that could print out the various application forms, signature cards, and other documents utilized by the Savings Bank to open a deposit account or to make a loan application. The ATMs would also have a "day depository" drawer or collection box in which envelopes containing new account or loan application forms, as well as any initial amounts deposited with deposit application, would be stored. At the end of each business day, a courier . . . would pick up the envelopes placed in the

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<sup>3</sup> 12 U.S.C. § 1823(k) (Supp. V 1993).

ATM's drawer and transport them overnight to one of the Savings Bank's offices for processing.<sup>4</sup>

Employees of the Savings Bank (not the Broker/Dealer Affiliate) located in an authorized office of the Savings Bank would, by means of the two-way video phones, advise potential or existing customers on available loan and deposit products and assist them in filling out forms to open deposit accounts and apply for loans or servicing existing loans and deposit accounts. For new business, the available services are described as follows:

In the case of a new deposit account, no account would be deemed to have been opened until the appropriate documentation and/or funds had been received and processed at the Savings Bank's main office. Loan applications could be accepted<sup>5</sup> by a Savings Bank employee utilizing an ATM to communicate with a borrower, but final approval and disbursement of any funds would be contingent upon the Savings Bank's actual receipt and review of the loan documentation filled out by the customer and the subsequent closing of the loan.<sup>6</sup>

Based on the above description of the proposed activities of the ATMs, you maintain that the ATMs should not be treated as branch offices under the Branching Regulation, but rather as either remote service units ("RSUs") or combination RSUs/unmanned agency offices. You maintain that the ATMs would qualify as RSUs under the RSU Regulation, because they would offer the range of services permitted for RSUs on an unstaffed basis without providing for the formal opening of savings or demand accounts or the formal establishment of loan accounts. Alternatively, you argue that the ATMs could be treated as combination RSUs/unmanned agency offices that also would not be branch offices. For the reasons discussed below, we agree with your opinion that the ATMs would not be branch offices under the Federal Regulations.

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<sup>4</sup> Letter of June 21, 1994 ("June 21 Letter"), at 5.

<sup>5</sup> In a letter dated September 14, 1994, you specifically substituted the word "accepted" in this sentence for the phrase "tentatively approved" in your June 21 Letter. In so doing, you have indicated that the term "accepted" is intended to mean that "no loans would be approved through the use of the ATMs."

<sup>6</sup> Id.

## DISCUSSION

Under section 5(a) of the Home Owners' Loan Act (the "HOLA")<sup>7</sup> the Director of the OTS is authorized to provide for the organization, incorporation, examination, operation, and regulation of federal savings associations. The courts have recognized that this exceptionally broad delegation of power gives the OTS, including its predecessor, the Federal Home Loan Bank Board (the "FHLBB"), wide regulatory discretion to regulate the activities of Federal thrifts<sup>8</sup> and complete discretion to determine by regulation what constitutes a branch.<sup>9</sup>

Pursuant to this broad grant of authority, the Branching Regulation defines the term "branch office" as any "office other than [an association's] home office, agency office, data processing or administrative office, or a remote service unit"<sup>10</sup> and authorizes the transaction of any business of a Federal savings association at a branch office.<sup>11</sup> Furthermore, the Branching Regulation specifies that any banking facility that qualifies as an RSU is not a branch office.<sup>12</sup>

The RSU Regulation defines, in pertinent part, the term "Remote service unit" to mean "an information processing device, including associated equipment, structures and systems, by which information relating to financial services rendered to the public is stored and transmitted, instantaneously or otherwise, to a financial institution . . . The term includes, without limitation, point-of-sale terminals, merchant-operated terminals,

<sup>7</sup> 12 U.S.C. § 1464(a) (Supp. V 1993).

