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**TO:** Chief Executive Officer of the Institution Addressed

**RE:** ATM SAFETY ACT – Advisory Notice

**DATE:** December 17, 1998

On November 3, 1997, the New York State Banking Department (Department) initiated its ATM Safety Act Enforcement Program with the assignment of ten (10) ATM inspectors to various regions throughout the State. To date, the Department has inspected 3,000 of the State's 3,400 ATM locations and issued 2,200 violations. The Department anticipates that all ATM locations statewide will be inspected at least once by the end of December, 1998. A large majority of the violations noted by inspectors are caused by the failure to comply with the various lighting requirements of the ATM Safety Act (the Act). The three most frequent violations involve "open air" ATMs:

- Failure to maintain 2 candlefoot power (CFP) within 50 feet of an open air ATM from all unobstructed directions.
- Failure to maintain 10 CFP within 5 feet of ATM.
- Failure to maintain 2 CFP within 60 feet of a defined parking area.

The Department has determined that the most common cause of these violations is unfamiliarity with the technical requirements of the Act. The Department has found that many institutions have hired electrical contractors and local electricians who are not familiar with these requirements. Lighting outdoor areas for nighttime use requires specialized knowledge. Therefore, we recommend that institutions check to ensure vendors possess the necessary professional experience and expertise before contracting for their services. The Department has also noted that in many cases institutions fail to conduct independent testing and verification.

A common mistake made by both institutions and lighting contractors when measuring light intensity is failing to hold the light meter sensor upward on a horizontal plane. Many institutions and electrical contractors have informed the Department that they aim the light meter sensor at the light source when measuring light intensity. Since the law clearly mandates measurement of light on a horizontal plane, the Department's ATM inspectors measure lighting levels by holding their light meter sensor upward on a horizontal plane 5 feet above the ground.

As a result of the frequency of lighting violations, the Department has received requests for numerous interpretations and clarifications of the Act as it relates to specific situations. All such inquiries were referred to

the Department's Legal Division, and after careful review, written opinions were provided to the inquiring institutions.

In an effort to provide additional guidance to all institutions subject to the Act, the Department has compiled a summary of nine such letters and legal opinions that provide clarification and interpretation of certain aspects of the Act. The Department believes that the fact patterns summarized therein will serve as a helpful reference source for all institutions. The nine letters and opinions have been reduced to plain English in a short and comprehensive format.

In addition to the legal opinions, an advisory notice regarding the installation of "panic hardware" on exit doors to ATM facilities is provided as a separate attachment. This advisory notice pertains only to those institutions that operate ATM facilities in New York City.

The Department welcomes your comments concerning the contents of this notice or any other concerns you may have regarding the ATM Enforcement Program. All requests for interpretation of the ATM Act should be submitted in writing along with any supporting documentation to Mr. Joseph Caiola, Director, Criminal Investigations Bureau, Two Rector Street, New York, NY 10006.

Sincerely,

Elizabeth McCaul  
Acting Superintendent of Banks

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### **FACT PATTERNS**

**LIGHTING ISSUES:** Article II-AA, Sections 75-b(4) (i), (ii), (iii) of the Banking Law, concerning ATMs open to the outdoor air.

#### **Scenario 1**

**Facts:**

1. Trees on bank property blocking 2 CFP of lighting at certain points within 50 feet of ATM.
2. The Bank thought it had to cut the trees.

**Question:** Does the bank have to cut the trees to effectuate compliance with the 50 foot requirement?

**Dept. Opinion:** No, the bank is not mandated to do so, since trees were there before the Act was passed. The fact that the Act requires 50 feet of

lighting in all "unobstructed direction" indicates that obstructions need not be eliminated if they existed prior to the Act.

### **Scenario 2**

Fact: 1. Trees within 50 feet of an ATM are on private property and block lighting.

Question: Is the bank responsible for removing trees on private property that block required lighting?

Dept. Opinion: No, the bank is not responsible for removing trees not on its property to conform with Act.

