



CARL T.C. GUTIERREZ  
GOVERNOR OF GUAM

DEC 05 1995

The Honorable Ted S. Nelson  
Acting Speaker  
Twenty-Third Guam Legislature  
Guam Legislature Temporary Building  
155 Hesler Street  
Agana, Guam 96910


OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	<i>M. Lee</i>
Time	11:10
Date	12/6/95

Via: Office of Speaker Don Parkinson

Dear Speaker Nelson:

Enclosed please find a copy of Substitute Bill No. 349 (LS), "AN ACT TO ADD SUBSECTION (c) TO SECTION 30900 OF THE GOVERNMENT CODE TO DEFINE 'BRANCH BANKING'", returned to the Legislature as vetoed by the Governor, and again passed by the Legislature on November 20, 1995. I have numbered Substitute Bill No. 349 as **Public Law No. 23-48**.

Very truly yours,

  
Carl T. C. Gutierrez

Attachment

**230880**

Office of VICE-SPEAKER TED S. NELSON	
Received by	
<i>Boldin</i>	<i>bcw</i>
Print Name	Initial
Date: 12-6-95	Time: 10:00

TWENTY-THIRD GUAM LEGISLATURE  
1995 (FIRST) Regular Session

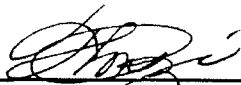
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 349 (LS), "AN ACT TO ADD SUBSECTION (c) TO SECTION 30900 OF THE GOVERNMENT CODE TO DEFINE 'BRANCH BANKING'," returned to the Legislature without approval of the Governor, was reconsidered by the Legislature and after such reconsideration, the Legislature did, on the 20th day of November, 1995, agree to pass said bill notwithstanding the objection of the Governor by a vote of two-thirds or more of all the members thereof, to wit: by a vote of seventeen (17) members.



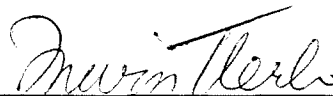
\_\_\_\_\_  
DON PARKINSON  
Speaker

Attested:



\_\_\_\_\_  
JUDITH WON PAT-BORJA  
Senator and Legislative Secretary

-----  
This Act was received by the Governor this 29th day of November,  
1995, at 4:50 o'clock P.M.



\_\_\_\_\_  
Assistant Staff Officer  
Governor's Office

Public Law No. 23-48

TWENTY-THIRD GUAM LEGISLATURE  
1995 (FIRST) Regular Session

Bill No. 349 (LS)  
As substituted by the  
Committee on Ways and Means

Introduced by:

F. E. Santos

T. C. Ada

AN ACT TO ADD SUBSECTION (c) TO SECTION 30900  
OF THE GOVERNMENT CODE TO DEFINE "BRANCH  
BANKING".

1        **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**

2        **Section 1.** A new Subsection (c) is hereby added to Section 30900 of the  
3 Government Code to read as follows:

4            "(c) As used herein, the term "branch bank" shall include  
5 customer-bank communication terminals ("CBCT's"), including any  
6 off-premises electronic device, either manned or unmanned,  
7 activated by a bank customer, where deposits are received, loan  
8 payments are received, cash is dispensed, or money is lent. An  
9 automated teller machine ("ATM") and a cash dispensing machine  
10 or any device that performs the same or similar functions are two  
11 types of unmanned CBCT's. However, for the purposes of this  
12 Section, point-of-sale (POS) devices, personal computers without  
13 the capability to accept deposits or payments nor dispense cash or  
14 other financial instruments, and standard telephones which may be  
15 used to access a bank's telephone banking services shall not be  
16 considered to be a branch bank."

# TWENTY-THIRD GUAM LEGISLATURE

1995 (FIRST) Regular Session

Date: 11/20/95

## VOTING SHEET

Bill No. 349

Resolution No. \_\_\_\_\_

Question: Motion of Senator F.E. Santos to override the Governor's Veto

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	ABSENT/ OUT DURING ROLL CALL
ADA, Thomas C.	✓			
AGUON, John P.	✓			
BARRETT-ANDERSON, Elizabeth	✓			
BLAZ, Anthony C.	✓			
BROWN, Joanne S.	✓			
CAMACHO, Felix P. <span style="float: right;">11</span>	✓			
CHARFAUROS, Mark C	✓			
CRISTOBAL, Hope A.	✓			
FORBES, MARK	✓			
LAMORENA, Alberto C., V	✓			
LEON GUERRERO, Carlotta	✓			
LEON GUERRERO, Lou <span style="float: right;">11*</span>			Excused ✓	
NELSON, Ted S. <span style="float: right;">11</span>	✓			
ORSINI, Sonny L.		✓		
PANGELINAN, Vicente C	✓			
PARKINSON, Don	✓			
SAN AGUSTIN, Joe T. <span style="float: right;">11*</span>			Excused ✓	
SANTOS, Angel L. G. <span style="float: right;">11</span>	✓			
SANTOS, Francis E.	✓			
UNPINGCO, Antonio R. <span style="float: right;">11*</span>			Excused ✓	
WONPAT-BORJA, Judith	✓			

TOTAL 17 1 3\*

CERTIFIED TRUE AND CORRECT:

Recording Secretary

\* Excused from voting





CARL T.C. GUTIERREZ  
GOVERNOR OF GUAM

OFFICE OF THE SPEAKER	
Date:	<u>Oct 13, 1995</u>
Time:	<u>1:10 pm</u>
Received By:	<u>[Signature]</u>
Print Name:	<u>P. Roberts</u>

OCT 13 1995

The Honorable Ted S. Nelson  
Acting Speaker  
Twenty-Third Guam Legislature  
Temporary Legislature Building  
155 Hesler Street  
Agana, Guam 96910

Office of VICE-SPEAKER TED S. NELSON	
Received by	
<u>J. Saitta-Bellurri</u>	<u>[Signature]</u>
Print Name	
Date: <u>10-13-95</u>	Time: <u>1:30 pm</u>

J. C. [Signature]  
Senator / Acting Legislative Council  
10/13/95      1400 hrs.

Via: Office of Speaker Don Parkinson

Dear Speaker Nelson:

Enclosed please find Substitute Bill No. 349 (LS), "AN ACT TO ADD SUBSECTION (c) TO SECTION 30900 OF THE GOVERNMENT CODE TO DEFINE 'BRANCH BANKING'", which I have vetoed.

After technical review, it has been determined that the bill is deficient in a number of areas, and these areas are now the subject of thorough study by the Guam Banking Board. The bill does a disservice to the very people that it is trying to help.

Up to the present, there are no definitions contained in Guam banking laws for the terms "branch bank", "Automated Teller Machine (ATM)", or "Customer-Bank Communication Terminal (CBCT)". Although "branch bank" is an old concept, related to brick and mortar buildings, terms such as "ATM" and "CBCT" are products of the computerization and automation of banking services that is rapidly taking place in our "age of the information superhighway". In fact, the future holds such services for bank customers as full-service banking at home from the telephone.

Substitute Bill No. 349 defines none of the terms "branch bank", "ATM", or "CBCT", yet uses them in a convoluted word salad in which each succeeding phrase builds upon itself to establish that an ATM is a type of CBCT, and a

CBCT is a type of branch bank. The bill states in its first 2 lines that a CBCT is a branch bank. It then states that a CBCT may be a machine which has as its only function the dispensing of cash from a customer's account. Under this language, any bank operating on Guam which is chartered off-island and which has a cash dispensing machine on its main premises must remove that cash dispensing machine forthwith, because maintaining it will constitute an illegal excess of branch banks for that particular bank! In other words, the off-island bank would have to make a choice between operating a traditional brick and mortar branch and one ATM, 2 traditional brick and mortar branches and no ATM, or 2 ATMs and no brick and mortar building. This forced choice will immediately reduce the current level of banking services to the people of Guam, and will possibly constitute a "taking" of property without due process, in violation of constitutional rights. There is no compensation proposed for this reduction in banking service, nor is there a reasonable period of time to phase out an existing service.

Federal law defines "branch bank" by requiring that one of three elements be present in order to constitute a branch bank: a place where 1) deposits are received, 2) checks are paid, or 3) money is lent. A branch bank is **not** a place where customers receive cash from their accounts. A branch bank is not a cash dispensing machine, yet Substitute Bill No. 349 would make machines with only this function into branch banks on Guam.

Since Guam law has no current definitions for various terms now frequently used in the banking industry, the Guam Banking Board has held a public hearing on these matters and is now in the process of studying and drafting rules and regulations which address all of these complicated issues. The members of the Guam Banking Board are composed of persons representing 2 local banks, 2 off-island banks, 1 member of a credit union, and 1 person "at large". These persons are well aware of the value of fostering local banking businesses so that they do not become swallowed up in Guam's economy. None of these board members will hurt our local banking industry.

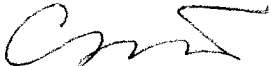
The Guam Banking Board has already made a draft of rules and regulations dealing with the definitions of "branch bank" and "ATM", as well as many other terms. When finalized, these rules and regulations will be forwarded to the Guam Legislature, which may conduct another public hearing. As it happens, the definitions would be no threat to local banks. Local banks are

allowed to operate, in as many locations as they desire, ATMs which offer all of the services enumerated as a "branch bank" under federal law, as well as the additional cash dispensing function. Off-island banks, on the other hand, could not do this; off-island banks would be able to operate a full-service ATM on their premises, but could operate only "Remote ATMs" in other locations. Remote ATMs are prohibited from accepting deposits or loan payments, and could only dispense cash from a customer's account, or transfer funds between accounts held by that customer at that same bank. This is not a threat to the local banking industry.

The Guam Banking Board should be allowed to finalize its work product and forward it to the Governor and the Legislature for public hearing. There should be a full and open discussion of all of these issues. There is no need to hastily sign into law a one-paragraph "word salad" that may violate the due process constitutional rights of existing businesses. Substitute Bill No. 349 will definitely have the effects of reducing banking services to the territory, as well as polarizing the banking community, and even banking customers.

Let the Banking Board do its job. Everyone will be accommodated, local banks, off-island banks, and all of our banking customers and potential customers.

Very truly yours,

  
Carl T. C. Gutierrez  
Governor of Guam

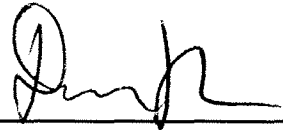
Attachment

**230668**

TWENTY-THIRD GUAM LEGISLATURE  
1995 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 349 (LS), "AN ACT TO ADD SUBSECTION (c) TO SECTION 30900 OF THE GOVERNMENT CODE TO DEFINE "BRANCH BANKING"," was on the 2nd day of October, 1995, duly and regularly passed.



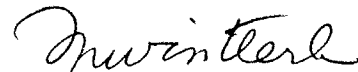
\_\_\_\_\_  
DON PARKINSON  
Speaker

Attested:



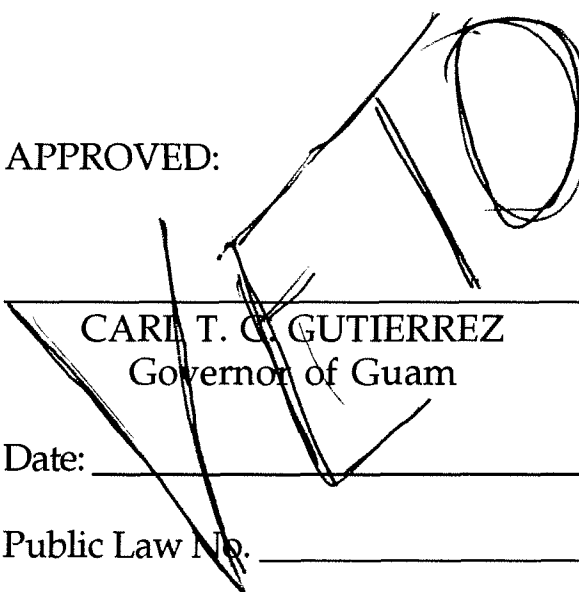
\_\_\_\_\_  
JUDITH WON PAT-BORJA  
Senator and Legislative Secretary

-----  
This Act was received by the Governor this 3rd day of October,  
1995, at 9:10 o'clock 9 .M.



\_\_\_\_\_  
Assistant Staff Officer  
Governor's Office

APPROVED:



\_\_\_\_\_  
CARL T. GUTIERREZ  
Governor of Guam

Date: \_\_\_\_\_

Public Law No. \_\_\_\_\_

TWENTY-THIRD GUAM LEGISLATURE  
1995 (FIRST) Regular Session

Bill No. 349 (LS)  
As substituted by the  
Committee on Ways and Means

Introduced by:

F. E. Santos

T. C. Ada

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14 other financial instruments, and standard telephones which may be  
15 used to access a bank's telephone banking services shall not be  
16 considered to be a branch bank."



CARL T.C. GUTIERREZ  
GOVERNOR OF GUAM

OFFICE OF THE SPEAKER

Date: Oct. 13, 1995  
Time: 1:10 pm  
Received By: [Signature]  
Print Name: J. Roberto

OCT 13 1995

The Honorable Ted S. Nelson  
Acting Speaker  
Twenty-Third Guam Legislature  
Guam Legislature Temporary Building  
155 Hesler Street  
Agana, Guam 96910

Office of  
VICE-SPEAKER TED S. NELSON  
Received by  
J. Roberto [Signature]  
Print Name  
Date: 10-13-95 Time: 1:30 pm

Via: Office of Speaker Don Parkinson

J. C. Ode  
Senator / Acting Legislative Sec  
10/13/95 1400 hrs.

Dear Speaker Nelson:

Accompanying Substitute Bill No. 349, which I am returning as vetoed, I am attaching a copy of draft of rules and regulations which the Guam Banking Board is still working on to resolve some confusion in the Guam Banking laws, and to provide definitions in the code.

**These rules and regulations are not in final form and are not being transmitted for legislative action at this time.**

I am forwarding them to you so that the Legislature is aware of the work being done by the Guam Banking Board. When the rules and regulations are completed in their final form, they will be forwarded to the Legislature.

Very truly yours,

[Signature]  
Carl T. C. Gutierrez

Attachment  
**230689**

# **DRAFT**

## **BANK BRANCH, "AUTOMATED TELLER MACHINE" (ATM)(s) & "REMOTE AUTOMATED TELLER MACHINE" (Remote ATM)(s)**

### **REGULATIONS**

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<b>Section 30900.3 . . . . .</b>	<b>Definitions</b>
<b>Section 30900.4 . . . . .</b>	<b>Licensing</b>
<b>Section 30900.5 . . . . .</b>	<b>Placements</b>
<b>Section 30900.6 . . . . .</b>	<b>Operations</b>
<b>Section 30900.7 . . . . .</b>	<b>Effective Date</b>
<b>Section 30900.8 . . . . .</b>	<b>Forms</b>

**SECTION 30900.1**

**AUTHORITY**

These Rules and Regulations are promulgated pursuant to the authority granted to the Banking Board, §§30012(a)(2) and 30012(g) of the Government Code of Guam Title XXXI of the Government Code of Guam is hereinafter referred to as Banks & Banking.

**SECTION 30900.2**

**PURPOSE**

The purpose of these Rules and Regulations is to establish the Definitions, Licensing, Placement and Operations of a **Bank Branch**, an **"Automated Teller Machine" (ATM)(s)** and a **"Remote Automated Teller Machine" (Remote ATM)(s)** for the Territory of Guam.

**SECTION 30900.3**

**DEFINITIONS**

The following definitions or terms as defined in §30000 of the Banks and Banking Law, are hereby made a part of these Rules and Regulations.

**"Financial Institutions"**

means any bank as defined in §30001 of the Guam Banking Code which is duly authorized, pursuant to the terms of the Guam Banking Code, to conduct business within the Territory of Guam.

**"Bank Principal Office"**

means the location where banking activities, administrative and operational policies of the bank are established.

**"Bank Branch"**

means a location of a bank, other than the bank's principal office, at which the bank engages in financial transactions and other activities permitted by its charter, and local banking laws.

**"Financial Transaction"**

monetary activities permitted by local and federal banking laws.

**"Automated Teller Machine"  
(ATM)**

means an unmanned electronic information processing device which uses either the direct transmission of electronic impulses to a financial institution or the recording of electronic impulses or other indicia of a transaction for delayed transmission to a financial institution in order to perform any and all financial transactions. ATM(s) is/are defined as a Bank Branch except those ATM(s) that are within or upon the premises of the bank principal office or bank branch.