<sup>8</sup> See Fidelity Federal S. & L. Ass'n v. De La Cuesta, 458 U.S. 141, 145 (1982) (citing People v. Coast Federal S. & L. Ass'n., 98 F.Supp. 311, 316 (S.D. Cal. 1951); Independent Bankers Ass'n. of America v. Fed. Home Loan Bank Bd., 557 F.Supp. 23 (D.D.C. 1982); see Int. Mem. C.C. (OTS) (June 13, 1994) at 5.

<sup>9</sup> See Bloomfield F. S. & L. Ass'n v. American Com. St. Corp., 396 F.Supp. 384, 389 (1975) (citing Bridgeport F. S. & L. Ass'n v. Fed. Home Loan Bank Bd., 307 F.2d 580, 584 (3rd Cir. 1962), cert. denied, 371 U.S. 950 (1963)).

<sup>10</sup> 12 C.F.R. § 545.92(a) (1994).

<sup>11</sup> Id.

<sup>12</sup> Id.; see also Internal Mem. Dep. G. C. (FHLBB) (Long) (Jan. 27, 1984) at 6-7 ("1984 Memorandum") and 12 C.F.R. § 545.141(a)(3) (1994) ("An RSU is not a branch . . . of a Federal savings association under § 545.92 et seq. of this part.")

cash-dispensing machines, and automated teller machines  
 . . . .<sup>13</sup>

Because the proposal in essence involves services provided at an ATM, it is arguably permissible under the plain language of the RSU Regulation, which, by its terms, includes ATMs. However, the fact that the proposed services would be offered at an ATM is not dispositive because the RSU Regulation limits the services that may be offered through an RSU.<sup>14</sup> Rather, in our view, the more appropriate test is to scrutinize the actual services performed at an ATM terminal to determine whether they exceed the intended scope of the RSU Regulation's exemption from branch office status.

In this regard, your letter identifies three basic services to be performed at the ATMs: (1) processing savings and checking account deposits and withdrawals and account balance inquiries regarding current accounts, (2) rendering customer assistance in conducting transactions through two-way video phones, and (3) (a) providing forms for deposit, checking account and loan applications through attached printers, and (b) incorporating a "day depository" drawer for holding deposits and completed applications for pick-up by a courier service for processing at a branch office of the association.

As to the first service - account deposit, withdrawal and balance inquiries - these types of activities are unquestionably permissible and routine ATM activities.<sup>15</sup> The second and third services, however, would expand upon the range of traditional services offered at ATMs. You argue in essence that these two services would literally qualify the ATMs as RSUs under the language of the definition contained in the Section 545.141(a)(3) of the RSU Regulation, because the two-way video phone is an "information processing device," and the attached form printer and day depository drawer are "associated equipment, structures

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<sup>13</sup> 12 C.F.R. § 545.141(a)(3) (1994) (emphasis added).

<sup>14</sup> 12 C.F.R. § 545.141(b) (1994) ("No RSU may be used to open a savings account, a demand account or establish a loan account.") We note that depository institutions have recently sought to expand the scope of services available through computer terminals to include a wide range of new services, including, for example, securities brokerage services. See Sandra Sugawara, Stocking up at the ATM, WASH. POST, Oct. 6, 1994, at D11, D14 (Citibank permits customers to execute stock trades at ATM terminals.); see also 12 C.F.R. § 545.142 (1994) (authorizing Federal associations to provide certain types of permissible home banking terminal services.)

<sup>15</sup> See 12 C.F.R. § 545.141(a) and (b) (1994).

and systems "by which information relating to financial services rendered to the public is stored and transmitted, instantaneously or otherwise" to the Savings Bank.<sup>16</sup>

We do not believe that focusing on the equipment as opposed to its use is dispositive of the critical issue presented by these nontraditional ATM activities, i.e., whether they are within the scope of activities permissible under the RSU regulation. Nonetheless, for the reasons discussed below, it is our view that the proposed services would fall within the scope of activities permissible under the RSU Regulation.

