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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

October 8, 2009

Richard H. Neiman
Superintendent of Banks
NYS Banking Department
One State Street
New York, NY 10004

Re: Report 2009-F-23

Dear Mr. Neiman:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the New York State Banking Department (Department) to implement the recommendations contained in our audit report, *Oversight of the ATM Safety Act* (Report 2006-S-37).

Background, Scope and Objective

On February 6, 1996, Governor George Pataki signed the ATM Safety Act (Act). The provisions of this legislation, which became effective on January 1, 1997, are applicable to all Federal and State chartered banking institutions, including trust companies, savings banks, savings and loan associations, and credit unions that operate automated teller machine (ATM) facilities in New York State (State). Recognizing that ATMs are used daily by millions of New Yorkers, the Act requires certain ATM facilities to meet standards to ensure they are safe to use. For example, the Act established minimum standards for exterior lighting at and around ATM facilities and required the installation of videotape surveillance and monitoring systems and door locks.

The Act applies only to bank-operated ATM locations available both during and after regular banking hours. Each bank with ATM facilities covered by the Act is required to file an annual report with the Department, certifying its facilities are in compliance with the Act and noting any variances or exemptions granted. For noncompliant facilities, the bank must list noncompliant ATMs, describe the condition and its reason, and provide a plan to remedy the condition. The New York State Superintendent of Banks can assess fines for violations of the Act and can approve variances or exemptions to the required safety measures.

The Department employs ATM inspectors to verify that ATM facilities comply with the Act. ATMs located outside New York City are expected to be inspected during the day and again at night. Most New York City ATM inspections are conducted during the day. The Department has divided the State into ten inspection zones (Albany, Broome, Buffalo, Nassau, New York City,

North Country, Rochester, Suffolk, Syracuse, and Westchester) and has developed procedures and guidelines designed to monitor compliance with the Act consistently throughout the State.

The Department's ATM Unit is staffed with a Program Administrator, one full-time field inspector in New York City, and nine part-time inspectors in the other inspection regions. In calendar year 2008, the Department reported it cost about \$306,950 to administer its ATM safety program. Department officials indicated that as of July 2009, there are about 5,000 bank-owned ATM locations in the State.

Our prior audit report, which was issued on October 4, 2007, examined whether the Department effectively monitored compliance with the Act during the period January 1, 2003 through May 31, 2006. We found that while the Department effectively monitored compliance with the Act, improvements are needed in certain practices. For example, the Department did not have a complete list of bank-operated ATM locations, some banks did not file the annual certification report, Department inspectors did not always follow proper procedures when conducting inspections, and banks were not notified timely of violations. The objective of our follow-up was to assess the extent of implementation as of July 1, 2009, of the 14 recommendations included in our prior report.

Summary Conclusions and Status of Audit Recommendations

We found that Department officials have made significant progress in correcting the problems we identified. However, additional improvements are needed. Of the 14 prior audit recommendations, 11 recommendations have been implemented and 3 recommendations have been partially implemented.

Follow-up Observations

Recommendation 1

Reiterate to banks the requirements to report new ATM facilities and changes to existing ATM facilities.

Status - Implemented

Agency Action - The Act requires banks to file a list of their ATM facilities with the Department. The Department's Rules and Regulations further require banks to notify the Department of new or closed ATM facilities within 14 business days of commencing or ceasing operations. During our prior audit, we found that banks were not always reporting new or revised ATM facilities to the Department. The Department has since reiterated to banks that they must report opened and closed ATM facilities in accordance with the Act. We verified that letters were sent to banks in January 2008, June 2008, August 2008, February 2009 and June 2009 requesting compliance with the Act.

Recommendation 2

Strengthen internal procedures for updating the ATM inventory.

Status - Implemented

Agency Action - Department officials are exploring ways to improve data transmittal procedures and thereby strengthen internal procedures relating to updating the Department's ATM facility inventory. At the request of the Department, legislation was introduced in early 2009 to amend the Banking Law to permit the Superintendent to require banks to electronically submit reports mandated by the Act.

Recommendation 3

Address the ATM inventory inaccuracies identified during the audit.

Status - Implemented

Agency Action - During our prior audit, we observed ATMs at four bank locations that were not listed in the Department's ATM inventory record. We reviewed the Department's current ATM location database and found that the four bank locations are included.

Recommendation 4

Reiterate to banks the requirement that they provide an annual certification letter to the Department.

Status - Implemented

Agency Action - The Banking Law requires that banking institutions with ATM facilities to annually file with the Department their certification of compliance with the Act. The Department has reiterated to banks that they must submit their annual certification letters. We verified that letters were sent in January 2008, August 2008, February 2009 and June 2009 reminding banks of this requirement.

Recommendation 5

Assess whether a goal of inspecting ATMs based on their relative safety risk would be a more cost-effective goal than the present goal.