**"Remote Automated Teller  
Machine" (Remote ATM)**

means an unmanned, free standing electronic



information processing device, located separate and apart from a financial institution's bank principal office, bank branch, detached or mobile facility, which uses either the direct transmission of electronic impulses or other indicia of a transaction for delayed transmission or services to a financial institution in order to perform financial transactions except for accepting cash/check deposits and cash/check loan payments. Remote ATM(s) are not defined as a Bank Branch.

**"Point-of-sale Terminal(s)"**

means a manned electronic information processing device, other than a telephone, located at the point of sale and separate and apart from a financial institution's principal office, bank branch, or detached facility, which use either the direct transmission of electronic impulses to a financial institution or the recording of electronic impulses or other indicia of a transaction for delayed transmission to a financial institution in order to perform financial transactions. Point-of-sale terminal(s) includes electronic information processing devices which interface with the telephone transmission system and which, either through the direct transmission of electronic impulses or the recording and delayed transmission of electronic impulses to a financial institution, perform financial transactions. Nothing in this definition prevents a device which constitutes a point-of-sale terminal from being used to perform, for its operator, any internal business functions that are not financial transactions. Point of sale Terminal(s) are not defines as a Bank Branch.

**"Federal Banking Agency"**

means the Comptroller of the Currency with respect to a National Bank, the Federal Deposit Insurance Corporation with respect to State & Territorial Banks.

**"Bank Holding Company"**

refer to the Federal definition.

**"Out-of-State"**

means with respect to any State or Territory, a Bank whose home State or Territory is outside the Territory of Guam.

**"Uninsured Branch"**

means a branch of a financial institution that is not an insured branch, as defined in §3 (s)(3) of the Federal

**Deposit Insurance Act.**

**"Adequately Capitalized"**

means a level of capitalization which meets or exceeds all applicable Territorial or Federal regulatory capital standards.

**"Electronic Fund transfer"**

means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic device or telephone instrument, or computer or magnetic tape or point-of-sale terminal so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone.

**"Preauthorized electronic fund transfers"**

means an electronic fund transfer authorized in advance to recur at substantially regular intervals.

**"Deposit"**

means the establishment of a debtor-creditor relationship represented by the agreement of the deposit debtor to act as a holding, paying, or disbursing agent for the deposit creditor.

**"Financial Instrument"**

includes, but is not limited to, any check, draft, warrant, note, certificate of deposit, letter of credit, bill of exchange or any negotiable instrument, credit or debit card, transaction authorization mechanism, or any computer system representation thereof.

**SECTION 30900.4 LICENSING**

**Licensing regulations for Bank Branch, Automated Teller Machines (ATM)(s), Remote Automated Teller Machine (Remote ATM)(s), and Interstate Branching.**

**(a) Bank Branch**

- (1) An application to establish a Bank Branch shall be considered by the Board after a public hearing at which all interested parties may present their reasons and any evidence in favor or against the establishment of said Bank Branch.**

- (i) A brief description of the general type of functions which the Bank Branch will perform.
  - (ii) Insurance policies and security measures for the protection of the Bank Branch and its customers.
  - (iii) The exact location of each Bank Branch to include; distance from the establishing branch bank, population of the city or town of location of proposed Bank Branch.
  - (iv) Current financial statement of the financial institution applying for the proposed bank branch.
  - (v) Names and addresses of the main office and each existing branch and the total amount of deposits arising as a result of the operation of the main office of each existing branch as of the date of the application.
  - (vi) Submit information of the capital structure of the applicant bank.
  - (vii) Submit information on the future earning prospects for the proposed bank branch.
  - (viii) Submit information on the proposed management brief resume or outline of his past business or banking experience, other qualifications and duties and responsibilities in connection with the operation of the Proposed Bank Branch.
  - (ix) Submission of a Resolution from the Board of Directors of the applicant bank branch.
- (2) Each financial institution shall pay a fee of Five Hundred (\$500.00) to accompany each application submitted to the Banking Commissioner.
- (b) **Automated Teller Machines (ATM)(s)**
- (1) An application to establish an Automated Teller Machine (ATM) shall be considered by the Board after public hearing at which all interested parties may present their reasons and any evidence in favor or against the establishment of said ATM.
    - (i) There is sufficient need for such an ATM.
    - (ii) The proposed ATM has reasonable opportunity to be

**economically self-sustaining.**

- (iii) A brief description of the general type of functions which the ATM will perform.**
  - (iv) Insurance policies and security measures for the protection of the ATM and its customers.**
  - (v) The exact location of each ATM to include; distance from the establishing branch bank, population of the city or town of location of proposed ATM.**
  - (vi) Current financial statement of the financial institution applying for the proposed bank branch.**
  - (vii) Names and addresses of the main office and each existing atm at the date of the application.**
  - (viii) Submit information of the capital structure of the applicant bank.**
  - (ix) Submission of a Resolution of the Board of Directors of the applicant bank branch.**
- (2) Each financial institution shall pay a fee of Five Hundred (\$500.00 to accompany each application submitted to the Banking Commissioner.**

**(c) Remote Automated Teller Machines (Remote ATM)(s)**

- (1) A Remote ATM does not constitute a branch office or other type of office facility or agency of a bank within the meaning of §30900 of the Guam Banking Code of The Government Code of Guam.**
- (2) A financial institution may establish and operate one or more "Remote Automated Teller Machine" (Remote ATM) in this Territory. Within thirty (30) days before any "Remote ATM" is installed by a financial institution, the financial institution shall send to the Commissioner's office written notice of the intended installation. The notice shall be on such form as the Commissioner may reasonably prescribe and shall contain the following information:**
  - (i) A brief description of the general type of functions which the Remote ATM will perform.**

- (ii) Insurance policies and security measures for the protection of the Remote ATM and its customers;
  - (iii) The exact location of each Remote ATM to include; distance from the establishing branch bank, population of the city or town of location of proposed Remote ATM.
- (3) For each Remote ATM established, the establishing financial institution shall pay a fee of Five Hundred Dollars (\$500.00) and such fees shall accompany the notice to the Commissioner.
- (4) The Commissioner may, within 30 days after receiving a notice, disapprove the installation, operation or installation and operation of a Remote ATM if a financial institution not connected to the Remote ATM files a protest with the department in which it establishes by a preponderance of the evidence that the installation, operation, or installation and operation would unreasonably interfere with its operations or if the commissioner determines that the installation, operation, or installation and operation of a Remote ATM would result in an unsafe and unsound condition affecting any institution or other person under the jurisdiction of the department. The installation, operation, or installation and operation of a Remote ATM is considered approved if the commissioner does not disapprove it within thirty (30) days after filing of the notice.

**SECTION 30900.5**

**PLACEMENTS**

- (a) **Bank Branch**
  - (i) A financial institution shall not change the location of an established bank branch without prior written approval from the Banking Board.
- (b) **Automated Teller Machine (ATM)(s)**
  - (i) A financial institution shall not change the location of an established automated teller machine without prior written approval from the Banking Board.
- (c) **Remote Automated Teller Machine (Remote ATM)(s)**
  - (i) A financial institution may change the location of an established Remote ATM from one location to another but not without prior written approval from the Banking Commissioner.

**(a) Automated Teller Machine (ATM)(s)**

**(i) An ATM of a financial institution located other than on the premises of the principal place of business of the financial institution or the premises of any of its branches, may by agreement be made available to one or more other financial institutions on such terms and conditions as the financial institutions may agree.**

**(ii) Any financial institution establishing or sharing the use of more ATM's in this territory may:**

**(1) Make the facilities available for use by account holders of one or more financial institutions other than the institutions owning or operating the ATM.**

**(2) Impose a transaction fee for the use of an ATM, if the imposition of the fee is disclosed at a time and in a manner that allows a user to terminate or cancel the transaction without incurring the transaction fee. This fee may be in addition to any other charges imposed by the financial institution.**

**(3) An agreement to share an ATM may not prohibit, limit, or restrict the right of a financial institution to charge a customer any fee allowed by state or federal law, or require a financial institution to limit or waive its rights or obligations.**

**(4) The commissioner may, after notice and hearing, require rescission or modification of any provisions of such contractual agreement as provided relating the rights and obligation of account holders of financial institutions, merchants, merchant customers, or others using or having access to an ATM finds to be unconscionable or contrary to the public interest.**

**(5) The financial institution who establishes an ATM shall provide:**

**(a) Lighting during the hours of darkness for the machine and its access area and defined parking area to include in the evaluation a consideration of:**

**(1) the extent to which the presence of landscaping, vegetation, or other obstructions in the area of the machine and the access area and defined parking area for the machine; and**

- (2) the incidence of crimes of violence in the immediate neighborhood of the machine as reflected in the records of law enforcement and of which the financial institution has actual knowledge.
      - (3) in an access area or defined parking area for, but not controlled by the financial institution, the person who leased the site where the ATM is located controls the access area or defined parking area, that person shall comply.
    - (b) Notices shall be furnished to customers of basic safety precautions that each customer should employ while using a ATM. The financial institution shall deliver personally or mail the information to each customer whose mailing address is in this territory to which accesses this ATM. The financial institution may furnish this information with periodic disclosure statements furnished pursuant to the federal Electronic Fund Transfer Act (15 U.S.C. Section 1693 et seq).
  - (6) Any electronic fund transfer made through or by use of an ATM is subject to the provisions of the federal Electronic Funds Transfer Act (15 U.S.C. 1693 et seq.) and Regulation E (12CFR 205.2), and except as otherwise may be provided by applicable law, shall govern the rights, liabilities and responsibilities of the financial institution and its customers with regard to ATM transactions. The financial institution and its customers may also by contract establish the rights, liabilities and responsibilities of the parties, provided that the terms of the contract shall not be more restrictive than any provisions of the Electronic Transfer Act applicable to the ATM transaction(s). Any electronic fund transfer or electronic impulse or data or information originating from an ATM or transmitted to an ATM may be received, transmitted and processed at any office, branch, or data processing facility of a financial institution wherever located, either within or without the Territory of Guam.
- (c) **Remote Teller Machine (ATM)(s)**
  - (i) A Remote ATM of a financial institution, may by agreement be made available to one or more other financial institutions on such terms and conditions as the financial institutions may agree.

- (ii) Any electronic fund transfer made through or by use of a Remote ATM is subject to the provisions of the federal Electronic Funds Transfer Act (15 U.S.C. 1693 et seq.) and Regulation E (12CFR 205.2), and except as otherwise may be provided by applicable law, shall govern the rights, liabilities and responsibilities of the financial institution and its customers with regard to Remote ATM transactions. The financial institution and its customers may also by contract establish the rights, liabilities and responsibilities of the parties, provided that the terms of the contract shall not be more restrictive than any provisions of the Electronic Transfer Act applicable to the Remote ATM transaction(s). Any electronic fund transfer or electronic impulse or data or information originating from a Remote ATM or transmitted to a Remote ATM may be received, transmitted and processed at any office, bank branch, or data processing facility of a financial institution wherever located, either within or without the Territory of Guam.
- (iii) No person shall use or attempt to use a Remote ATM for the purpose of obtaining any information concerning the account or line of credit of a customer with a financial institution without the prior approval of the customer. Nothing contained in the Rules & Regulation shall authorize the Commissioner to regulate the conduct or business functions or to obtain access to any business records, data or information of a financial institution or its customers except as may otherwise be provided by law.
- (iv) Any financial institution establishing or sharing the use or more Remote ATM's in this territory may:

  - (1) Make the facilities available for use by account holders of one or more financial institutions other than the institutions owning or operating the Remote ATM.
  - (2) Impose a transaction fee for the use of a Remote ATM, if the imposition of the fee is disclosed at a time and in a manner that allows a user to terminate or cancel the transaction without incurring the transaction fee. This fee may be in addition to any other charges imposed by the financial institution.
  - (3) An agreement to share a Remote ATM may not, prohibit, limit, or restrict the right of a financial institution to charge a customer any fee allowed by state or federal law, or require a financial institution to limit or waive its rights or obligations.



- (4) The commissioner may, after notice and hearing, require rescission or modification of any provisions of such contractual agreement as provided relating the rights and obligation of account holders of financial institutions, merchants, merchant customers, or others using or having access to Remote ATM's finds to be unconscionable or contrary to the public interest.
- (5) The financial institution who establishes a Remote ATM shall provide:
- (a) Lighting during the hours of darkness for the machine and its access area and defined parking area to include in the evaluation a consideration of:
- (1) the extent to which the presence of landscaping, vegetation, or other obstructions in the area of the machine and the access area and defined parking area for the machine; and
  - (2) the incidence of crimes of violence in the immediate neighborhood of the machine as reflected in the records of law enforcement and of which the financial institution has actual knowledge.
  - (3) in an access area or defined parking area for but not controlled by the financial institution, the person who leased the site where the Remote ATM is located controls the access area or defined parking area, that person shall comply.
- (b) Notices shall be furnished to customers of basic safety precautions that each customer should employ while using a Remote ATM. The financial institution shall deliver personally or mail the information to each customer whose mailing address is in this territory to which accesses this Remote ATM. The financial institution may furnish this information with periodic disclosure statements furnished pursuant to the federal Electronic Fund Transfer Act (15 U.S.C. Section 1693 et seq).
- (6) Any electronic fund transfer made through or by use of a Remote ATM is subject to the provisions of the federal

Electronic Funds Transfer Act (15 U.S.C. 1693 et seq.) and Regulation E (12CFR 205.2), and except as otherwise may be provided by applicable law, shall govern the rights, liabilities and responsibilities of the financial institution and its customers with regard to Remote ATM transactions. The financial institution and its customers may also by contract establish the rights, liabilities and responsibilities of the parties, provided that the terms of the contract shall not be more restrictive than any provisions of the Electronic Transfer Act applicable to the Remote ATM transaction(s). Any electronic fund transfer or electronic impulse or data or information originating from a Remote ATM or transmitted to a Remote ATM may be received, transmitted and processed at any office, branch, or data processing facility of a financial institution wherever located, either within or without the Territory of Guam.

**SECTION 30900.7**                    **EFFECTIVE DATE**

These Rules and Regulations shall become effective the \_\_\_\_ day of \_\_\_\_\_, 199\_\_ and shall remain in effect unless amended or until rescinded.

**SECTION 30900.8**                    **FORMS**

The application, notification and discontinuance notifications applications/forms for **Branch Banks, Automated Teller Machine (ATM)(s) and Remote Automated Teller Machine (Remote ATM)(s)** are made part of these rules and regulations.

**TWENTY-THIRD GUAM LEGISLATURE**

1995 (FIRST) Regular Session

Date: 10/2/95

**VOTING SHEET**

Bill No. 349  
 Resolution No. \_\_\_\_\_  
 Question: \_\_\_\_\_

<u>NAME</u>	<u>YEAS</u>	<u>NAYS</u>	<u>NOT VOTING/ ABSTAINED</u>	<u>ABSENT/ OUT DURING ROLL CALL</u>
ADA, Thomas C.	✓			
AGUON, John P.	✓			
BARRETT-ANDERSON, Elizabeth	✓			
BLAZ, Anthony C.	✓			
BROWN, Joanne S.	✓			
CAMACHO, Felix P.	✓			
CHARFAUROS, Mark C.	✓			
CRISTOBAL, Hope A.	✓			
FORBES, MARK	✓			
LAMORENA, Alberto C., V	✓			
LEON GUERRERO, Carlotta	✓			
LEON GUERRERO, Lou *			✓	
NELSON, Ted S. //		✓**	✓**	
ORSINI, Sonny L.		✓		
PANGELINAN, Vicente C	✓			
PARKINSON, Don	✓			
SAN AGUSTIN, Joe T. *			✓	
SANTOS, Angel L. G.	✓			
SANTOS, Francis E.	✓			
UNPINGCO, Antonio R. *			✓	
WONPAT-BORJA, Judith *			✓	

TOTAL 15 2 4  
X 5

CERTIFIED TRUE AND CORRECT:

Recording Secretary

\* Excused from voting.  
 \*\* Abstained on 2nd roll call considered "No"



2340

# Senator Francis E. Santos

Chairperson, Committee on Ways & Means

Phone: (671) 472-3414/5 Fax: (671) 477-3048

## TWENTY-THIRD GUAM LEGISLATURE

155 Hesler St.  
Agana, Guam 96910

September 26, 1995

The Honorable W. Don Parkinson  
Speaker,  
Twenty - Third Guam Legislature  
155 Hesler Street  
Agana, Guam 96910

Dear Speaker Parkinson:

The Committee on Way and Means, now reports its findings on Bill #349 **An act to add subsection (c) to section 30900, Government Code (Guam Banking Code) to define "Branch" Banking**, to the full legislature with the recommendation to do Pass.

