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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

August 10, 2005

**Interpretive Letter #1036**  
**August 2005**  
**12 USC 36**

Subject: Remote Deposit Capture Terminals

Dear [ ]:

This is in response to your letter of June 2, 2005 on behalf of [ *National Bank* ], requesting confirmation of our earlier telephone discussion as to whether a check scanning terminal at a nonbank location, used by a bank customer to transmit electronic images of checks to the bank for deposit, is a branch within the meaning of the McFadden Act, 12 U.S.C. § 36. This will confirm my opinion expressed during that call that such terminals are not branches under federal law regardless of whether they are owned by the customer or the bank.

#### Facts

According to your letter, it is now possible for a corporate customer of a bank to use a check scanning terminal, located on the customer's premises, to make deposits. The customer scans a check and an electronic image of the check is then transmitted to the bank to effect a deposit. This can be done even when the depository bank is located in another state and does not have a branch in the customer's state. In some cases the scanning terminal may be owned by the bank, while in other cases the customer or a third party may own the terminal.

This process, known as "remote deposit capture,"<sup>1</sup> has been made possible by the Check Clearing for the 21st Century Act ("Check 21 Act"),<sup>2</sup> which was enacted in 2003 and took effect on October 28, 2004. Briefly, the Check 21 Act authorizes the use of a "substitute check," which is a paper reproduction of an original check that contains an image of the front and back of the original check. When a bank customer deposits a check, the depository bank may choose to send a substitute check to the collecting bank instead of sending it the actual check. Alternatively, if agreeable to both banks, the depository and collecting banks can engage in

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<sup>1</sup> See, e.g., Bonnie McGeer, *Remote Deposit Boosts Service, Cuts Costs*, American Banker, Jan. 18, 2005.

<sup>2</sup> Pub. L. No. 108-100, 117 Stat. 1177 (2003), *codified at* 12 U.S.C. §§ 5001-5018. The Board of Governors of the Federal Reserve System has issued implementing regulations that are primarily codified as Subpart D of Regulation CC, 12 C.F.R. §§ 229.51 *et seq.*

electronic check presentment where data and images captured from the original check are provided in lieu of the original check. The collecting bank then may use or generate a substitute check for presentment to the paying bank or, by agreement, these banks can engage in electronic check presentment. The original check is retained at the depository bank, *i.e.*, it is truncated. Provided that certain requirements are met, a substitute check is the legal equivalent of the original check. Thus, the Check 21 Act is intended to facilitate the check collection process by eliminating the need to transport original checks around the country.

The original depositor may also truncate the check if the depository bank has agreed to permit it.<sup>3</sup> As discussed above, instead of taking the original check to the bank for deposit, the bank's customer can scan the check on a terminal at the customer's location and simply transmit electronic images and data from the check to the bank in order to effect the deposit.

### Analysis

Under the McFadden Act, 12 U.S.C. § 36, a "branch" is a location established (*i.e.*, owned or rented) by a national bank at which deposits are received, or checks paid, or money lent.<sup>4</sup> However, it does not include an automated teller machine or a remote service unit.<sup>5</sup> The OCC has issued a regulation defining a "remote service unit:"

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.<sup>6</sup>

We conclude that a remote deposit capture terminal is not a "branch" for purposes of section 36. If, on one hand, the terminal performs the banking function of "receiving

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<sup>3</sup> Customers have no right to provide electronic images for deposit without the consent of the depository bank. Banks that permit customers to submit deposits based on self-generated, truncated check images and data will need to consider adopting risk control measures such as appropriate technical standards, exposure limits, and indemnification from the customer. Some banks are also using image inspection tools to review the images received from customers for quality. The bank that accepts the images and data from the truncating customer may be liable for warranty and indemnification claims that result under the Check 21 Act if the substitute checks based on those images and data prove inadequate.

<sup>4</sup> The leading case explaining these terms is *Independent Bankers Ass'n of America v. Smith*, 534 F.2d 921 (D.C. Cir.), *cert. denied*, 429 U.S. 862 (1976).

<sup>5</sup> 12 U.S.C. § 36(j).

<sup>6</sup> 12 C.F.R. § 7.4003.

deposits,” then it falls within the definition of a “remote service unit.” It is “automated” in the sense that it is operated by the customer rather than a bank employee and can be used by the customer to effect a banking transaction without the involvement of bank personnel. On the other hand, if the terminal does not “receive deposits,” then it is not a “branch” because it does not engage in a core banking function.

Therefore, we conclude that a remote deposit capture terminal as described in your letter is a not branch within the meaning of the McFadden Act, even if such a terminal is established (owned or rented) by a national bank. If the terminal instead is owned or rented by the customer, then it still is not a branch because it is not established by a bank, whether it is considered to “receive deposits” or not. Since the terminal is not a branch, the customer’s location where the terminal is deployed also is not a branch. Therefore, it does not matter for branching purposes where the electronic deposit is considered to be “made” or “received,” and so we express no opinion on those questions.

I trust that this has been responsive to your inquiry. If you have further questions, please feel free to contact me at (202) 874-5300.

Sincerely,

**signed**

Christopher C. Manthey  
Special Counsel  
Bank Activities & Structure Division