Status - Implemented

Agency Action - The Department has assessed whether ATM facilities should be inspected based on relative safety risk. It has obtained bank crime rate statistics on a county basis as part of its assessment.

Recommendation 6

Implement the inspection-scheduling improvements identified in this report.

Status - Partially Implemented

Agency Action - Our original report identified three inspection-scheduling improvements: establishing a standard number of inspections that inspectors should complete, testing video images and performing facility inspections during the same bank visit, and enhancing the process for recording and transmitting inspection results electronically. We found that the Department has implemented two of the three suggested improvements.

Department officials indicated that the amount of time required to perform an inspection varies based upon the bank locations and seasonal weather conditions. They track the number of inspections performed by each inspector on a monthly basis and compare that number with the amount performed during the same time period in the previous year. We determined that this method establishes a standard to track an inspector's performance.

We reviewed a sample of inspection records for an inspector to determine if the inspector was testing video images and completing the other required checks during the same bank visit. Based on our review, we determined that this was done.

The third suggested improvement has not yet been implemented. Inspectors are still sending inspection results to the Department in the same manner as originally reported. However, Department officials indicated that they are currently upgrading their computer system and that the upgrades need to be completed before they can consider enhancing the process for recording and transmitting inspection results.

Recommendation 7

Remind ATM inspectors of requirements for light metering tests, detecting unobstructed views, and checking door locks.

Status - Implemented

Agency Action - We reviewed the Department's quarterly ATM training session agendas for 2008 and 2009 which covered the various safety measures that banks must have in place relating to lighting, door locks, unobstructed views of the facility interior, etc. We determined that the Department has reminded ATM inspectors of the inspection requirements.

Recommendation 8

Provide ATM inspectors with training in proper inspection techniques as warranted.

Status - Implemented

Agency Action - Department officials provided documentation of their quarterly ATM training sessions. These sessions covered proper inspection techniques.

Recommendation 9

Develop a testing protocol for situations where banks use digital imaging systems including a strategy for testing the performance of digital cameras.

Status - Implemented

Agency Action - Department officials indicated that tests for digital imaging systems and videotape are identical and that their inspections comply with Banking Law requirements. We determined that the Department's current testing protocol for digital imaging systems and digital cameras is adequate.

Recommendation 10

Ensure that quality assurance for the ATM inspections covers inspections with satisfactory results as well as those which resulted in violations.

Status - Implemented

Agency Action - During our prior audit, we found that the Department's quality assurance program only covered inspections when banks disagreed with the violations found. Department officials indicated that they now also review inspection results where no violations are reported. We examined a March 2009 sample of inspection reports and verified that this is now being done.

Recommendation 11

Notify banks immediately when violations are identified during ATM inspections.

Status - Implemented

Agency Action - Department officials stated that the Banking Law does not require the Department to immediately notify banks of violations. However, they explained that if an inspector found a serious violation, the Program Administrator would immediately telephone the institution putting it on verbal notice and then follow up with written notification.

Recommendation 12

Schedule re-inspections promptly when initial inspections identify safety violations.

Status - Partially Implemented

Agency Action - The Department has not fully implemented this recommendation, but is making efforts to address this particular issue. The Department is amending its Rules and Regulations to ensure that banks act timely to correct ATM violations after notification of a violation. The proposed change would require a bank which has received a violation notice to file a report of corrective action under penalty of perjury within ten business days. Department officials believe that this requirement will advance the goals of the ATM Program and not compel inspectors to interrupt the Department's inspection schedule to verify the correction of a single violation.

Recommendation 13

Ensure that banks take timely corrective actions as required by State and New York City law to resolve safety violations.

Status - Implemented

Agency Action - The Department is amending its Rules and Regulations to ensure that banks take timely corrective actions to correct ATM violations. Banks would be required to file a report of corrective action within ten business days of receipt of the violation notice in which they would certify that either the violation has been corrected or provide the date it would be corrected. In the latter situation, the completion date would be within 30 days of notification and the bank would have to provide its correction plan.

Recommendation 14

Establish policy indicating under what circumstances fines should be used for enforcing compliance.

Status - Partially Implemented

Agency Action - The Department has not yet formally established a policy indicating under what circumstances fines should be used for enforcing compliance. However, Department officials indicated that the Superintendent of Banking is committed to using fines and penalties as an enforcement mechanism when ATM violations are not corrected. The Department's legal staff has drafted a policy addressing the use of fines and will be submitting it to its Executive staff for review.

Major contributors to this report were Gene Brenenson and Farhan Ahmad.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the management and staff of the Department for the courtesies and cooperation extended to our auditors during this process.

Very truly yours,

Albert Kee, CPA
Audit Manager

cc: Amy Hutner, Director of Internal Audit
Tom Lukacs, Division of the Budget