Votes of the Committee members are as follows:

To Pass:	<u>7</u>
Not To Pass:	_____
Abstain:	<u>2</u>
Inactive File:	_____
Off Island:	_____
Unavailable:	<u>1</u>

Copies of the Committee Report and all pertinent documents are attached for your information.

Respectfully,

Francis E. Santos

attachments

*Member,*  
Committee on  
Economic-Agricultural  
Development & Insurance

*Member,*  
Committee on  
Electrical Power &  
Consumer Protection

*Member,*  
Committee on Federal  
& Foreign Affairs

*Member,*  
Committee on Rules

*Member,*  
Committee on  
Tourism & Transportation

*Member,*  
Commission on  
Self-Determination

*Member,*  
Guam Finance Commission



**TWENTY-THIRD  
GUAM LEGISLATURE**  
155 Hesler St.  
Agana, Guam 96910


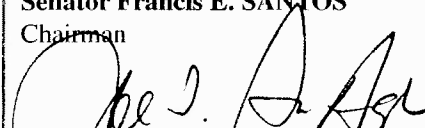
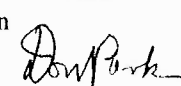
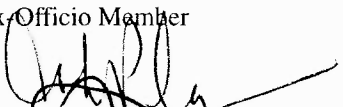
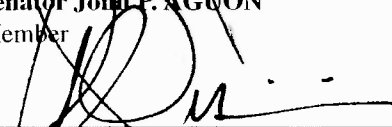

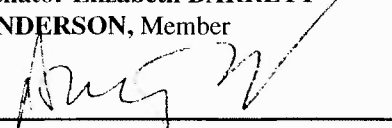
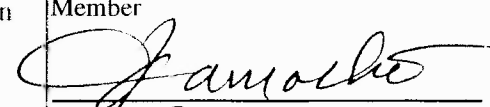

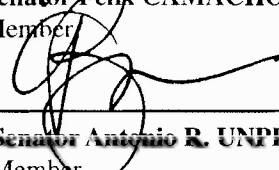
# Senator Francis E. Santos

Chairperson, Committee on Ways & Means

Phone: (671) 472-3414/5 Fax: (671) 477-3048

## VOTING SHEET

On Bill #349 An act to add subsection (c) to section 30900, Government Code ( Guam Banking Code ) to define " Branch" Banking.

	<u>COMMITTEE MEMBERS</u>	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>TO ABSTAIN</u>	<u>TO PLACE IN INACTIVE FILE</u>
		<input checked="" type="checkbox"/>			
<i>Member,</i> Committee on Economic-Agricultural Development & Insurance	<b>Senator Francis E. SANTOS</b> Chairman			<input checked="" type="checkbox"/>	
					
<i>Member,</i> Committee on Electrical Power & Consumer Protection	<b>Senator Joe T. SANAGUSTIN</b> Vice-Chairman		<input checked="" type="checkbox"/>		
					
	<b>Speaker Don PARKINSON</b> Ex-Officio Member				
<i>Member,</i> Committee on Federal & Foreign Affairs					
	<b>Senator John P. AGUON</b> Member	<input checked="" type="checkbox"/>			
<i>Member,</i> Committee on Rules					
	<b>Senator Sonny L. ORSINI</b> Member				
<i>Member,</i> Committee on Tourism & Transportation		<input checked="" type="checkbox"/>			
	<b>Senator Judy WON PAT-BORJA</b> Member				
<i>Member,</i> Commission on Self-Determination		<input checked="" type="checkbox"/>			
	<b>Senator Elizabeth BARRETT-ANDERSON,</b> Member				
<i>Member,</i> Guam Finance Commission		<input checked="" type="checkbox"/>			
	<b>Senator Anthony C. BLAZ</b> Member				
					
	<b>Senator Felix CAMACHO</b> Member				
				<input checked="" type="checkbox"/>	
	<b>Senator Antonio R. UNPINGCO</b> Member				

# **TWENTY-THIRD GUAM LEGISLATURE**

**Committee on Ways & Means  
Chairman  
Senator Francis E. Santos**

## **COMMITTEE REPORT**

**On Bill #349**

**An act to add subsection 30900,  
Government Code  
( Guam Banking Code )  
to define “Branch” Banking.**

## INTRODUCTION

A Public Hearing was held on Wednesday, September 6, 1995, at 1:30 p.m. by the Committee on Ways & Means to discuss Bill # 349. The hearing was held in the Public Hearing Room in the Legislative Building in Agana.

## COMMITTEE MEMBERS PRESENT

Senator Francis E. Santos, Chairman; Senator Joe T. San Agustin, Vice-Chair; Senator Sonny Orsini; Senator John P. Aguon; Senator Judith Won Pat Borja, Senator Anthony C. Blaz; Senator Felix P. Camacho; Senator Antonio R. Unpingco; non members present, Senator Tom C. Ada; Senator Lou Leon Guerrero; Senator Hope A. Cristobal.

## WITNESSES PRESENT

Mr. Kurt Moylan and Mr. Cristobal Duenas representing Citizens Security Bank; Mr. Tony Leon Guerrero representing the Bank Of Guam; Mr. Philip J. Flores, representing Guam Savings and Loan; Mr. Joseph T. Duenas, representing the Department of Revenue and Taxation; Mr. John Lee representing First Hawaiian Bank; Mr. Roman Castro and Mr. Richard Dahl both representing the Bank of Hawaii; and Mrs. Betty Guerrero a concerned citizen.

## TESTIMONY/QUESTIONS/COMMENTS

Chairman Santos called the hearing to order and Vice-Chair Senator Joe T. San Agustin then explained why he, as a board member of the Bank of Guam would recuse himself from discussions on this matter.

Chairman Santos then called for anyone in the audience who had testimony to present to come forward.

The first testimony presented was by, Former Lt. Governor Kurt S. Moylan, (Exhibit A) who thanked Chairman Santos and Senator Tom Ada, for their foresight in introducing this piece of legislation. He stated that the real issue in considering Bill #349 is whether we will control our own financial industry or to give it up to outside banks who have no local investors and no local board of directors. The reason why outside banks want to see an increase in ATM's is not because of consumer service and convenience, it is because of market share and huge profits they earn from the people of Guam. He reminded the senators that Guam needs a strong local banking industry that it can depend on and that as political leaders they are responsible for fostering and promoting development of local banks who provide the financial services our citizens demand. He also stated that passage of bill #349 supports that legal opinion by the Attorney General and the Federal Deposit insurance Corporation that bank owned ATM's are branches.

Mr. Moylan than introduced Mr. Cristobal Duenas, one of the members of the board of directors of Citizens Security Bank, who offered his support of the bill and that the legislation was in proper order and badly needed.

Third to testify was Mr. Tony Leon Guerrero (exhibit B) who testified in favor of the bill, he noted that passage of the bill would reaffirm this governments position that ATM's are branches and that would subject them to the two branch limitation Governing banks chartered outside of Guam the bill as written would not change the way banking has been regulated on Guam for the past 23 years it would merely reaffirm our present banking code and forestall an effort to change the banking code in a way that would be detrimental to our economy and our people. He also requested that the documents he submitted to all senators be introduced as testimony in the matter. He named numerous federal laws (acts) that consider ATM's to be branches. He noted that Federal Banking Regulations define ATM's as branches even though case law is silent on the issue. He noted that in 1986 the Attorney General of Guam issued a legal opinion identifying an ATM as a branch and earlier this year our current Attorney General issued a memorandum general concurring with the prior opinion.



Mr. Leon Guerrero noted that the central issue was reciprocity, in 1985 the legislature issued a clear statement on this issue and there has been nothing that has alluded to a change in the governments opinion. In order to be exempt from the two branch rule the home state of a bank must grant Guam Banks the same treatment as is accorded to said bank. The Hawaiian Intrapacific Banks Reciprocity Law is an illusion at best, territorially chartered banks are considered to be foreign banks under this code and as such are highly restricted in the types of activities in which they can. Even if a Guam Bank had the assets of 10 billion dollars it could not operate as a full service bank it could only accept deposits from foreign citizens and governments not from US citizens, the Bank of Guam along with Guam Savings and Loan have unsuccessfully tried in the past to open branches there. Hawaii finds it logically and economically expedient to aggressively protect their banking industry at home, yet their banks try to convince us out here that it is best to open up our industry to them, what an insult, a slap in the face. At the Fed level under the international banking act of 1978 territorial banks are also considered to be foreign, despite the fact that they are regulated by the FDIC, congress treats them as if they were unregulated. They must chose a home state and operate as if they were chartered there.

The Guam reciprocity law has no effect what so ever when they operate in the among the 50 states it only comes into effect when a stateside bank comes to operate on Guam. This is typical to how the federal government treats the people of Guam. Even access to investment capital is limited because of the treatment of being foreign. When one US corporation owns stock in another US corporation, they can deduct up to 70% of the dividends paid out can be deducted before computing its taxes. Not so with dividends from a foreign corporation. In a sense US Corporations are discouraged by this tax treatment from investing in the territories.

Mr. Leon Guerrero likened the situation to David and Goliath, he reminded the Senators to think about who won that confrontation. He stated that the Hawaii banks have said that they need to establish their own ATM networks for the convenience of their customers, he said that this was a bunch of B.S. (Bankers Scam). It is his position that this aspect is already being serviced by the Bank of Guam's twenty plus ATM's, Citizens Security and Guam Savings and Loan network.

The Hawaii banks have been invited to join in the network so as to provide better service to everybody for a nominal transaction fee to cover network costs in refusing the invitation they have thrown out the opportunity.

Mr. Leon Guerrero went on to state that, in the US. where there are dual banking systems, state and nationally chartered banks it has been proven that locally chartered banks provide better service to the community, a few examples were given. ( exhibit B, pp. 3 -4).

He (Leon Guerrero) alluded to the fact that the recent concerns of the off island banks may be due to the fact that they would like to expand their market share so as to increase the value of their stock for future potential acquisitions.

Mr. Leon Guerrero mentioned the fact that the bigger issue on the horizon could have a far greater impact on banking in Guam than the branch status of ATM's. The 1994 interstate banking and Branching Efficiency Act will go into effect on two phases, with the first phase at the end of this month and the final implementation in June 1997. This act is expected to change the face of banking across the US and given Guam's unique position it may have a particularly acute effect here.

Mr. Leon Guerrero reminded the legislature that there are several decisions that the legislature must make regarding how the island will react to and accommodate the Act, the principal one of which will be whether to allow unrestricted branching into Guam by outside banks or to more closely protect our financial industry. In this case not to decide is to decide, since taking no action would mean that we opt in to the Act, opening the door to every outside bank expressing an interest in our island.

The next individual to testify was Mr. Philip J. Flores, president, Guam Savings and Loan (Exhibit Q). Mr. Flores testified in favor of the bill his comments were as follows.

Mr. Flores, began his statements with by stating that Guam Banking Law is fair, the complaint by the outside banks that Guam's 3 local banks have an competetive advantage over them has no substance.

Mr. Flores stated that the outside banks were correct in saying that the Banking law that Bill #349 would strengthen benefits local banks. He noted that it is that way everywhere. He went on to detail how Guam Savings and Loan had applied for a banking license in the state of Hawaii and how the Hawaii Banking Commission attempted to slow down and discourage a Guam based financial institution from doing business in Hawaii. He reminded senators that while the off island banks claim Guams banking laws are to restrictive, these same banks thrive in a market which will not allow Guam Banks to enter their state.

Mr. Flores mentioned that Guam has one of the most liberal banking laws in america for allowing foriegn bank entry. i.e. competition.

He also noted that the Guam Banking Commission has sitting members who are officers of two huge holding companies, Citibank in New York, and First Hawaiian Bank of Hawaii. Something that he doubted could be seen in any other state.

He touched on the subject of the outside banks hypocrisy of the noncompetetive argument. (Exhibit Q, pp. 2-3) listing three different instances where these same off island banks seemed to have lost their spirit of open competition and customer service.

Mr. Flores then talked about the idea of service to our island community, some of the outside banks talk of *refocusing* on our area, that would be nice to see, but true customer service is never losing that focus, he questioned the idea because if you have to refocus, then does that mean that you have lost focus for a while. He said that he could speak for the three locally owned banks in saying that they have never lost focus on our community. He mentioned *Marinet* , and how with this access to over 30 ATM's thoughout the island is available to customers and how all of the outside have been invited to join, this is true concern for customer service.

Mr. Flores, alerted Senators to the fact that mortgage rates in Hawaii, differ drastically from the mortgage rates on Guam. A person would pay more for the same loan with the same institution on Guam than he would in Hawaii. When one of the three banks does this it shows that their concern is not for the local consumer but for profits.

Mr. Flores then stated that the outside banks look not to customer service in the area of ATM's but to market dominance, to being the biggest and most profitable. He asked the Senators to imagine what would happen if the affect of this dominance caused the disappearance through merger or buyout of one of the local banks because they could no longer compete with the Giants and then what if one of the giants was purchased or swallowed up? Did the Senators remember when Bank of America said all that they wanted to do was help the people of Guam until they decided to make more money by selling and abandoning our market?

Mr. Flores then went on to discuss the makeup of the Board of Directors for the Federal Home Loan Bank, he stated that Guam currently it is represented by the state of Hawaii and does not hold a position on the board of directors, which is comprised of a representative from each of its members states and that legislation proposed by Guam congressman Robert Underwood met opposition from the Federal Home Loan Bank of Seattle, the district to which Guam falls under. One of the opponents to Guam being treated equally was the current representative for Hawaii and Guam on the board of directors.

That representative is Mr. Rodney Shinkawa, the president of First Federal Savings of America, the parent company of First Savings and Loan. Mr. Shinkawa felt that the Federal Home Loan Bank would be better served when Guam is represented not by itself but by Hawaii. To date he still opposes giving Guam equal representation.

A seat on this board would be beneficial for the entire Guam community as any bank who truly values the welfare of Guam should be supporting Guam's inclusion on the Board. Instead, an off island bank, the same one that will not waive Typhoon insurance requirements and which charges more to its Guam borrowers says Guam is not good enough while at the same time it pushes for the liberalization of Guam's banking laws.

With that Mr. Flores closed his testimony and availed himself for questioning by the Senators.

Chairman Santos then turned over the line of questioning to the other Senators in attendance.

Senator Orsini asked all the representatives of the local bank, how this bill would affect consumer service on Guam.

Mr. Flores responded that if the liberalization of Guam laws were allowed to happen, (non passage of this bill) that there would be a definite market dominance of non locally owned banks. And it would put all the smaller locally owned banks at a disadvantage, because of their inability to compete.

Mr. Leon Guerrero also remarked that there was no service issue here but a market dominance issue. The growth of the locally owned banks is dependent upon this legislation.

Senator Orsini asked how this legislation would affect the new technology such as point of sale, home computer banking, and debit cards.

Mr. Leon Guerrero, responded that this legislation would strengthen the local banking laws and that the technology is already here on Guam, and would not be directly affected by this legislation.

Mr. Flores commented that this legislation was not about service, but about the fact that if they could not have ATM's and branches in California then why should any one else have ATM's here.

Senator Cristobal, asked if there are any other territorial banks that have branches and ATM's elsewhere.

Mr. Leon Guerrero responded that the problem with the territorial banks is that they are considered foreign in all states. They are have no identity all their own yet.

Senator Cristobal asked how old the banks on Guam were and how old the outside banks were so as to clarify the issue of whether or not this had something to do with the ability to compete.

Mr. Flores responded that Guam Savings and Loan is the oldest locally chartered bank on Guam, being chartered in 1954.

Mr. Leon Guerrero stated that the bank of Guam was founded in 1974 and that age was a matter but so was the fact the outside banks all come from very large metropolitan areas.

