

**INTERPRETIVE LETTER 94-002 (JANUARY 28, 1994)**

**Placement of proprietary message on ATM screen that can be accessed only by customers of the establishing bank does not violate prohibition against proprietary advertising on the ATM terminal. [Note: EFT Act enacted 1/1/96 explicitly authorizes proprietary advertising when the terminal is accessed by an existing accountholder of the establishing bank.]**

This is in reply to your inquiry concerning the use of proprietary messages or advertising on automatic teller machines ("ATM") screens. Specifically, you asked whether Section 8-103(B) of the Electronic Fund Transfer Transmission Facility Act ("Act"), 205 ILCS 615/8-103(B) (1992), prohibits a bank from operating an ATM in a manner that allows proprietary advertising to be displayed on the screen of the ATM when the ATM is accessed by a customer of that bank. For the reasons described below, this Agency does not interpret Section 8-103(B) of the Act as prohibiting such proprietary advertising on ATM screens.

Section 8-103(B) sets forth the types of logos and other information that an ATM may "bear" and states that an ATM "may not bear any other form of financial institution proprietary advertising." As amended by Public Act 88-408, effective August 20, 1993, Section 8-103(B) allows a notice to be placed on the ATM identifying the financial institution that established the ATM.

This Agency historically has construed Section 8-103(B)'s prohibition against proprietary advertising as applying only to advertising that was physically attached to the ATM terminal. Thus, while advertising could not be affixed to the ATM screen or to other parts of the terminal, it could be placed outside of an ATM kiosk, on the interior walls of an ATM kiosk, and in other areas around the ATM as long as the ATM terminal itself did not bear the advertising.

Given that proprietary advertising may be placed around--but not on--ATM terminals, and that an ATM terminal may now bear the name of the financial institution which established it, it is questionable whether Section 8-103(B)'s prohibition against proprietary advertising on the ATM terminal continues to serve a significant purpose. However, to the extent that Section 8-103(B) still would prohibit an ATM terminal from bearing proprietary advertising, we conclude that your proposal would not be in violation of that prohibition in any event.

Under your proposal, a bank would establish an ATM and would implement software that would allow a proprietary message or advertisement to appear on the screen only if the ATM was accessed by a customer of the establishing bank. Customers of other banks may be able to utilize the same ATM, but their access cards would not trigger the proprietary message. The ATM terminal itself would not bear proprietary advertising that

could be seen by passers-by or by any person using the ATM, except by customers of the establishing financial institutions.

Under the circumstances described in the preceding paragraph, this Agency concludes that the ATM would not bear proprietary advertising in violation of the language, spirit or intent of Section 8-103(B). The proprietary message would not be affixed to the exterior of the ATM terminal where it could be observed an any person looking at the ATM. At no time would the proprietary message appear on the ATM screen when the ATM is accessed by a customer of a financial institution that did not establish the ATM. The proprietary message would appear only to ATM users who are already customers of the establishing financial institution. Such limited access to the proprietary message is not contrary to Section 8-103(B), because the ATM terminal does not externally "bear" the proprietary message, and the message cannot be used to attract, advertise to or communicate with customers of competing financial institutions.