



THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF BANKS

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June 7, 2013

Richard E. Bolton, Jr.
President and Chief Executive Officer
Lowell Co-operative Bank
15 Hurd St.
Lowell, MA 01852

Dear Mr. Bolton:

This letter is in response to your correspondence dated December 12, 2012 on behalf of Lowell Co-operative Bank (Bank) to the Division of Banks (Division) regarding Interactive Teller Machines (ITMs), as described below. Your letter asks for clarification on the approval process for the installation of an ITM at the Bank's operations center, which is not a designated branch. At issue is whether the approval for the ITM will be governed by G.L. c. 167B, which governs electronic branches and electronic fund transfers, or by G.L. c. 167C, which governs branches.

Facts Presented

According to your letter, the Bank has contracted to purchase five ITMs from NCR. Two of these machines have been installed but are not currently operational.

The Bank installed the first ITM at the Bank's 691 Rogers Street, Lowell branch location to replace the full-service automated teller machine (ATM) maintained at this location. The Bank's Rogers Street location is an approved full-service retail branch location. The Bank has also installed the second ITM at the Bank's operations center at 18 Hurd Street, Lowell, Massachusetts which is not a designated branch. This ITM is replacing a full-service ATM that was approved for this site.

Your letter states that the NCR equipment has the functionality of both a traditional ATM and an ITM. When the Bank's Customer Call Center is closed and the ITM functionality is off, the equipment has the capability of operating as a full-service ATM. Currently, the NCR equipment is not certified with the Bank's core processor, Jack Henry, to work as an ATM, therefore this functionality has been turned off and is not utilized by the Bank. The Bank was in the process of certifying the ATM functionality with Jack Henry at the time of your letter and anticipated that by the end of the first quarter 2013, it would be utilizing the NCR equipment both as an ATM and ITM.

As described in your letter, the ITMs, for the most part, have the functionality of an ATM, but with an additional interactive video component. The video functionality allows a more interactive experience between the customer and Bank employee, allowing the Bank to bring typical call center

services to the customer at the ITM. These are the same services that customers can currently access through the telephone.

As presented in the attachment to your letter, there are eight additional services that the ITMs would provide that would not be available through an ATM.

For the following three services, transactions processed on the ITM would be processed through the Customer Assistance Center as they would be processed in any Call Center:

- Hot card (stop on debit card);
- Verify account history; and
- Check orders.

The following five services would require a signature form that would have to be mailed to the client and returned for processing through the Customer Assistance Center as they would be processed in any Call Center:

- Stop payments;
- Debit card reissue;
- Report loss of Money Order;
- Report loss of Treasurer's Check; and
- Change of address.

Question Presented

The issue presented in your letter is whether the ITMs, as described above, are considered to be ATMs or electronic branches under Massachusetts General Laws chapter 167B, or if the ITMs are considered to be branches under Massachusetts General Laws chapter 167C.

Massachusetts General Laws

Electronic branches and electronic fund transfers are governed by Massachusetts General Laws chapter 167B and its implementing regulation, 209 CMR 31.00 *et seq.* Massachusetts General Laws chapter 167B, section 1, defines "Electronic branch" in relevant part as "an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. Such term includes, but is not limited to automated teller machines and cash dispensing machines. Such term does not include a teller machine or similar device located on the premises of and operated solely by an employee of a financial institution or a point-of-sale terminal...An electronic branch shall not be considered a branch in chapters one hundred and sixty-eight, one hundred and seventy, one hundred and seventy-one, one hundred and seventy-two and one hundred and seventy-two A." The Division notes that the term "automated teller machine" is not defined under Massachusetts General Laws chapter 167B.

Massachusetts General Laws chapter 167B, section 1 defines "Electronic fund transfer" as "any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic branch telephone instrument, or computer or magnetic tape or point-of-sale terminal so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone..."

Massachusetts General Laws chapter 167B, section 3, in the fourth paragraph, states in relevant part, "No such electronic branch located at other than the office of a financial institution *shall be manned*

or operated at any time by an employee of any financial institution, holding company of a financial institution or affiliate thereof, or any organization except on a temporary basis for the purpose of instructing operators or customers, servicing the electronic branch or for the purpose of using such electronic branch on said employee's own behalf." (Emphasis added.) The word "manned" is not defined in G.L. c. 167B.

Massachusetts General Laws chapter 167C, governing bank locations, does not define the word "branch". The provisions of Massachusetts General Laws chapter 167C govern branch offices or depots, mobile branch banking and several related topics, but the Division has not identified any provision in said chapter 167C to address the ITM technology at issue.