Mr. Moylan stated that Citizens Security Bank is the youngest bank on Guam being founded in 1991. He also stated that if the outside banks left there would be nothing that any one could do to stop or prevent this. But the local banks could absorb their customers. The real issue is who is the one that is going to be supported, the local banks who have a vested interest on the island or the outside banks.

Senator Camacho asked what percentage of the local market does the three local banks hold.

Mr. Leon Guerrero answered that between the three they hold about 30% of the market.

Senator Pangelinan suggested a change in the bill that would address the question of home terminal and computer banking.

Senator Santos then called all others that were interested in testifying.

Mr. John Lee was the first to testify. He offered both oral and written testimony against the bill.

He first wanted to clarify some items mentioned by the first set of speakers. He stated that First Hawaiian Bank came to Guam in 1970 and was not a part of the protectionist regime that Mr. Moylan alluded to.

He also stated that they in fact were the first to loan to the Government of Guam, in 1970 they loaned out \$12,000,000.00 to the Port Authority and another \$3,000,000.00 to the Guam Power Authority.

He also stated that First Hawaiian Bank is one of the founding members of Marinet, they have not been able to access the system due to the fact that their computer systems are not compatible.

He then went on to read his written testimony ( exhibit DD ) in which he detailed First Hawaiian's opposition to the bill.

The next person to testify on the bill was Mr. Roman Castro, Vice President of the Bank of Hawaii, he offered both written (Exhibit MM) and oral testimony against the bill.

He stated that this bill would in effect not allow the people of Guam to experience the full use of modern technology.

He stated that he believes that the passage of this bill would be a great disadvantage to the people of Guam by denying the full utilization of all avenues of banking especially customers of Bank of Hawaii.

Third to testify was Mr. Richard Dahl, president of the Bank of Hawaii, he presented both oral and written testimony against the bill.

He stated that size has very little to do with strength of a bank and that Guam makes itself out to be a place that invites foreign investments yet it also wishes to isolate itself with regards to banking.

He agreed with Mr. Leon Guerrero in the statements that Guam must make decisions as to how it deals and looks at banking and that he would be very willing to help them take a look at this.

He informed the senators present that Hawaii is not as bad a protectionist as it has been made out to be.

Senator Ada asked Mr. Dahl whether it was true that the State of Hawaii requires that any Guam bank have \$10,000,000.00 in assets.

Mr. Dahl said that was not a true statement.

Senator Santos then said that according to the statute that he was holding that was the stipulation.

Mr. Dahl said that he was very unaware of that statute and that according to the Hawaii Banking Commissioner, this was not so.

Mr. Lee added that there would be no problem with the locally chartered banks entering Hawaii the problem may arise as to whether or not the federal government would accept this.

Mr. Lee also mentioned the thought that if Guam chartered banks had the ability to enter the state of Hawaii would they be actively pursuing and supporting this legislation.

Mr. Dahl remarked that in September of 1997 this would be a moot point because of the interstate banking laws to be enacted.

Senator Pangelinan asked Mr. Dahl if he knew the rationale that the state of Hawaii used when deciding to restrict the foreign banks from establishing branches there.

Mr. Dahl replied that though it was a very good question he may not be able to give all the answers to that. Many foreign jurisdictions require a size restriction in order to operate a branch in their jurisdictions. So therefore it was a matter of reciprocity.

Senator Pangelinan questioned him again, implying that it may go further than that, and that it may be an attempt to limit competition.

Mr. Dahl admitted that the state may have had a protectionist attitude when deciding to do this.

Senator Pangelinan asked what business policy or philosophy on the part of the banks keep them from a decision to locally charter a bank that is a subsidiary of the banks.

Mr. Lee responded that First Hawaiian Bank has looked into the idea but the bank has decided that if they were going to put out most of the capital then they would like to keep control, with a locally charter they may lose some control.



Senator Santos questioned whether or not there was a problem with having local investors.

Mr. Lee, responded that no there was no problem its just that they bank did not want to lose that issue of control with decisions.

Mr. Dahl responded that his bank is 15% locally owned because all of his employees own stock in the bank and that the bank has offered its stock out for purchase in the local market and that the Bank of Hawaii does own a locally chartered bank that being First Savings and Loan.

After a short question and answer period, the gentlemen were excused and the chair called for any others who wanted to testify.

The next person to testify, was Mr. Joseph T. Duenas, Director of the Department of Revenue and Taxation and Guam's Banking Commissioner who offered both written and oral testimony.

His testimony was a request that the banking board be allowed to promulgate the rules and regulations regarding ATM's and then transmit them to the legislature for action.

Senator Ada questioned the matter of the fact that there was a legal opinion rendered that states that the composition of the Banking Board as being illegal.

Mr. Duenas said that this question was raised by the legal counsel of the Bank of Guam at the last banking board meeting. He then stated that upon review by the A.G.'s office there was no merit to the questions raised by the Bank of Guam.

There was an extended question and answer period regarding the composition of the Guam Banking Board and its members.

The last person to testify was Mrs. Betty Guerrero, a concerned citizen.

Mrs. Guerrero presented oral testimony as a concerned citizen, she was very short and to the point in her assertion that the bill "*Stinks*".

## Recommendations

Barring all negative testimony and in an effort to protect the people of Guam and help foster a stable and growing banking community the Committee on Ways and Means reports Bill #349 out to the full legislature with the recommendations to do pass.

9/14/95  
Exhibit A

TWENTY-THIRD GUAM LEGISLATURE  
1995 (First) Regular Session

Substitute Bill No. 349  
As substituted by the  
Committee On Ways and Means  
Introduced by:

F.E. Santos  
T.C. Ada

**AN ACT TO ADD SUBSECTION (c) TO SECTION 30900,  
GOVERNMENT CODE (GUAM BANKING CODE) TO  
DEFINE "BRANCH" BANKING.**

**BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**

Section 1. Subsection (c) is hereby added to Section 30900, Government Code (Guam Banking Code) to read as follows:

"(c). As used herein, the term "branch bank" shall include customer-bank communication terminals ("CBCTs"), including any off-premises electronic device, either manned or unmanned, activated by a bank customer, where deposits are received, or loan payments are received, or cash is dispensed, or money is lent. An automated teller machine ("ATM") and a cash dispensing machine or any device that performs the same or similar functions are two types of unmanned CBCTs. However, for the purposes of this Section, point-of-sale (POS) devices, personal computers without the capability to accept deposits or payments nor dispense cash or other financial instruments, and standard telephones which may be used to access a bank's telephone banking services shall not be considered to be a branch bank."

TWENTY-THIRD GUAM LEGISLATURE  
1995 (First) Regular Session

Substitute Bill No. 349

Introduced by:  
As substituted by the  
Committee on Ways and Means

F.E. Santos  
T.C. Ada

**AN ACT TO ADD SUBSECTION (c) TO SECTION 30900,  
GOVERNMENT CODE (GUAM BANKING CODE) TO  
DEFINE "BRANCH" BANKING.**

**BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**

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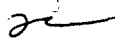
“(c). As used herein, the term “branch bank” shall include customer-bank communication terminals (“CBCTs”), including any off-premises electronic device, either manned or unmanned, activated by a bank customer, where deposits are received, or loan payments are received, or cash is dispensed, or money is lent. An automated teller machine (“ATM”) is a type of unmanned CBCT.”

TWENTY-THIRD GUAM LEGISLATURE  
1995 (First) Regular Session

95 AUG 11 PM 4: 25

Bill No. 349

Introduced by:

F.E. Santos   
T.C. Ada 

**AN ACT TO ADD SUBSECTION (c) TO SECTION 30900,  
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DEFINE "BRANCH" BANKING.**

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Section 1. Subsection (c) is hereby added to Section 30900,  
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(c). As used herein, the term "branch bank" shall include  
"CBCT" consumer-bank communication terminals, including any  
on-or off premises electronic devise either manned or unmanned (but  
not employing bank personnel) activated by a bank customer to  
communicate instructions to his bank regarding the transfer of funds  
to and from his bank accounts. An automated teller machine  
("ATM") is a type of unmanned CBCT."

# COMMITTEE ON RULES

Twenty-Third Guam Legislature  
155 Hesler St., Agana, Guam 96910



8-17-95  
2:45

August 16, 1995

## MEMORANDUM

**TO:** Chairman, Committee on Ways and Means

**FROM:** Chairman, Committee on Rules

**SUBJECT:** Referral - Bill No. 349

The above Bill is referred to your Committee as the principal committee. Please note that the referral is subject to ratification by the Committee on Rules at its next meeting. It is recommended you schedule a public hearing at your earliest convenience.



**SONNY LUJAN ORSINI**

Attachment:



**BUREAU OF BUDGET & MANAGEMENT RESEARCH**

OFFICE OF THE GOVERNOR, Post Office Box 2950, Agaña, Guam 96910

**CARL T.C. GUTIERREZ**  
GOVERNOR

**MADELEINE Z. BORDALLO**  
1<sup>ST</sup> GOVERNOR

**JOSEPH E. RIVERA**  
DIRECTOR

**FRANCES J. BALAJADIA**  
DEPUTY DIRECTOR

SEP 12 1995

The Bureau requests that Bill No(s). 349 be granted a waiver pursuant to Public Law 12-229 for the following reasons:

Bill 349 is administrative in nature and does not pose a fiscal impact to the Government of Guam's general fund.

*for Frances J. Balajadia*  
Joseph E. Rivera  
Director





**Committee on Ways & Means**  
**Senator Francis E. Santos, Chairman**  
**NOTICE OF PUBLIC HEARING**

**Date: Wednesday, September 6, 1995**

The public is invited to attend discussions on the following topics:

**At 1:30 p.m.**

On the appointment of **Mrs. Ernestina B. Perez** as a member of the **Guam Board of Equilization**.

**Bill # 88**

An act to appropriate Eight Million Two Hundred Eighty Thousand Dollars (\$8,280,000.00) from the General Fund to fund a one time lump sum cost of living allowance for an estimated 4,600 Government of Guam Retirees or their survivors for fiscal year 1996 only

**Bill #305**

An act to provide a defined contribution plan for employees of the Government of Guam.

**Bill #327**

An act to amend subsection(a) of section 66307, article 3, Chapter 66, Title 21 GCA relative to the requirements for the issuance certificate of occupancy

**Bill #333**

An act to amend subsection (a) of §8170 of title 4, Guam Code Annotated, as contained in Public Law 23-33, Relative to retirement of members of the Guam Legislature, in order to clarify the intent to provide for retirement of senators to be based on the salary received rather than the salary of the director of the department of administration.

**Bill #349**

An act to add subsection (c) to section 30900, Government Code ( Guam Banking Code ) to define "Branch" Banking.

**Place: Guam Legislature's Public Hearing Room**

Your views and comments are welcome.



**Twenty-Third Guam Legislature  
Committee on Ways & Means**

Public Hearing

Wednesday, September 6, 1995 1:30 p.m.

Re: Bill # 349, An act to add subsection (c) to section 30900, Government Code (Guam Banking Code) to define "Branch" Banking

Exhibit G

Print Name	Signature	Representing	Testimony Oral, Written or Both	For	Against
KURT S. MOYER	<i>KURT S. MOYER</i>	CITIZEN SECURITY	Bill 349	X	
TERRY LEON GUISARRO	<i>TERRY LEON GUISARRO</i>	BUDGET	Bill 349	X	
<del>GEORGE FERRER</del>	<del><i>GEORGE FERRER</i></del>	<del>GOVERNMENT</del>	<del>WRITTEN</del>		
Philip J. Flores	<i>Philip J. Flores</i>	Guam Savings	Bill 349	X	
Joseph T. Duenas	<i>Joseph T. Duenas</i>	REV. & TAX	Bill		
John Lee	<i>John Lee</i>	First Hawaiian Bank			
Roman Castes	<i>Roman Castes</i>	Bank of Hawaii			
Richard Dahl	<i>Richard Dahl</i>	Bank of Hawaii			

Exhibit H



# Citizens Security Bank (Guam), Inc.

Your Banking Partner

424 West O'Brien Drive, 114 Julale Shopping Center  
Agana, Guam 96910

Post Office Box EQ • Agana, Guam 96910

Tel: (671) 472-1161/2/3/4/5/6

Fax: (671) 472-1177



September 6, 1995

Honorable Francis E. Santos  
Senator and Chairman  
Committee on Ways and Means  
Twenty-Third Guam Legislature  
Agana, Guam 96910

RE: BILL NO. 349 - AN ACT TO ADD SUBSECTION (c) TO SECTION 30900, GOVERNMENT CODE (GUAM BANKING CODE) TO DEFINE "BRANCH" BANKING

Dear Chairman Santos:

First of all, on behalf of our local investors and the Directors of Citizens Security Bank, we wish to applaud you and Senator Tom Ada for introducing this significant Bill to define "CBCT"-consumer-bank communication terminals as branches.

Bill 349 is important because the Banking Commission has recently approved administratively ATMs as non-branches. The Guam Legislature has assumed the leadership as the true policymakers in our community.

I am taking the liberty of enclosing my written testimony given before the Banking Commission on August 16th which sets forth our objection to making CBCT-ATMs as non-branches. Both the Bank of Guam and Guam Savings and Loan submitted written position papers at this hearing against the Banking Commission to make ATMs as non-branches. We are in agreement with their positions.

The real issue in considering Bill 349 is whether we will control our own financial industry or will we give this up to outside banks who have no local investors and no local Board of Directors. Best we remember that Bank of America and Chase Manhattan banks pulled out of Guam because of economic considerations. The reason why outside banks want to see the spread of ATMs is not because of consumer service or convenience, it is because of market share and huge profits they earn from the people of Guam!

Let us be mindful that Guam needs a strong local banking industry it can depend on. As political leaders in our island community, you are responsible for fostering and promoting the development of local banks who provide the financial services our citizens demand and expect both in good times and in bad times.

PAGE 2  
BILL 349



Passage of Bill 349 supports the legal opinion by the Attorney General of Guam and the Federal Deposit Insurance Corporation (FDIC) that bank-owned ATMs are branches.

By allowing ATMs to be considered non-branches, will definitely give a tremendous advantage to the large off-island banks and hurt the local banks. Eventually, you would have no local banks at all since the larger off-island banks would vitually control the financial market in Guam.

No one wants to see outside banks control the financial services in Guam. Guam Banking laws are too liberal now. It has allowed outside financial institutions to impersonate as local when in reality, they are outside owned financial institutions who are reaping profits from Guam to pay dividends to shareholders thousands of miles from Guam.

Guam was once a colony of Spain...do we wish Guam to be part of the Hawaiian islands, of course, not!

Guam will control its own destiny and it is the elected leaders who will guide us.

The enactment into law of Bill 349 will clearly demonstrate that local banks will be supported by Guam's elected leaders.

Thank you.

Respectfully yours,

Kurt S. Moylan  
Chairman

Enclosures:



# Citizens Security Bank (Guam), Inc.

*Your Banking Partner*

424 West O'Brien Drive, 114 Julale Shopping Center  
Agana, Guam 96910

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Tel: (671) 472-1161/2/3/4/5/6

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August 16, 1995

Mr. Joseph T. Duenas  
Director and Banking Commissioner  
Department of Revenue and Taxation  
378 Chalan San Antonio Street  
Tamuning, Guam 96911

RE: PUBLIC INPUT ON WHETHER ATMS ARE BRANCHES

Dear Banking Commissioner Duenas:

Thank you for allowing us to present our position against the Banking Commission changing the existing ATM definition from branches to non-branches. Both the Attorney General of Guam and FDIC consider ATMs as branches.

Our President, Dan Webb, in his June 26th and 28th Memos spoke against changing the ATMs to non-branches. He supplied information from the Conference of State Bank Supervisors on how other states treat off-site ATMs. Further, he recommends rules and regulations be implemented to control the existing and future installation of ATMs since there are no rules and regulations in place now.

For your information, in 1989, the 20th Guam Legislature entertained Bill 726, Relative to Establishment and Operation of Automatic Teller Machines. The bill was given a public hearing. The same outside banking interests who now want to administratively amend the banking definition of ATMs, were involved in the drafting of Bill 726. Citizens Security Bank and the Bank of Guam spoke against this bill. It never passed the Legislature.

The Bank of Guam in their June 14th letter to you has done an excellent job of outlining clearly the reasons why the Banking Commission should not consider changing the ATMs to non-branches. Citizens Security Bank fully supports the Bank of Guam position paper.