### **Scenario 3**

Facts:

1. A private lot within 50 feet of an ATM is overgrown with trees and bushes.
2. The trees and bushes are blocking the light.

Question: Must the bank maintain private property to conform with Act?

Dept. Opinion: No, the bank is not responsible for maintaining property of others to insure compliance with the Act.

### **Scenario 4**

Facts:

1. Both public and private property are located within 50 feet of an ATM.
2. The private property is separated by a wood fence.

Question: Must the bank light the public and private property within 50 feet?

Dept. Opinion: If the fence obstructs lighting within 50 feet, the bank is not required to light up the private property on the other side of the fence. The fence would be considered an obstruction. As for the public property, if there are no obstructions the 50 foot requirement would have to be met.

### **Scenario 5**

Fact: 1. A town building commission ordered a bank to lower the lighting intensity at a drive-up ATM because it adversely affected residents in the

surrounding area and it was in violation of a town code.

Question: The bank requested guidance from the Department.

Dept. Opinion: The State Legislature has determined the amount of lighting necessary for the safeguarding and protection of persons at ATMs, and the town's building commission cannot pass upon lighting that is required by the Act. Sections 75-b and 75-c of the ATM Act mandate minimum lighting at ATMs, and both sections preempt local building codes in cases in which those codes conflict with the Act.

Options:

- If a bank wishes to comply with the town code, it can apply for a variance or exemption, as set forth in the Act.
- A bank can also take the position that the Act requires the lighting and the bank's compliance with the Act cannot be deemed a violation of the town's building code.

### **Scenario 6**

Facts:

1. A walkup/drive-up ATM is located 10 feet away from the bank's property line.
2. A six-inch (6") high curb separates both properties.
3. An open parking lot is located on the other side of property line and is used by the bank's customers when using the ATM.

Question: Must the bank light up property not owned or leased by it to conform to the 50 foot requirement in Section 75-b(4)(ii)?

Dept. Opinion: Yes. The Act mandates that lighting requirements be maintained even if it necessitates lighting property owned or leased by others if there are no obstructions blocking the light.

**CAMERAS:** Article II-AA, Section 75-b (3), 75-c (1) of the Banking Law

### **Scenario 7**

Facts:

1. A bank was issued a violation notice because its cameras failed to view and record all persons entering the ATM facility during regular banking hours.

2. The branch video system has eight cameras, six in the branch, two in the vestibule where the ATM is located. As such, during regular banking hours, the VCR records images in sequential order every 11 seconds. Thus, the images from each of the eight cameras are recorded every 11 seconds.

After regular banking hours, the images from the two vestibule cameras record an image every two seconds.

Definition: 75-b (3) ATM facility – is defined as "an area within the dominion and control of a banking institution, comprised of one or more automated teller machines and any adjacent space which is made available to banking customers after regular banking hours."

The bank opined the ATM contained in the vestibule was not an "ATM facility" during regular banking hours, but rather became an "ATM facility" only after regular banking hours when the vestibule is locked and is accessed with a device.

Question: Does the definition of an "automated teller machine facility" support the bank's claim that it was not in violation?

Dept. Opinion: The Banking Department concurred with the bank's opinion. Although the statutory language is somewhat ambiguous, it would appear that the Legislature would not have added the term "after regular banking hours" to the definition of "automated teller machine facility" if it had intended the provisions of the Act to be applicable during "regular banking hours".

Furthermore, the fact that ATMs which are only available for use during "regular business hours" are clearly not within the purview of the Act supports the position that ATMs available for use 24 hours a day should only be subject to the Act "after regular business hours".

**DRIVE-UP ATMS** – Article II-AA, Section 75-b (4) (b) (ii) and (iii) of the Banking Law

### **Scenario 8**

#### Facts:

1. A drive-up ATM was issued a violation for not maintaining 2 CFP within 50 feet of the walkup/drive-up from all unobstructed directions.
2. The bank asserted that the Act only addresses indoor ATM facilities and those "open to the outdoor air" and that it makes no distinction between walkup ATM and a drive-up ATM.
3. The bank further asserted that the safety concerns for those two

types of facilities are very different and that the drive-up facility presents less risk to users as the car permits the user to escape possible danger quickly and can be locked.