Federal Law: Office of the Comptroller of the Currency Interpretive Letter and Regulation

Although not determinative to the Division's position, the Division notes that the Office of the Comptroller of the Currency (OCC) has issued an interpretive letter on a similar subject matter. In Interpretive Letter #772, issued in March 1997, the OCC considered whether ATMs and remote service units ("RSU") were bank branches, concluding, "that U.S.C. §24(Seventh) authorizes national banks to establish and operate ATMs and RSUs and that this authority is not subject to geographic restrictions and related approval requirements because ATMs and RSUs are excepted from the definition of a bank "branch" in 12 U.S.C. § 36(j)."

In 1999, the OCC promulgated the following regulation at 12 CFR §7.4003: "A remote service unit (RSU) is an automated facility, operated by a customer of a bank, that conducts banking functions, such as receiving deposits, paying withdrawals, or lending money. A national bank may establish and operate an RSU pursuant to 12 U.S.C. §24(Seventh). An RSU includes an automated teller machine, automated loan machine, and automated device for receiving deposits. *An RSU may be equipped with a telephone or televideo device that allows contact with bank personnel. An RSU is not a 'branch' within the meaning of 12 U.S.C. 36(j) and is not subject to state geographic or operational restrictions or licensing laws.*" (Emphasis added.)

Consumer Protections and Security Requirements

In reviewing the substance of the differences between ITMs and ATMs, the Division also considered the consumer protections required under Massachusetts and federal law. The Division's regulation implementing M.G.L. c. 167B, 209 CMR 31.00 *et seq.*, provides in relevant part at 209 CMR 31.02(4): "Compliance with any provision of the Federal Electronic Fund Transfers Act, the Board's Regulation E, official Board interpretations and official staff interpretations, which does not conflict with M.G.L. c. 167B, 209 CMR 31.00 or an advisory ruling of the Commissioner, shall be deemed to be (in) compliance with M.G.L. c. 167B."

Analysis

With regard to Massachusetts General Laws chapter 167B, the Division reviewed section 1 to identify any definition that may be applicable to ITM technology since it is not referenced by name or description. As noted above, the definition of "electronic branch," as drafted, includes "an electronic device, other than a telephone, through which a consumer may initiate an electric fund transfer. Such term includes, but is not limited to automated teller machines and cash dispensing machines..." The Division notes that the definition includes the term "but is not limited to," which suggests that it was not drafted as an exhaustive list. The Division also reviewed Chapter 530 of the Acts of 1981, which added chapter 167B to the General Laws. While the statute has been amended subsequently, the definition in section 1 of "electronic branch" has not been amended since its enactment in 1981.

With regard to the prohibition of "manned" electronic branches in Massachusetts General Laws chapter 167B, s. 3, paragraph 4, it is the position of the Division, that the ITMs, as described in your letter, are not 'manned,' but instead are automated machines operated by the customer, with no bank employee onsite to operate the machine on the customer's behalf. Each of the transactions are initiated by the customer and five of the ITM transactions require the customer to return a signature form to complete the transaction. Accordingly, based on the facts presented in your letter, the prohibition on 'manned' electronic branches set forth in Massachusetts General Laws chapter 167B, s. 3, paragraph 4 would not apply.

Conclusion

Given the advent of technology not likely contemplated in 1981, the Division has instead focused its analysis on the substance of the additional services provided by the ITMs as presented in your letter. As noted above, there are eight additional services available through the ITMs that are not available through traditional ATMs. Three of those services are processed through the Customer Assistance Center: stop on a debit card, verification of account history and check orders. The other five services requiring a signature form that would be mailed to the client and returned for processing through the Customer Assistance Center are: stop payments; debit card reissue; report loss of Money Order; report loss of Treasurer's Check; and change of address.

All eight of the transactions are initiated by the consumer. In addition, there are no distinctions among the protections for consumers using electronic branches under Massachusetts General Laws chapter 167B or 209 CMR 31.00 *et seq.* based upon the type of electronic branch, so the protections would be the same for consumers using both ITMs and ATMs under Massachusetts law.

Accordingly, based on the totality of the facts presented and the current statutory framework, it is the position of the Division that the ITMs, as specifically described in your letter, would be considered electronic branches, as governed by Massachusetts General Laws chapter 167B and 209 CMR 31.00 *et seq.* The application process for the ITM at the Bank's operations center would follow the existing procedure for an application to establish an ATM, which is to submit a notice to the Division within 30 days after opening the ATM location. It is also the position of the Division that all consumer protections and security requirements applicable to ATMs under state law would also apply to use of ITMs.

The Division emphasizes that its position is based solely on the specific ITM services described in your December 12th letter, and that this position should not be considered to be a blanket authorization of all ITM technology under the existing statutory framework of Massachusetts General Laws chapter 167B.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented may result in a different position statement by the Division.

Sincerely,



Sandra Clarke
Chief Operating Officer

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