We agree with the Bank of Guam that this issue be held in abeyance until the Interstate Banking Efficiency Act of 1994 can be reviewed since this Act has a broader impact on our banking laws than this single issue.

PAGE 2  
BANKING COMMISSIONER



It would be in the best interest of the people of Guam and the banking community that the Banking Commission work with the Guam Legislature in reframing our banking law to encourage the development of existing local FDIC banks and to meet the challenges ahead of us in making Guam truly a financial center of the Pacific region.

On behalf of the 41 local resident investors of Citizens Security Bank, we ask that nothing be done to change ATMs to non-branches.

Thank you.

Sincerely yours,

A handwritten signature in cursive script, appearing to read 'K. Moylan'.

Kurt S. Moylan  
Chairman

Enclosures:

cc: Board of Directors  
Albino Gabriel  
Jose Leon Guerrero  
Cristobal C. Duenas  
Edward Chiang  
Joseph F. Camacho  
Wilfred Yamamoto  
Antonio R. Unpingco  
Ernesto M. Espaldon  
Dan Webb



## MEMORANDUM

To: Joey Duenas, Director  
Department of Revenue and Taxation

From: Dan Webb, President  
Citizens Security Bank

Subject: ATM's

Date: June 28, 1995

---

Good Morning, Joey:

Just a brief follow up to my memo and our conversation. I have finally received a response from the Conference of State Bank Supervisors. Interestingly, the initial response was erroneously sent to your office on June 19. It was faxed to me after follow up correspondence last week.

At any rate, CSBS has provided me with more complete information about the treatment of off-site ATM's, which I have enclosed for your review. You will note that, as you previously reported, 37 of 53 states and territories do not consider ATM's as branches. However, only six (including Guam) have no statute specifically addressing ATM limitations. Additionally, only 15 (including Guam) permit out of state banks to place ATM's inside the state or Territory. Twenty two require sharing of off-site ATM's and an additional 18 specifically permit shared equipment. Clearly, from this information, the majority of states and territories are more protective of local institutions and tend toward sharing the cost of developing technology.

I hope this information is helpful. Please call if I can add anything.

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Julale Shopping Center  
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Fax: (671) 472-5829

Mailing Address: P.O. Box EQ • Agaña, Guam 96910

**HARMON OFFICE:**

185 Ilipog Drive  
Harmon Industrial Park  
Tel: (671) 646-0881  
Fax: (671) 649-6151



## MEMORANDUM

To: Joey Duenas, Director  
Department of Revenue and Taxation

From: Dan Webb, President  
Citizens Security Bank

Subject: ATM's

Date: June 26, 1995

---

Hafa Adai, Joey:

I have given a great deal of thought to this subject over the past few days and have concluded that any change from the status quo can only be detrimental to the local banks and investors.

While I know that your primary intent is to improve services for the consumer, I think it also important that you keep in mind the responsibility to protect local businesses and investors. Changes proposed to permit proliferation of ATM's by off-Island banks will result in an unfair regulatory and economic advantage to the larger banks and will ultimately siphon deposits and profits from Guam.

The FDIC continues to consider an ATM a branch. Installation of an off-site full service machine requires a branch application. A relaxation of Guam's current ATM licensing posture will widen the discrepancy in application process between insured and non-insured banks and will give a tremendous advantage to large, well capitalized off-Island banks.

What is prompting this decision? Have you had any pressure from consumers to install more ATM's? Proponents of this change seem to be only those banks that are in an economic position to immediately gain from relaxation of controls. What are their motives? Will they provide services for free? For how long? (It is curious to me that these same banks - Bank of Hawaii, First Hawaiian and Citibank - have had, for several years, the technological capability to allow their customers access to international networks, but have only in the last year committed the resources necessary to provide debit card service on Guam. And, if I'm not mistaken, Citizens and Bank of Guam were the first banks on Island to offer this service.)

ATM networks are growing as a means of cutting costs and generating fee revenue. Local financial institutions already have installed (or are in the process of installing) over twenty full service machines. Off-Island banks currently have at least six through the wall

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Mr. Joey Duenas, Director  
Department of Revenue and Taxation  
Page 2

and one off-site machine. Additionally, your predecessor permitted the installation of eleven cash dispensing machines by a Bank of Hawaii subsidiary. How many do we need? Off-Island banks are already at an advantage, with greater pools of trained/skilled staff, more advertising dollars, deeper pockets, lower cost funding and a broader array of sophisticated services. With growing costs and increasing competition, local banks are highly motivated to meet consumer demands. If the demand for more ATM's exists, it seems to me highly likely that local institutions will respond.

Notwithstanding the above arguments for the status quo, any change should consider the following:

- 1.) Licensing should remain within the authority of the Banking Commissioner in order to prevent fraud and ensure that operators are qualified and sufficiently capitalized.
- 2.) Regulations need to consider the ADA requirements and should provide for placement in well lighted heavily trafficked areas to discourage crimes associated with ATM withdrawals.
- 3.) With the growing crime wave, consideration should be give to consumer education on ATM usage.
- 4.) In order to maximize customer utility, consideration should be given to requiring shared ownership of machines. Off-Island banks can currently contract with local banks to install ATM's at any location approved by the Commissioner.



ANTHONY A. LEON GUERRERO  
President  
and  
Chief Executive Officer



**Bank of Guam**

"The People's Bank"

MEMBER OF THE FEDERAL  
DEPOSIT INSURANCE CORP.

Exhibit 2

P. O. Box BW  
Agana, Guam 96910  
Tel: 472-8865/6/7

**TESTIMONY**

of

**Mr. Anthony A. Leon Guerrero  
President and Chief executive Officer**

**Bank of Guam**

**Regarding Bill 349**

**September 6, 1995**

Good afternoon, Mr. Chairman and distinguished Members of the Committee. My name is Tony Leon Guerrero, and I am the President of Bank of Guam. I am here this afternoon to testify in favor of Bill 349, which would reaffirm the position of our government that Automated Teller Machines and other Customer Bank Communication Terminals are bank branches, and thereby subject to the two-branch limitation governing banks chartered outside of Guam. It is important to note that Bill 349 would do nothing to change the way that banking has been regulated in Guam for the past 23 years. It will merely reaffirm our present Banking Code and forestall an effort to change the Code in a way that I believe would be detrimental to our local banking industry, our economy, our community and our people.

I have taken the liberty of providing each of your offices with a copy of my testimony given on August 16<sup>th</sup> before the Banking Board on this issue, and would respectfully request that that testimony be entered into the record of this hearing today. That being provided, I will limit my testimony today to a summary of the key points that I consider to be most crucial in the deliberation of this issue:

- a) ATMs are branches. The bank regulatory authorities in Guam, as well as all of the banks operating here, have historically considered them to be branches. The National Banking Act (12 USC 36(j)), the Federal Deposit Insurance Act (Section 3(g)), the Bank Holding Company Act (Section 1(o)(3)) and the International Banking Act of 1978 (Section 1(a)(3)) all treat ATMs as branches. Language in these laws all centers around the core functions of a branch: receiving deposits, cashing checks and lending money. Even federal regulations consider them to be branches. Guam should be no different. Under case law, where state law is silent on the matter, ATMs are considered to be branches. Bill 349 would merely explicitly define what has been our implicit practice for the past 23 years or so.
- b) In an opinion on this issue rendered by Guam's Attorney General in 1986, ATMs were considered to be branches. Again in a memorandum written earlier this year, our present Attorney General generally concurs with the earlier opinion. It is interesting to note that, in a survey of bank regulatory authorities at the end of 1993, only nine out of fifty-three responded that their jurisdictions consider ATMs to be branches. However, fully thirty-three out of the fifty-three jurisdictions prohibit out-of-state banks from operating ATMs, even on site at their

brick-and-mortar branches. One way or another, most places within the United States strictly prohibit unlimited branching by out-of-state banks.

- c) The central issue in this debate is reciprocity, first and foremost. In 1985, the Guam Legislature made a clear statement on reciprocity, and I know of nothing that has changed our government's position on the matter since that time. In order to be exempt from Guam's two-branch limitation on banks chartered outside of Guam, the home state of a bank must grant the same treatment, reciprocal treatment, to Guam banks as is accorded to banks from that state operating in Guam.
- d) Hawaii's "Intra-Pacific banks" reciprocity law is an illusion, at best. Territorially-chartered banks are considered to be "foreign" under the Hawaii Code, and as such are highly restricted in the types of activity in which they can engage there. Even if a Guam bank had the requisite \$10 billion in assets to enter the Hawaii market, it could not operate as a full-service bank; it could only accept deposits from foreign citizens and foreign governments, not from U.S. citizens, and would not be allowed to operate ATMs. We have tried, but we have been denied entry into the Hawaiian market, and so has Guam Savings and Loan. Hawaii finds it economically expedient to aggressively protect their banking industry at home, yet their banks try to convince us that it is best for us to open up our industry here for them. What an insult!
- e) At the federal level, under the International Banking Act of 1978, territorial banks are also considered to be foreign, and we are therefore limited in terms of how we can operate. Despite the fact that we are regulated by the Federal Deposit Insurance Corporation, the Congress treats us as if we are as unregulated as any bank from some foreign country. We must select a "home state" and operate as if we were chartered there. Our branching, both within the state and across state lines, is regulated as if we were chartered in that home state. Our reciprocity law has no effect whatsoever when we operate in or among the 50 States. It only has an effect when banks chartered there operate here. This is typical of the way in which the territories are treated by the federal government, but I see no reason to reinforce those inequities with how we regulate banking in Guam.
- f) Even our access to investment capital is limited because of our treatment as being "foreign," and this places all Guam corporations, including banks, at a financial disadvantage. Several years ago, we learned about our treatment under the Internal Revenue Code the hard way. We were ready to close a deal with a mainland firm that wanted to buy Bank of Guam preferred stock. At the last minute, they realized that, because we are designated as being foreign, they could not take advantage of the so-called "dividend reduction deduction" on the dividends that we pay. When one U.S. corporation owns stock in another U.S. corporation, it can deduct 70 percent of its dividend income before computing its taxes; not so with dividends from a foreign corporation. Because we are considered to be foreign, the deal fell through. In a sense, U.S. corporations are discouraged by this tax treatment from investing in the territories. Yet the giant U.S. banks against whom we compete are not crippled by this unfair disadvantage; they have virtually unlimited access to investment capital.
- g) Our colleagues from Hawaii argue that they need to establish their own ATM networks in Guam for the convenience of their customers. This is a bunch of B.S. . . . Banker's Scam! The convenience of their customers is being served by the existing network of branches and ATMs. It is my position that this objective within the banking industry in Guam is already being

accomplished by Bank of Guam's system of twenty-two ATMs around the island, along with those surreptitiously installed by Bank of Hawaii's sister corporation, First Savings and Loan. Other banks' customers have access to our Pacific Express ATMs because of our affiliation with Cirrus, EDS, Star, JCB, AFFN and the Exchange Network, so the convenience of the community as a whole is met, whether specific individuals bank with us or with one of our competitors.

- h) Additionally, Bank of Guam and Citizens Security Bank have asked Bank of Hawaii and First Hawaiian Bank to join our networks, for the convenience of their customers, for a nominal transaction fee to cover network costs. Both Bank of Hawaii and First Hawaiian Bank refused to join. So, what is their real motive in wanting to establish their own ATM networks? They are using "customer convenience" as a wonderful catch phrase, but they have already thrown out an opportunity to provide convenience to their customers that, from the customer's perspective, would be exactly what they could accomplish without the regulatory change that they demand.
- i) The interests and service requirements of the community are best served by local institutions. History has proven this time and time again, and this truth is reflected in the fact that the United States has a dual banking system, with both state-chartered and nationally-chartered banks. To give a few local examples:
  1. ATM technology has been around for some 35 years. Why is it that the interests of customer convenience are just now driving the off-island banks to insist that they be allowed unrestricted branching in the form of ATMs? I will tell you: it is because Bank of Guam took the lead, and now that the local financial institutions are taking a more aggressive posture on networking, they are afraid that we will provide better customer service than they are able to provide. They have over a 25 year lead on us, but never brought this service to Guam until recently.
  2. None of the financial institutions operating here wanted to lend to the government of Guam until Bank of Guam did so. Only when the off-island banks realized that we didn't go bankrupt did they want to get into the business of lending to our local government. Before that time, our government was jokingly known as a "bad credit risk" in their circles.
  3. After the Guam Power Authority's bond default, Bank of Guam went to great lengths to restart municipal financing here, and succeeded with the issuance of the 1985 Highway Bond by Goldman Sachs with Bank of Guam as Trustee.
  4. At a time when banks in Guam would only lend to the big names with the big money, Bank of Guam started lending to the average man on the street. The outside banks weren't interested in that part of the market, and could care less about their customers' financial needs. It was only after the outside banks learned that there is money to be made in the small-loan end of the market, lending to the normal working man, that they started to move into the type of consumer lending that we have today.
  5. At a time when prices had risen rapidly but incomes in Guam had not, we started five-year consumer and automobile loans so that our people would be able to buy the things that they need, want and deserve. The off-island banks wouldn't make these types of loans for terms

longer than three years because of a lack of faith and trust in the people of Guam. Now, our initiative in that market has changed their attitude.

6. We were the pioneers of philanthropic donations here, giving \$25 thousand to the Guam Memorial Hospital to purchase life-saving medical equipment, and more recently another \$250 thousand to the University of Guam to support the education of our island's youth, along with countless other contributions to other worthy causes. The off-island banks only joined later . . . much later . . . out of a sense of their new-found social consciousness.
  7. We pay millions of dollars in dividends and taxes in our community based on our worldwide income, while the outside banks continually, year after year, expatriate their profits back to their head offices, not to mention the fact that they hardly pay any dividends here, since they are not locally-owned.
  8. We select our employees and officers locally, all the way from our messengers to the top levels of management and our Board of Directors. To this date, I still can't understand why these outside banks can't find local talent to run their operations when they have been here longer than we have. Are our local residents so inadequate as a people? I don't think so!
  9. Other states continue to protect their local financial industry, while we continually have to struggle in one of the most liberal banking regimes in the world. While other jurisdictions close their doors to outside banks, ours remain wide open. This makes it very difficult for our local banking institutions to survive, let alone to thrive, and now the off-island giants against whom we compete would have us stripped of one of the small remaining advantages that we have.
- j) I believe a recent Pacific Daily News article (Vol. 26, No. 213, September 2, 1995, pg. 48, "Banks bigger, fewer and more expensive," by Janet L. Fix; copy attached) could shed some light on the recent concerns of our off-island competitors. Considering what is happening in the U.S. banking environment, it appears that they want to expand their market share and profitability here in Guam so that they can increase the value of their stock for future potential acquisitions. They want to do this, of course, at the expense of reducing our stock value and the wealth of our local shareholders. And they have the nerve to come here and ask you to do this job for them!
- k) We're responsive to the needs of the people, the culture, the community and, most of all, our local economy. The same holds true for our shareholders, over 3,000 of whom live here. We distribute our profits to those shareholders, and they pay their taxes, too. We reinvest our retained earnings for the good of our local economy, and we employ nearly 400 people here, providing a livelihood for them and for their families. We care about Guam, and our actions show it more persuasively than any words ever could.

Mr. Chairman, the off-island banks already have many advantages over our locally-chartered institutions, and they are so huge in comparison that we have to work all the harder just to avoid being swallowed up. Although the reservation of the ATM part of the market is a small advantage that we are granted, it is one of the few advantages that we still have. I ask you, Mr. Chairman . . .

Senators . . . why should we further handicap our local banks by granting even more liberal treatment to outside concerns? I don't think we should.

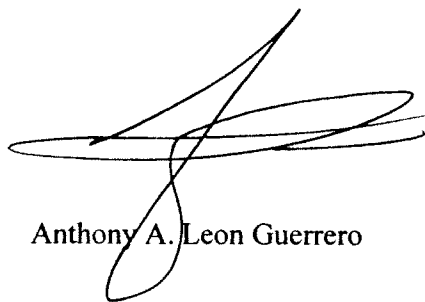
There is a bigger issue on the horizon that could potentially have a far greater impact on banking in Guam than does the branch status of ATMs. The 1994 Interstate Banking and Branching Efficiency Act will go into effect in two phases, with the first phase at the end of this month and the final implementation in June of 1997. This Act is expected to change the face of banking across the United States, and given Guam's unique position, it may have a particularly acute effect here. The Guam Legislature must make several decisions regarding how we will react to and accommodate the Act, the principal one of which will be whether to allow unrestricted branching into Guam by outside banks or to more closely protect our financial industry. In this case, not to decide is to decide, since taking no action would mean that we opt in to the Act, opening our doors to every outside bank expressing an interest in our island.