Question: The bank urged an interpretation of the lighting requirements in Section 75-b (4) (ii) and (iii) of the Banking Law that would recognize the above facts and stated that compliance would not afford additional protection to the user but would be costly to the institution.

Dept.'s Opinion: Although the bank correctly points out that the Act does not distinguish between walkup and drive-up facilities, the Department can only interpret the Act as it is written. The drive-up facility is clearly an ATM facility "open to the outdoor air" and, as such, the specified lighting requirements are applicable.

**FACILITIES SUBJECT TO THE ACT** – Article II-AA, Section 75-i  
(1) Banking Law

**Scenario 9**

Facts:

1. An ATM was installed in a store's vestibule.
2. The store's owners installed a card reader to make it accessible to any ATM users during hours when the store is closed.
3. The vestibule ATM is now available 24 hours a day.

Question: Is this an "automated teller machine facility" as defined in Article II-AA, Section 75-b (3) and is it covered by the Act?

Dept.'s Opinion: Unlike the store, the ATM is accessible 24 hours a day. Since the ATM is open after regular banking hours and the exclusionary provisions of Section 75-i relating to ATMs located in space unrelated to banking activities are inapplicable, the ATM in question is subject to the provisions of the Act.

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**ADVISORY NOTICE**

**PANIC HARDWARE – NYC ATM FACILITIES ONLY**

Recently, ATM Inspectors assigned to enforce the security measures listed under 10-160.b of the New York City Administrative Code (N.Y.C. Local Law 70) have begun issuing violations to banks which have installed an electric release button adjacent to and exiting from an automated teller machine facility. For reasons stated below, the

installation of such devices on exit door(s) to ATM facilities located in New York City violates (Section 75-1.2) of the ATM Safety Act. Section 75-1 of the Act states that a city having a population of one million or more having a rule, regulation, code, statute or ordinance regarding customer safety at automated teller machine facilities enacted before the date the Act became law, may continue to be required by such city. Any such security measures shall be enforced by the Superintendent of Banks. Accordingly, violation notices will continue to be issued to those banks which maintain such devices and/or fail to correct the violation within 10 days.

Section 10-160.b (3) states that entry doors equipped with fire exit bolts pursuant to Section 27-371, subdivision K.2 of the New York City Building Code shall be maintained at each automated teller machine facility. Subdivision K.2 of the Building Code refers to PANIC HARDWARE. It states, "Fire exit bolts shall be of an approved type, and shall release when a pressure exceeding fifteen pounds is applied to the releasing device in the direction of exit travel. The bars or panels shall extend at least two-thirds of the width of the door and shall be placed at least thirty inches, but not more than forty-four inches above the floor."

Concerned about the increased violations of 10-160.b (3) the Banking Department contacted the New York Fire Department's Public Safety Unit. The Fire Department official at the Public Safety Unit confirmed that at the time New York City's ATM law was proposed in 1992, the New York Fire Department took the position that the provisions of subchapter 6 of the New York City Building Code, which delineates safe egress requirements, should remain in full force and effect. In that same year, the New York City Buildings Department made the following statement: "This Department's interpretation of Section 10-160.b (3) (Local Law 70) of the New York City ATM legislation pertaining to fire exit bolts is that this hardware must be of an approved type, and release when a pressure not exceeding fifteen pounds is applied. We have advised institutions that an electric release button mounted adjunct to the door does not comply with Section 27-371(K) of the Building Code."

It should be pointed out that under Section 75-m of the Act, the Superintendent is not authorized to approve variances or exemptions to the security measures listed under 10-160.b of the New York City Administrative Code (Local Law 70).

Banks with ATM facility locations in New York City are advised to inform their security directors and facilities managers of the information contained in this advisory.

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