The RSU Regulation imposes the following relevant limitations on the operation of RSUs: "No RSU may be used to open a savings account, a demand account, or establish a loan account."<sup>17</sup> While in adopting and amending the RSU Regulation neither the OTS nor the FHLBB explicitly addressed the intended scope of the regulatory prohibitions against opening savings or checking accounts or establishing a loan at RSUs, in other relevant contexts accounts have been held not to have been opened or established until an association accepts for processing and acts upon an application or other completed form.<sup>18</sup> Because you represent that an application to open a savings or demand account or to obtain a loan would not be reviewed or acted on until the association receives the appropriate documentation at its main office or a branch,<sup>19</sup> we would not regard any of the proposed activities as exceeding the limitations imposed by the RSU regulation.

In addition, we note that the use of the proposed day depository drawer service for applications is very similar to the use of courier services to facilitate the formal opening of savings and demand accounts and establishment of loan accounts at branch offices. Previous legal opinions have recognized that Federal associations have the incidental authority to provide banking services such as the opening of deposit and loan accounts through courier-type arrangements in which the substantive

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<sup>16</sup> June 21 Letter at 7 (quoting 12 C.F.R. 545.141(a)(3) (your emphasis)). You also note that, as unmanned facilities, the ATMs would not contravene a prior FHLBB legal ruling that manned facilities could not qualify as RSUs. 1984 Memorandum at 7. For the reasons discussed herein, this argument is not dispositive of the issues you have presented.

<sup>17</sup> 12 C.F.R. § 545.141(b) (1994) (emphasis added).

<sup>18</sup> See, e.g., Op. Dep. C.C. (OTS) (Comizio) (Nov. 20, 1992) at 4-5.

<sup>19</sup> See note 5 supra and accompanying text.

transactions were formally completed at association offices.<sup>20</sup> In such cases, Federal associations are not required to obtain prior agency approval under the Branching Regulation, because the activities are not deemed to be the operation of branch offices.<sup>21</sup>

Finally, because the above-described activities are within the scope of the RSU Regulation, we would not view the use of a two-way video phone that functions solely to provide customer assistance and information relating to these activities as exceeding the scope of the RSU Regulation. Our views on this issue, however, are limited to situations where the video phone is used solely to provide information and assistance to fill out deposit, account, or loan applications, and association personnel are not otherwise engaging in any way in the actual processing or review of such applications by video phone or other communication devices at an ATM. In addition, this opinion does not authorize the sale of uninsured products at an ATM or address any other regulatory compliance issues that may arise in connection with the establishment or operation of ATMs providing the above-described activities.

You also argue that if we conclude that the proposed ATM activities do not fall within the scope of the RSU Regulation, the ATMs would qualify as unmanned agency offices without rising to the level of branch office operations. In light of our foregoing views on the proposed ATM activities, we do not believe it is necessary to address this issue.<sup>22</sup>

In reaching the conclusions presented in this letter, we have relied on the factual representations contained in the materials presented to us. Our conclusions depend upon the accuracy and completeness of those representations. Any material change in circumstances from those set forth in your submissions could result in conclusions different from those expressed herein.

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<sup>20</sup> See, e.g., Op. G.C. (FHLBB) (May 25, 1972) (establishing a courier service to provide banking services); Ops. G.C. (FHLBB) (Nov. 20, 1986) (using courier services to pick up deposits from customers' places of business; sending deposit originators to open accounts and pick up applications and initial deposits for transport to a branch office).

<sup>21</sup> Id.

<sup>22</sup> We note that the proposed loan activities generally would be permissible as agency office loan production office activities. See 12 C.F.R. § 545.96(a) (1994) (Federal associations may, without prior OTS approval, maintain agency offices that service and originate, but do not approve, loans).

If you have any questions regarding the foregoing, please do not hesitate to contact Richard L. Little, Senior Counsel at (202) 906-6447.

Very truly yours,

  
Carolyn B. Lieberman  
Chief Counsel