During our last Board meeting at the Bank, the Board created a Subcommittee specifically to review the implications of this Act to Guam, and the Subcommittee was given the authority to commission a study by an outside consulting firm. We would like to join with the Legislature in studying the prospective impacts of our various alternatives, and would be more than happy to make the results of our study available to this body. Working together, I am sure that we can come to the best decision in terms of the future economic condition of our island, for the greatest benefit of all of our people.

In the meantime, though, I ask that you pass Bill 349, and that you pass it unanimously. Let the people of Guam know that you support our local economy, our business community and our local banks. It's a battleground out there, and the Barbarians are at the gates. Your favorable decision on this Bill will help us to maintain our position in the face of our competitors. We will remember you for it, and we will be grateful.

Thank you for the opportunity to address this issue before you this afternoon. I hope that my comments will be useful to you. Should you have any questions or wish to discuss this matter further, I am at your disposal.

Thank you.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke, positioned above the printed name.

Anthony A. Leon Guerrero

# Banks bigger, fewer and more expensive

By JANET L. FIX

Gannett News Service

PALM BEACH, Fla. — Banks are disappearing at a frenetic pace.

More than a half dozen have been gobbled since last Friday, including Chase Manhattan, the nation's sixth-largest, which will be taken over by Chemical. And the pace will only quicken after Sept. 29, when banks finally will be able to open branches in almost any state.

Here on Royal Palm Way, in a two-block stretch of fabulously wealthy Palm Beach, Island National Bank and Trust is the only Florida-based bank among a host of national banking and brokerage powerhouses. And sooner or later, Island National probably will be sold to the highest bidder. "We're not for sale, although I'm asked if we are almost weekly," says Anthony Newton, Island's chief executive. "I say, 'If you want to make a firm, serious offer, we'll consider it.'"

Where will it end? What will it mean? Expect:

▲ By 1998, 300 large banks will control 85 percent of the nation's banking deposits, but only a handful will have businesses in all 50 states. More than 2,000 banks will be gobbled up in the next three years. Today's midsize banks will be virtually gone. Small banks will be harder to find — and find it harder to stay in business.

▲ Consumers will have fewer banks and fewer bank branches to choose from. They'll do more banking by computer, phone and automated teller machine.

▲ Banks will flock to wealthy areas and fight to serve the richest customers. Poor neighborhoods and less-affluent states will have even fewer bank services or be dominated by one large bank.

▲ Bank customers will pay higher fees and get less competitive loan rates and savings interest rates from the banks that remain.

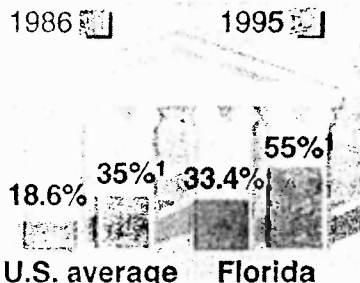
Bankers argue this won't happen. But it already has. In Florida. "Florida is a microcosm of what could happen," says Ed Mierzwinski, spokesman for the U.S. Public Interest Research Group. "And that's unfortunate for consumers."

Florida is a banker's goldmine. And Royal Palm Way is the main vein of the \$134 billion in consumer bank deposits that make Florida arguably the nation's richest and most attractive retail bank market.

About 50 million tourists visit the state each year and 700 people a day move to Florida — making it the second-fastest growing state after Texas. Retirees move their life savings here. Social Security collects about \$1 billion a year from Florida workers — but pays out 10 times that each year to the state's retirees. "Florida is a huge vacuum that sucks money in from everywhere," says Dick Bove, a bank stock analyst for Raymond James & Associates.

## Less local

Assets controlled by out-of-state banks:



U.S. average Florida  
1 — Estimate  
Source: Florida Banking Department, Kenneth H. Thomas

Gannett News Service

sociates. "Most of the money goes to four banks."

That makes Florida one of the most concentrated bank markets. Four banks control 70 percent of bank deposits. Fees are higher than in most states. Savings interest rates are lower. Loan rates are higher.

But on Royal Palm Way, too many financial institutions still are battling for customers. Cramped into two blocks are most of the nation's financial powerhouses: Citibank, Chase, First Union, Bank of Boston, Merrill Lynch, Dean Witter, NationsBank, Northern Trust, among others.

They're here because this is where the rich keep their cash, family fortunes, trusts, jewels — even their furs. First Union has a block-long fur vault. Bankers will do just about anything to keep wealthy clients here happy.

For bankers, Palm Beach is the epitome of what's wrong with the banking industry: There are too many banks. Last year there were 10,450 vs. 14,496 in 1985. Driving banks to merge: the push for profits. "Big isn't the goal, efficiency is," says Jim Chessen, chief economist for the American Bankers Association. "As banks consolidate, they become more efficient and they can deliver better, cheaper products to customers."

But if Florida is any guide, don't expect lower fees or better loan and savings rates soon. Here's what a decade of bank consolidation in Florida has wrought:

▲ The biggest banks were bought first. Eight of the 10 biggest banks in Florida in 1985 have been acquired or have failed. In all, 400 banks have been bought — mostly by big out-of-state banks. Now, even small banks, once considered too small to bother with, are takeover targets. "Every Florida bank has a 'for sale' sign in the window — visible only to out-

of-state banks," says Kenneth Thomas, a bank analyst based in Miami.

This isn't what Florida lawmakers envisioned in 1985. That's when Florida became one of the first states to approve interstate banking. Lawmakers hoped Florida's banks would become bigger and better able to compete. Barnett Banks of Jacksonville has become the biggest bank in Florida — but many believe it, too, will be sold. "It's the law of unintended consequences. Nobody expected Florida to wind up being dominated by out-of-state banks," says Doug Johnson, assistant director, Florida Division of Banking.

▲ Four banks are in control. Seven of every \$10 in bank deposits goes to Barnett, First Union and NationsBank, both of Charlotte, N.C., and Sun Banks of Alabama. A decade ago, the four biggest banks controlled just 48 percent of deposits.

"Four bank presidents (don't) meet in a dark room to set prices," says Ben Bishop, a Jacksonville-based bank analyst. "Florida still has a ... lot of folks aggressively fighting for business."

Besides, bankers argue that deposits aren't a valid measure of competitiveness. Banks offer many products that consumers can get from companies that aren't banks — products such as car loans, mutual funds, home equity lines of credit, home loans, and investment management services. The bank industry's share of financial assets has shrunk from about 40 percent in the 1970s to 25 percent last year. The other 75 percent is in the hands of brokers, insurance companies, pension managers and credit unions.

Consumers have been withdrawing money from banks and putting it into mutual funds and brokerage accounts. Bank deposit growth has averaged just 3.4 percent annually since 1980, while mutual fund assets grew 24 percent a year. In May, a Merrill Lynch executive told a Florida audience that the brokerage has more than 300,000 clients and \$50 billion in assets in Florida alone. "If a fifth of that is in money-market accounts, Merrill would rank as Florida's fifth-largest bank," Thomas says.

▲ Banks charge higher fees. A study by U.S. PIRG suggests fees on bank accounts are higher in Florida than in most of 24 other states surveyed. Thomas, of Miami, was irked by an error that caused a bounced-check fee. Last month he surveyed a variety of fees charged by First Union in Florida and in seven other states. First Union charges \$29 for overdraft checks in Florida and \$22 in North Carolina. The annual fee on a top-of-the-line money management account is \$95 in Florida, \$80 elsewhere. Wire transfers cost \$15 in Florida; \$7 in Maryland. "Our prices are very competitive in Florida," says First Union's Ken Darby.

## Weak sales p to sluggish e

WASHINGTON comes rose faster months, but weak sharply lower fa gested the econom sluggishness.

A flurry of data said spending adv pace since A speculation that th is poised for anothe

Summertime hi and other retail of sonal income up C — the biggest inc percent gain in Jar lull by the conti abandoned the sto the beach during A nation's big retail poor sales.

Sales results i storeowners Thu even for some co usually top perfor chants said their s ers reported minu

## Help wanted i slightly high

NEW YORK — wanted advertisin indication that em economy is favorab of the year.

According to : Thursday by the C the U.S. Help-Wa Index rose four poi compared with 120 and 131 a year ag

The strongest ir percent rise in Nev percent in the We region.

## Courts say se death benefit

WASHINGTON ly watched by AII eral judge found Texas firm broke the sale of a life death benefits to i

The Securities a mission last year s Inc. of Waco, Te: largest organizer o settlements," whic tients and other t ple to cash in their icy's death benefit

The SEC argue ners broke securiti aging the life insur: vestors in such a tute investment o fall under SEC re: tors said Thursday Judge Royce C. I with the SEC and inary injunction e ners.

## More banks n under in Russ

ANTHONY A. LEON GUERRERO  
President  
and  
Chief Executive Officer



# Bank of Guam

"The People's Bank"

MEMBER OF THE FEDERAL  
DEPOSIT INSURANCE CORP.

P. O. Box BW  
Agana, Guam 96910  
Tel: 472-8865/6/7

Exhibit N

August 30, 1995

The Honorable Senator Francis E. Santos  
Legislature Central  
Agaña, Guam 96910

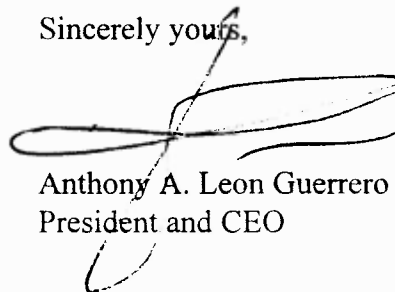
Dear Senator Santos,

I am writing to thank you for your sponsorship of Bill 349, which would clarify the Legislature's intent regarding whether Automated Teller Machines are bank branches and reaffirming the two-branch limitation governing banks chartered outside of Guam. I am quite grateful for your assistance in this important issue and for the speed with which you were able to address a matter of importance for our local banks and, ultimately, for everyone residing in Guam.

I am attaching a copy of a letter that I have sent to Speaker Parkinson and each of the other Senators for your information. It outlines the Bank's position on the issue, and provides several critical points which our local legislature should be familiar with in regard to regulating the activities of outside banks within the Territory. I hope that the letter helps to keep you abreast of the information with which the other Senators are working and that it provides you with additional convincing arguments in favor of your Bill.

Again, thank you for sponsoring this important piece of legislation for the benefit of Guam's local financial institutions and the economic future of our community. If there is anything more that I can do to ensure that Bill 349 passes without any difficulty, please let me know. In the meantime, I remain

Sincerely yours,



Anthony A. Leon Guerrero  
President and CEO

Attachments

ANTHONY A. LEON GUERRERO  
President  
and  
Chief Executive Officer



# Bank of Guam

"The People's Bank"

MEMBER OF THE FEDERAL  
DEPOSIT INSURANCE CORP.

P. O. Box BW  
Agaña, Guam 96910  
Tel: 472-8865/677

Exhibit 10

August 30, 1995

The Honorable Speaker Don Parkinson  
Julale Shopping Center, Suite 222  
Agaña, Guam 96910

Dear Speaker Parkinson,

In recent months, the issue has been resurrected as to whether Automated Teller Machines (ATMs) qualify as bank branches in Guam for purposes of the two-branch limitation on non-Guam banks. At the request of First Hawaiian Bank, there is currently an attempt being made to re-define ATMs as not being branches so that banks chartered outside of Guam can engage in the unlimited establishment of ATMs here. Hawaiian banks want to do more business in Guam, but do not want us to do business in Hawaii. They have branches and ATMs in Guam, but we can not even have one (1) branch or ATM in Hawaii. We are treated as foreigners in our own country.

Re-defining ATMs as not being branches would grant a significant, unfair advantage to Hawaiian and other off-island banks operating in Guam, and would be contrary to our reciprocity laws. It would also be illogical: after all, if where you do your banking is not a bank branch, then what is it? I am attaching a copy of my testimony, that of the Bank's attorneys, Mr. Phil Flores' of Guam Savings and Loan, and Mr. Kurt Moylan's of Citizens Security Bank given during the Banking Board hearing on the matter for your convenience.

Speaker Parkinson, I am writing to solicit your support of Bill 349 so that our local banking establishments and the financial and economic interests of the people of Guam can be preserved and protected. Bill 349 is intended to reassert the Legislature's intent with regard to the branch status of ATMs in order to guide the actions of the Banking Board. Bill 349 is to ratify by law that an ATM is a branch and that it falls into the provisions of the two-branch limitation of the Guam Banking Code. The Bill would provide a level playing field.

Our responsibility, including that of the Guam Banking Board and the Government of Guam, is to protect and ensure the continued success of the local banking industry and to protect the capital of the community, not to cater to just a few people who want to continue to do business with outside banks instead of doing business with local institutions. No one has been suffering from a lack of banking services. In fact, many banks are still not using the maximum number of branches (including ATMs) allowed within the law. With fifty-two (52) ATMs, twenty-eight (28) brick-and-mortar bank branches, seven (7) savings & loan facilities and six (6) credit union offices, there is a total of ninety-three (93) financial institution branches for a customer



population aged 16 and over of about 75,000; the island is over-banked. There is no reason to liberalize the law for outside banks only. Guam-chartered banks are doing the job better.

I am in favor of Bill 349 for several reasons, but most particularly because I feel that banks chartered outside of Guam already have too great an advantage over locally-chartered institutions. Information which may be helpful in your deliberations on this issue is as follows:

- 1) The State of Hawaii is extremely protective of its financial industry, and does not allow full-service banking by territorially-chartered banks, including those chartered in Guam (defined as foreign banks under Hawaiian law). Therefore, Guam banks cannot enter the Hawaii market at all, let alone operate ATMs there. There is no reciprocity provided to Guam by the State of Hawaii under its banking code. Hawaii treats Guam banks as being foreign in Hawaii, but Guam treats Hawaiian banks as being domestic in Guam. This is in direct contrast to the reciprocity provision of our Guam Banking Code.
- 2) Under the International Banking Act of 1978, Guam-chartered banks are defined as being "foreign," despite the fact that we are insured and regulated by the Federal Deposit Insurance Corporation just like any other domestic U.S. bank.
- 3) In accordance with a prior Banking Board decision and a 1986 Attorney General's opinion, off-premises ATMs are treated as branches for purposes of the two-branch limitation. This is appropriate, since ATMs are capable of performing virtually all of the functions that are performed at a "brick-and-mortar" branch, especially those tasks usually performed by a teller. The two branch limitation on non-Guam banks under existing law, including ATMs, provides a small defensive advantage that Guam banks have in operating here. Defining ATMs as not being branches would enhance the advantages of off-island banks while at the same time eroding the competitive position of local banks.
- 4) Guam currently has an extremely liberal banking law, which not only allows state- and nationally-chartered U.S. banks to operate as full-service establishments here, but also allows them to operate ATMs. Most States do not allow out-of-state banks to operate ATMs at all, even on-premises.
- 5) Because Guam corporations are foreign under federal law, our bank stock dividends are treated differently under the Internal Revenue Code than dividends paid by Hawaiian banks. Corporate holders of Hawaiian bank stock are eligible for the dividend reduction deduction, allowing them to deduct 70 percent of their dividends received from taxable income before computing their tax liability; because we are "foreign," dividends paid by Guam banks are not eligible for this tax treatment, so it is virtually impossible for Guam banks to attract capital from U.S. corporations. This is a substantial impediment for Guam banks. As a result, Guam banks are at a serious disadvantage in competing with banks chartered in Hawaii, both because we are far more limited in our opportunities to increase our

deposits (due to the smaller market that we serve) and because we are unable to attract anywhere near as much capital investment (due to our treatment as "foreign" under the tax code).

