

INTERPRETIVE LETTER – 06-02 (MAY 9, 2006)

Remote deposit capture terminals do not constitute a branch office of a state bank under Section 2 of the Illinois Banking Act.

The Division of Banking (the “Division”) has received and reviewed your April 3, 2006 letter requesting that the Division clarify whether a remote deposit capture terminal constitutes a branch office of a state bank pursuant to the provisions of the Illinois Banking Act¹, (the “Act”). Based upon the factors listed in your April letter describing the process of capturing and transmitting electronic digital image information and in recognition of modern banking technology, it is the Division’s position that a remote deposit capture terminal does not have the statutory attributes of a branch office under Section 2 of the Act.

Your initial letter and subsequent communications with the Division identified a relatively new use of information or data transmission technology, commonly referred to as a remote deposit capture terminal. The use of remote deposit capture terminals, which appears to be a direct outgrowth from the recently enacted Check Clearing for the 21st Century Act,² enables the user to scan and convert checks to a digital image and then transmit this digital image to a depository financial institution. Usually, these remote deposit capture terminals are utilized by a financial institution’s corporate and commercial customers as a means of eliminating the need for the customer to physically transport and deposit checks at a branch banking office. To effectuate the remote deposit capture, the financial institution’s corporate and commercial customers must own or be supplied the scanning and transmission terminal from the financial institution. Generally, transmission of the digital check images to the financial institution is accomplished through a secure internet transmission line to a third party processor, who in turn transmits the information to the Bank for the purpose of crediting the corporate or commercial customer’s account. You have indicated that financial institutions usually execute contractual agreements with the processor and the corporate or commercial customer whereby it is agreed that the deposit aspect of the digital image is deemed to be effective upon the receipt of the transmission at the main office of the financial institution, rather than the receipt by the third party processor.

Section 2 of the Act defines a branch office of an Illinois state-chartered bank as a place at which deposits are received, checks paid, or loans made.³ The Division has long held that a determination of where a deposit is received is dependent in part upon where the deposit is credited to a customer’s account.⁴ Nothing in the information you have provided, as described above, indicates that the customer’s deposits are received and credited at the remote deposit capture terminal. Rather, the corporate or commercial customer transmits the digital check image to the financial institution through a third party processor. Because the remote deposit capture terminal is merely a data transmission device and is not immediately crediting the customer’s deposit, it is not a branch office of the financial institution under Section 2 of the Act. Such a determination is consistent with the Division’s previously stated recognition that the use of modern technology as an aid to data transmission does not result in branching activities.⁵ Therefore, it is the determination of the Division that the use of the remote deposit capture terminal is analogous to previously authorized uses of technology to transfer funds by telephonic or electronic means. Consequently, the engagement by a state-chartered bank in the receipt of deposits

¹ 205 ILCS 5/1 et seq.

² 12 U.S.C. 5001

³ 205 ILCS 5/2.

⁴ See Division of Banking Interpretive Letter No. 91-23 (Sep. 13, 1991).

⁵ See Division of Banking Interpretive Letter 90-03 (January 30, 1990).

by means of a remote deposit capture terminal and placement of a remote deposit capture terminal on a state-chartered bank customers' premises does not constitute the establishment of a bank branch at that location.

You are reminded, however, that a state-chartered bank that agrees to engage in the use of remote deposit capture terminals will need to develop risk control measures. These control measures should address appropriate technical standards to safely implement the transmission devices and establish exposure limits and indemnification agreements between the state-chartered bank and its customers.