- 6) First Hawaiian Bank and Bank of Hawaii have been offered the opportunity to participate in electronic banking networks here, such as Apas, MariNet or Bank of Guam's ATM and Point-of-Sale system, but have refused to do so. They want to establish their own ATMs here merely to further erode the market share of local banks and savings & loan associations so that they can gather more profits to send back to Hawaii.
- 7) U.S.-chartered banks have a way around the two branch limitation, if they want to operate ATMs in Guam: they can incorporate in Guam and invest the required capital, just like the rest of us! Then they could operate as many ATMs as they want, without trying to degrade our banking laws. They could also experience what it is like to operate under the many constraints and disadvantages that Guam banks face.
- 8) The Banking Board has decided to proceed with the Administrative Adjudication process to exclude ATMs from the definition of branches. This decision suffers from a couple of basic problems. First, it is our position that the Board is illegally constituted, and therefore cannot act at all. Under the law, the requirement is that there be three bankers and three non-bankers on the Board; there are now five bankers and one non-banker on the Board, including representatives from Bank of Guam, Citibank, Citizens Security Bank, the GovGuam Employee Federal Credit Union, and First Hawaiian Credit Corporation (wholly owned by the holding company that owns First Hawaiian Bank), along with a representative from Oceanic Lumber. Secondly, each of the bankers on the Board has an interest in ATMs, and therefore a conflict of interest in this issue. Each should have recused themselves from the vote on the issue, but none did. The vote should be deemed invalid.

The passage of Bill 349 is very important for us in the local banking industry, as well as to the people of Guam. It will confirm the legislative view that an ATM is a branch, and the law with the two-branch limitation, which has been the pillar of the success of the local banking industry during the last 23 years, will be reaffirmed. Bill 349 will preserve Guam's legal treatment of ATMs and branches as it has been practiced since the early 1970s; no change will be made. All that will happen is that the Legislature will ratify the previous decision of the Banking Board and the interpretation of existing law that the Attorney General issued in 1986.

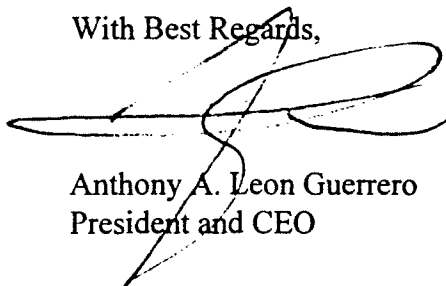
It is also important to note what the success of the local banking industry means to us. It means the uninterrupted payment of quarterly dividends for over 20 years to over 3,000 local shareholders, the reinvestment of our profits locally, and substantial contributions to our government in the form of taxes. It means the livelihood of over 500 officers and staff of the Bank and their families, and the continuation of the services that we provide to over 50,000

customers. These are the people who will be affected by your decision regarding Bill 349, and your decision is important to all of us.

There are other important matters relating to banking to be considered at this time, too. Under the Interstate Banking and Branching Efficiency Act passed last year, we have until June 1<sup>st</sup>, 1997, to make up our minds about how to deal with the options it thrusts upon us. Among other things, we must either opt out of the Act, closing our doors to branching from other U.S. jurisdictions without our express consent, or opt in, allowing almost unlimited entry by outside banks. If we do nothing, we opt in by default. However, we should clarify our current position with regard to ATMs being branches now, then deal with the bigger issue of the Interstate Banking and Branching Efficiency Act once we have thoroughly studied the impact this Act will have on the local banking industry and our community as a whole.

Thank you for your time and interest in this matter. I hope that I can count on your assistance in passing Bill 349, helping to preserve a more equitable environment for local banking institutions.

With Best Regards,

A handwritten signature in black ink, appearing to read 'Anthony A. Leon Guerrero', written over a horizontal line.

Anthony A. Leon Guerrero  
President and CEO

Attachments

ANTHONY A. LEON GUERRERO

President  
and  
Chief Executive Officer



**Bank of Guam**

"The People's Bank"

MEMBER OF THE FEDERAL  
DEPOSIT INSURANCE CORP.

P. O. Box BW  
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Tel: 472-8865/6/7

Exhibit P

August 16, 1995

Mr. Joseph T. Duenas  
Director/Guam Banking Commissioner  
Department of Revenue  
and Taxation  
378 Chalan San Antonio Street  
Tamuning, Guam 96911

SUBJ: Testimony Regarding The Question Of Whether Hawaii's  
Intra-Pacific Banking Law Meet The Reciprocity  
Requirements Of The Guam Banking Code And Whether  
Automated Teller Machines Or Customer Bank Communication  
Terminals Constitute Bank Branches

Dear Mr. Duenas:

Thank you very much for allowing us to offer our position on a couple of banking issues which have once again come before this body. I believe that you have been asked to issue a declaratory ruling on two issues:

- A. Whether Hawaii's 1993 banking reforms dealing with "Intra-Pacific" reciprocity adequately meet the reciprocity requirements of the Guam Banking Code; and,
- B. Whether Automatic Teller Machines (ATMs) or Customer Bank Communication Terminals (CBCTs) constitute bank branches for regulatory purposes.

I said, "once again," because these same issues have been brought out in the past with regular frequency, only to be dismissed once a detailed review has been made and the relevant issues have been clarified. In deliberating these issues, what is of critical importance is that we all see the debate on a macro perspective, as well as on reciprocal arrangements so that we are all playing on a equal playing field and not just to focus on the "Guam picture."

We submit that Hawaii's "Intra-Pacific banks" statute not only falls short of meeting the reciprocity requirements of the Guam Banking Code, it is contrary to the intent of the Code and the intent of the framers of our local laws. With regard to whether ATMs constitute branches, this issue was already answered by an Opinion of the Attorney General and further supported by a recent Memorandum from the same Office. The Attorney General has determined that bank owned ATMs are considered branches.

We have solicited the opinions of our attorneys on these matters, and their analyses (which have been forwarded to your offices directly) are attached to this testimony for your convenience and ready reference.

### Reciprocity

There is a significant element of "equality" implied in the term "reciprocity." The reciprocity provision of our Banking Code requires that Guam-chartered banks be treated equally by the respective States as their State-chartered banks are treated here, and no less. There was no agreement to accept "perceived" reciprocity; at least that was not the intention of our Senators and Governor when our reciprocity law was enacted.

From both a National and a State perspective, we territorially-chartered banks continue to run into enormous problems with this reciprocity issue due to our "foreign bank" classification.

Nationally, under the International Banking Act of 1978 (IBA), all banks chartered in the territories and possessions of the U.S. are classified as foreign banks, and are therefore subject to limitations on their business activities. This unhappy result comes about because foreign banks are not regulated, and the U.S. Congress wanted to create an environment which denied these unregulated financial institutions any unfair advantage over regulated U.S. banks. Unfortunately, the law fails to recognize that many territorial banks (such as Bank of Guam and Citizens Security Bank) are already regulated in the same way as U.S. banks and, regardless to this fact, we were classified as a "foreign bank" when the Act was passed.

Specifically in reference to branching under the IBA, territorial banks can choose only one State as their "home" State in entering the U.S. market. Any interstate branching from there is subject to that home State's reciprocity agreements with the target State. As discussed later, this condition will not change even with the enactment of the Interstate Banking and Branching Efficiency Act of 1994 (IBBEA). Consequently, our ability to branch among the States is governed strictly by how we can maneuver under the reciprocity laws of the various States, not by how their reciprocity laws relate to us.

To make things worse, some States have adopted this national definition of foreign banks when they refer to banks chartered in U.S. territories, as is the case of the State of Hawaii. Section 412:3-502 of the Hawaii Code provides, "[n]o foreign financial institution shall receive deposits, lend money, or pay checks, negotiable orders of withdrawal or share drafts from any principle [principal] [sic] office, branch, agency, ATM or any other location in this State (Hawaii) . . . ." Guam chartered banks are considered

foreign financial institutions under Hawaiian law (see §412:5A-300, et. seq., of the Hawaii Code). Because Guam banks are classified in this manner, Guam banks are only authorized to establish a representative office, accept deposits from non-U.S. citizens and foreign nations and perform limited functions. Further, these "privileges" are strictly limited to banks with world-wide assets of at least \$10 billion. Consequently, it appears, that while, on one hand, the Hawaii's Intra-Pacific Banking laws allow Guam banks into Hawaii, further Hawaii regulations, on the other hand, severely limit its operation in the State of Hawaii. Is this reciprocity? The "Intra-Pacific banks" reciprocity arrangement appears designed to merely give an illusion of compliance with the intent of our Banking Code.

This "foreign" classification under State and federal laws places territorial banks at a major competitive disadvantage since these laws severely limit our market area. To open our market wider to these outside banks by allowing them additional branching and ATM privileges would only serve to further exacerbate our competitive disadvantage dilemma. Moreover, to allow this to happen in an economic environment which is already tight (at best), with the aggregate deposit base slowly shrinking in the past five-to-seven years, would be unbearable.

In my view, if we are truly seeking equal treatment in the territories, then I would suggest that we enact our own foreign banking amendment and classify all non-territorial banks doing business in Guam as foreign banks, limiting their activities and opportunities here in the same way that we are limited in their respective jurisdictions.

We have tried, with the help of our Washington Representative, Congressman Underwood, to amend the IBA to exclude regulated territorial banks from the "foreign bank" classification, but our proposal was rejected last June 1994. As a result, our ability to enter the market in Hawaii is not improved by their 1993 statute; therefore, the supposed "reciprocity" provided by that statute does not exist.

In summarizing this issue, I believe that the "Intra-Pacific" reciprocity provisions of Hawaii law result in nothing favorable or of value to Guam financial institutions, let alone the reciprocal arrangement required to permit additional branching within Guam by Hawaiian banking institutions. Therefore, I respectfully request that this Board decline to render the requested declaratory ruling, or, short of that, that a declaratory ruling be issued finding that Hawaii's "Intra-Pacific bank" provisions do not constitute the type of reciprocal arrangement required under Guam law.

#### Automatic Teller Machines as Branches

Before I proceed with the main points of my testimony on this subject, I would like to point out that the Board's 1984 decision regarding the Fort Sam Houston ATM authorization is irrelevant to the issue at hand. Such decision addressed the establishment of

ATMs within a military base. First Hawaiian's request does not involve the installation of an ATM in a military base. Guam's banking laws with respect to branching in military bases are generally inapplicable. All branching in the military bases are subject to federal laws, not local laws. The Board merely served the perfunctory role of approving an application which it had to approve anyway.

Turning now to whether ATMs should be defined as branches, we are faced with a much more straightforward issue. In its simplest terms, the Board already sought and obtained an opinion on this subject from the Attorney General back in 1986. Again recently, the AG on April 21, 1995 (Ref.:DTR 95-0486), issued another memorandum on the same subject which essentially confirms the original AG's opinion. The conclusion in both instances was that bank-owned ATMs are branches. Moreover, the Guam Legislature, who had the power to enact legislation to correct the 1986 Attorney General's opinion if they believed that it was contrary to their mandate, have done nothing to overturn it. Because the Legislature has not passed legislation overturning the Opinion, the legislature has essentially adopted the Attorney General's interpretation. The U.S. Court of Appeal, in Independent Banker's Assoc. of America v. Smith, 534 F2nd 921, (DC Cir) cert denied 429 U.S. 862 (1976), also believed that the Legislature has jurisdiction over branching matters when it overturned the lower court's decision that CBCTs were not branches. The Court stated that the ruling was contrary to the legislative meaning of the National Bank Act.

In limiting the activity of State and national banks in Guam by instituting the two-branch limitation, the Guam Legislature has established their intent to control the branching activity of State and National banks operating in Guam. The 1986 Attorney General's opinion also indicates that it is the prerogative of the Legislature, and not the Banking Board, to determine how this issue should be addressed. However, if this Board is determined to formulate a definition regarding whether ATMs are branches, it is our position that it must adhere to the provisions of the Administrative Adjudication Act. You must provide copies of the proposed regulation to the public, publish notice of a public hearing, accept input from the community, and then provide the Governor with final proposed regulations. These will then have to be put into Bill form and submitted to the Legislature for its disposition.

While the Guam Banking Code does not specifically define the terms "Branch" or "ATM", guidance in this regard is found in federal banking laws. Almost without exception, federal banking laws regulate ATMs and CBCTs as branches. The National Banking Act [12 USC 36(j)], the Federal Deposit Insurance Act [Section 3(g)], the Bank Holding Company Act [Section 1(o)(3)] and the International Banking Act of 1978 [Section 1(a)(3)] all treat ATMs as branches. Language in these laws all center around the core functions of a branch: receiving deposits, cashing checks and lending money. Guam should be no different.

The Supreme Court has also ruled that the broad nature of the definition of branch includes an ATM. They have affirmed that the test for whether a facility is a branch is a two pronged test: 1) does the facility fit the broad functional definition laid down by Congress in the National Bank Act, that is are deposits received, checks paid or money lent, and if so 2) does state law add any more refinements to the definition. First National Bank in Plant City v Dickinson, (CA FLA 1968) 400 F2nd 548, affirmed 90 S Ct 337, 396 US 122, 24 L Ed2d 312, reh'd denied. This Court, as well as numerous other federal appellate courts, have all affirmed that the term "branch" under the National Bank Act is to be construed broadly and includes ATMs. Perhaps the seminal case, Indep. Bankers Assn v. Smith, concluded that "branch" includes lesser bank agencies which provide only some of the services available in the traditional bank. The court went on to find that the term "branch" included CBCTs.

The FDIC Statement of Policy titled "Application to Relocate Main Office or Branch (Includes Remote Service Facilities)" notes in Section A, "Federal appellate court decisions have determined that the term "branch" includes remote service facilities. In March 1979, the FDIC adopted regulations which reflect these decisions and recognize remote service facilities as branches...". FDIC Regulation 303.0(a)(23) defines remote service facility as "an automated teller machine,... or other remote electronic facility where deposits are received, checks paid, or money lent...". Therefore, ATMs and CBCTs are considered branches under the FDI Act, by case law and FDIC regulations.

Additionally, in our review of the States' designation of ATMs as branches, we have gone beyond a simple tabulation of the "vote" among the States. We have looked into other characteristics of the States' banking statutes to determine exactly why these differences exist, and we have uncovered several facts that should interest this Board. Among other things, we have discovered that one case cited by First Hawaiian's attorney [State of Oklahoma v. Bank of Oklahoma, 409 F.Supp. 71 (N.D. Okla. 1975)] supporting the idea that ATMs are not branches was a lower-Court decision based upon arguments which was subsequently discounted by higher Courts.

More importantly, we have obtained a recent survey, dated December 31, 1993, from the Conference of Bank Supervisors that is very enlightening. When the question of, "How many States and Territories treat ATMs as branches?" is asked, the same conclusion of the Banking Board is reached. That is only nine out of fifty-three respondents (including Guam, Puerto Rico and the District of Columbia) consider ATMs to be branches, while another three do so under some circumstances. However, when the question, "How many States and Territories allow out-of-state banks to establish ATMs within their borders?" is solicited. The answer to this question is quite different. According to the same survey, only five of the fifty-three respondents allow the unconditional establishment of ATMs by out-of-state banks within their jurisdiction; two more allow such establishment, but treat the ATMs as branches. Another nine of the fifty-three allow such establishment under certain conditions: five of these require either reciprocity or active



(exercised) reciprocity, three require that sharing with in-State-chartered banks be permitted, and one, the State of Hawaii, allows such establishment provided that these ATMs do not accept deposits. The important point, though, is that thirty-three of the fifty-three jurisdictions surveyed had an outright, absolute prohibition against out-of-state banks establishing ATMs, even on the premises of their "brick-and-mortar" facilities. The bottom line is that in most of those States that do allow out-of-state bank entry, other mechanisms are in place to protect locally-chartered institutions from unlimited outside competition. For your reference, I have attached a summary of the 1993 survey results to this testimony.

The Attorney General of Guam has declared that bank-owned ATMs are branches. But some still contend that, in this age of electronic networking, ATMs are no longer bank-specific especially with the ever-changing character of banking, particularly with reference to the advances in electronic technology such as on- and off-line point-of-sale systems, credit cards, telephone bill-paying systems, and universal-access ATM networks. While this argument may be true to some degree, one point must be made clear: ATMs accept deposits from customers of the institution owning the ATM. This is an essential function of a branch and is specifically what makes an ATM a branch. Moreover, ATMs perform other traditional branch functions such as facilitating the credit process by releasing funds through automatic overdraft facilities and other lines of credit.

The costs of installing and servicing an ATM are borne by the bank that owns it. The bank owning the ATM predominantly labels the machine so customers can identify their bank. When more than one bank is tied into an ATM through a network, the owning bank receives fees from other banks' customers through an inter-bank settlement agreement, and these agreements are very specific as to the rights and responsibilities of each party involved. It is our understanding that even the State of Hawaii considers ATMs to be bank-specific. Furthermore, every time we seek to install another ATM, we must first notify this Board and the Federal Deposit Insurance Corporation of our intent. No matter how you look at it, every ATM is directly associated with a specific bank unless, as the recent AG's memorandum suggests, the ATM is a part of a third party shared network and is not owned by any specific bank.

Another matter that is related to this issue is consumer convenience. It is our position that this objective within the banking industry in Guam is already being accomplished by Bank of Guam's system of twenty-six ATMs and Guam Savings and Loan's 4 ATMs around the island, along with those surreptitiously installed by Bank of Hawaii's sister corporation, First Savings and Loan (11 ATMs), CitiBank (2 ATMs), First Hawaiian Bank (3 ATMs), Bank of Hawaii (3 ATMs), Navy Federal Credit Union (1 ATM) and Pentagon Federal Credit Union (2 ATMs). This comprises a grand total of 52 ATMs which service the island of Guam, along with 40 brick-and-mortar depository institutions. We also believe that another locally-owned financial institution is contemplating establishing additional ATMs. Other banks' customers have access to our Pacific Express ATMs as well as First Savings and Loan's ATMs because of our affiliations with Cirrus, EDS, Star, JCB, AFFN and the Exchange

Network. The convenience of the community as a whole in terms of ATM access is met whether specific individuals bank with us or with one of our competitors.

In summary, the Attorney General has opined that ATMs are branches, which was recently confirmed by a new AG's "informational memorandum." The entire issue is a legislative prerogative in any case, and may not be within the direct purview of this Board. While Guam's law is silent on the ATM query, Federal laws all consider ATMs as branches. Additionally, ATMs perform functions that are traditionally the role of a bank branch. While many of the States' laws are silent as to whether ATMs are branches, most States prohibit outside banks from establishing them within their boundaries under any circumstances. ATMs are bank-specific in terms of regulatory authority, ownership rights and income generation, as well as some of the functions that the machines can perform only for customers of the owning bank. Finally, the convenience of the community is already being accommodated by the existing ATM networks in Guam. With this in mind, we see no compelling need to change the current definition of ATMs as branches.

#### Other Considerations

I believe that it is the role of this Board to protect the financial interests of the people of Guam, including bank depositors and equity shareholders, and that in order to do so, it is this Board's responsibility to ensure the safety and soundness of the local banking industry. Bank of Guam presently has some 42,000 depositors in Guam holding some 50,000 accounts, and more than 3,000 shareholders, over 95% of whom reside in Guam. The Bank has already invested well over a million dollars in its ATM operations and continues to devote thousands of dollars to upgrading and improving those operations. The Bank has been able to invest this large amount of money into its ATM program because of the protection provided under the banking code. The proposed amendment, though, jeopardizes the investment of the Bank. Future investments in ATMs may not be economically feasible if the definition of branch is changed as suggested. More importantly, this change in the interpretation of the law would affect the investments of the Bank's 3,000-plus shareholders. A major reason that the price of Bank of Guam stock is very strong is because of the inherent protection of local banks embodied in the law. Without this protection, stock prices may suffer.

Along this same line, the issue of convenience was discussed earlier. However, customer convenience should not be the deciding factor to expand the definition of a branch to include ATMs or CBCTs. Permitting large mainland (foreign) banks, which have much larger capital bases, to proliferate on the island with ATMs would dilute the deposit base of locally-owned banks in favor of such large banks. Without the deposit base of the local community, local banks could not survive. The limitation of branch banking by non-local banks in the banking code was enacted to protect the local banking industry. The proposed change might improve customer convenience marginally, but at the cost of the local banking industry.

Protecting the safety and soundness of the local banking industry should be a major concern of the Banking Board. The above examples indicate why this is so. Consequently, the Board must take an aggressive approach to preserve and defend local financial institutions and local investments by quashing any attempt by non-Guam banks to expand their banking influence here.

As is clear from many aspects of the structure of our legal and political systems, the interests of the people of a locality are best understood and best accommodated by people who live within the locality's boundaries and have a vested interest in the economic vitality of their communities. It should also be clear that financial institutions rooted within a community are more likely to reinvest profits within that community rather than expatriating them to other communities. This is why we have a dual banking system within the United States, a system which is designed to ensure that the financial interests of the people in a community can be met by financial institutions that are most sensitive to the needs of that community.

Nevertheless, as mentioned earlier, Guam's banking laws are considered to be among the most liberal in the nation when it comes to allowing entry by outside financial institutions. With the exception of the two-branch restriction, we already grant unlimited access to our markets by banks that have no interest other than extracting profits from the people of Guam. Our reciprocity law goes even further, removing the two-branch rule for banks from any jurisdiction which permits Guam banks to have equal access to their markets. The purpose of this reciprocity law is to give other jurisdictions an incentive to allow Guam's financial industry a chance to thrive and grow in their markets.

Guam's laws appear even more liberal when viewed in the broader context of how our local institutions are treated by State and federal laws. Banks chartered in Guam are chartered in a U.S. territory, engage in transactions in the U.S. financial system, are regulated by the U.S. government, and yet are considered foreign under U.S. and State laws. Collectively, the several limitations imposed upon Guam banks by the States and the national government place us at an extreme competitive disadvantage. Because of this, both our activities and our opportunities are limited; we are not treated equally under the law. Our competitors from the States are larger banks in larger markets with access to U.S. capital markets; we are smaller banks in a relatively tiny market, and as a foreign corporation, the tax treatment of our dividends effectively precludes our access to U.S. capital markets. Outside banks can enter our markets with virtually no obstacles; we are often expressly excluded from their markets, inclusive of providing the services of our ATMs, but if we do enter, our status as a foreign bank sharply curtails the scope of our operations there. The types of transactions in which we can engage are restricted. They are gnawing into our market, taking a substantial market share and threatening to eradicate us entirely, while we can't even begin to expand into their markets. As a result, the markets available to us are severely limited.

Further, the market here has been shrinking, as evidenced by the departure of Bank of America, Bank of the Orient and the Chase Manhattan Bank and the recent receivership of the NavMar Federal Credit Union. Now may not be the time to stimulate entry into the market that would further threaten the safety and soundness of all financial institutions in Guam.

I believe that it is this Board's responsibility to consider and understand these factors in order to uphold the interests of our community and the intent of our laws. Further opening our markets to Hawaiian banks because of a presumed "reciprocity" provision in their law would be against the interests of our community and the intent of our existing laws. The unfettered branching through the vehicle of ATMs that could occur if this Board's definition of ATMs as branches is changed could totally undermine the integrity of our local banking institutions, leaving Guam at great financial and economic risk from now on.

You will note that I discuss outside banks' competitive advantages on Guam, rather than any competitive disadvantages. We at Bank of Guam, along with our colleagues at Citizens Security Bank, are the ones at a disadvantage. In my view, Guam's open banking law is already far too liberal with regard to State- and nationally-chartered banks, since it imposes no formidable obstacles to or deferential restrictions on any outside bank wishing to establish operations here. The fact that Guam-chartered banks will never have sufficient resources to compete with much larger banks from the States even in this market certainly dictates against Guam opening its doors further to the acquisition of or competition with its local financial institutions by outside concerns. However, now that the issue is being raised, I would like to point out that Guam-chartered financial institutions have matured considerably since the matter of non-Guam-chartered bank branching was last addressed by our Legislature. We no longer face the shortages of financial capital for the support of economic development that we once did. We can now provide the same type of world-class services as the outside banks. Through our correspondent relationships, we can secure virtually unlimited financing, as needed, for whatever viable project comes along. Perhaps we should now take our cue from Hawaii and make our out-of-state branching laws less liberal.

#### Interstate Banking and Branching Efficiency Act of 1994 (Act)

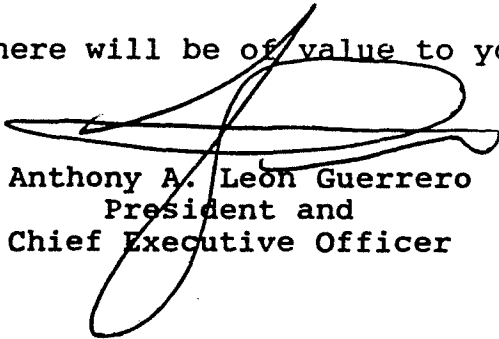
Under the Act passed last year, we have until June 1<sup>st</sup>, 1997, to decide how Guam must deal with the options it thrusts upon us. Among other things, we must either opt out of the Act, closing our doors to branching from other U.S. jurisdictions without our express consent, or opt in, allowing almost unlimited entry by outside banks. If we do nothing, we opt in by default.

Unfortunately, the Act, the International Banking Act, along with other laws affecting banking in Guam, is strongly biased against banks in the territories. Moreover, what is Hawaii intending to do in response to this law? I would be willing to speculate that the State of Hawaii will opt out of the Act for the very same reason that it instituted the illusory "reciprocity" under its "Intra-Pacific bank" statute referenced above. Be aware

that if Hawaii takes this route, it would cause extreme hardship to Guam chartered banks that chose Hawaii as its home state. Because of Hawaii has taken a protectionist posture, those Guam banks, effectively, can not branch beyond Hawaii.

Due to such considerations, I further suggest to hold in abeyance all policy decisions by this Board until the impact of Interstate Branching in Guam, through the Act, is thoroughly studied and we decide as a community what we should do in view of how we are being treated under the national regulatory regime and, more directly related to this testimony, by the regulatory regime of the State of Hawaii. I encourage each of you, Mr. Commissioner and our Banking Board members, to devote your energies to this larger matter.

I hope that my comments here will be of value to you in your deliberations.



Anthony A. León Guerrero  
President and  
Chief Executive Officer

AALG/ltd

atmtest4.doc

	ATMs Branches?	Remarks	Can Out-of-State Banks Establish ATMs?	Remarks
Alabama	No		Yes	
Alaska	No		Information Not Available	
Arizona	Information Not Available		No	Cash Dispensers OK.
Arkansas	No		No	
California	Yes		No	
Colorado	No		No	
Connecticut	No		Conditional	With active reciprocity.
Delaware	Yes		No	
District of Columbia	Information Not Available		No	
Florida	No		No	
Georgia	No		Yes	
Guam	Yes		Conditional	With reciprocity.
Hawaii	No		Conditional	No deposits accepted.
Idaho	No		No	
Illinois	No		No	
Indiana	No		No	
Iowa	No		No	
Kansas	No		Conditional	With reciprocity.
Kentucky	Information Not Available		Yes	
Louisiana	Yes		Yes	But ATM is a branch.
Maine	No		No	
Maryland	No		Yes	
Massachusetts	Sometimes	No mobile ATMs or ATMs in gambling establishments.	Conditional	With reciprocity.
Michigan	Sometimes	May be available for sharing.	No	
Minnesota	No		No	
Mississippi	Yes		Yes	But ATM is a branch.
Missouri	Information Not Available		No	
Montana	No		No	
Nebraska	No		Conditional	Jointly with a State-chartered institution.
Nevada	Information Not Available		No	
New Hampshire	No		No	
New Jersey	Yes		No	
New Mexico	Yes		No	
New York	Sometimes	Only if for Home Office protection or CRA purposes.	Conditional	If sharing is permitted.
North Carolina	No		No	
North Dakota	No		No	
Ohio	Yes		No	
Oklahoma	No		No	
Oregon	No		Conditional	With reciprocity.
Pennsylvania	Information Not Available		Yes	
Puerto Rico	No		No	
Rhode Island	No		Information Not Available	
South Carolina	No		Information Not Available	
South Dakota	No		Information Not Available	
Tennessee	Yes		No	
Texas	No		No	
Utah	No		Conditional	Jointly with a State-chartered institution.
Vermont	Yes		No	
Virginia	Information Not Available		No	Legislation to approve pending as of December 31, 1993.
Washington	No		No	
West Virginia	No		No	
Wisconsin	No		No	
Wyoming	No		No	

Note: Arizona and Hawaii appear to treat out-of-State ATMs the same.

Information from a survey conducted by the Conference of State Bank Supervisors, as of December 31, 1993.

BEFORE THE BANKING BOARD OF GUAM

Statement of Joaquin C. Arriola

August 16, 1995

LEGISLATIVE POWER—NONDELEGATION DOCTRINE

The Banking Commissioner has postulated that the Banking Board has the legal and valid power to declare that ATMs are not "branch banking" notwithstanding §30900 of the Banking Code which limits "state or national banks" (Hawaii refers to them as "foreign" banks) to two (2) branches. In support thereof, the Banking Commissioner cites Section 30012(2) of the Banking Code which provides that the Board has the power to "Implement by regulation any provision of this Title, and to define any term not defined in this Title."

Insofar as the issue of ATMs is concerned, Section 30012(2) of the Banking Code is an impermissible delegation of power, and therefore void.

The legislative power and authority of Guam shall be vested in a legislature. . .  
Title 48, §1423, United States Code.

The legislative power of Guam shall extend to all subjects of legislation of local application . . .  
Title 48, §1423a, United States Code

A cardinal and fundamental principle of the American constitutional system is the separation of the powers of government—the legislative, the executive, and the judicial. Each is separate from the others. O'Donohue v. United States, (1933) 289 U. S. 516, 77 L. Ed. 1356, 53 S. Ct. 740.

The legislature makes the laws; the executive executes such laws; and the judiciary interprets or construes such laws. Wayman v. Southard, (1825) 23 U. S. 1, 6 L. Ed. 253

The legislative power has been described generally as being the power to make, alter, and repeal laws. It has also been said that the essential of the 'legislative function is the determination of the legislative policy and its formulation and promulgation as a defined and binding rule of conduct, . . .

16 Am. Jur. 2d 849; Yakus v. United States, (1944) 321 U. S. 414, 88 L. Ed. 834, 64 S. Ct. 660.

. . . there can be no legislation by either the courts or the executive branch of government.

16 Am. Jur. 2d 849

The executive cannot discharge the functions of the legislature in any manner by so acting in his official capacity that his conduct is tantamount to a repeal, enactment, variance, or enlargement of legislation. Similarly, since the whole legislative power is assigned to the legislative department of the government, the general rule is that there exists no power in the executive department to suspend the operation of statutes.

16 Am. Jur. 2d 822.

The power to make the laws for this State is a sovereign power vested in the legislature. "On common-law principles, as well as by settled constitutional law, it is a power which cannot be delegated to another body, authority or person." "(citation omitted)" In Hill v. Relyea, 34 Ill.2d 552, at 555, 216 N.E.2d 795, at 797, this court summarized its holdings on the subject of delegation of legislative authority as follows:

There is a distinction between the delegation of true legislative power and the delegation to a subordinate of authority to execute the law. [Citation omitted.] The former involves a discretion as to what the law shall be: the latter is merely an authority or discretion as to its execution, to be exercised under and in pursuance of the law. [Citations omitted.] It is an established rule that the General Assembly cannot delegate its general legislative power to determine what the law shall be. . .

This court has also stated that the legislature in delegating to an administrative agency the performance of certain functions may not invest that agency with arbitrary powers. (citations omitted) The legislature cannot vest an administrative agency with the power in its absolute and unguided discretion to apply or withhold the application of the law or to say to whom a law shall



or shall not be applicable. (1 Am.Jur.2d, Administrative Law, sec. 108.) "Should a statute clothe an administrative officer with the discretion as to the administration of the statute and also clothe him with the right to determine what the law is, or give to him the opportunity to apply it to one and not apply it to another in like circumstances, either would constitute an unlawful delegation of legislative power. (citation omitted)  
People v. Tibbitts, (1973) 56 Ill. 2d 56, 305 N.E. 152, 155.

The prohibition against delegation of legislative power "[requires that the basic policy choices involved in "legislative power" actually be made by the Legislature as constitutionally mandated," (citations omitted) This doctrine serves two interrelated purposes. First, it seeks to insure that "basic policy choices" be made by duly authorized and politically responsible officials. (citations omitted) Second, it seeks to protect against the arbitrary exercise of unnecessary and uncontrolled discretionary power. (citations omitted) (Emphasis added)  
Wm. Penn Parking Garage, Inc. v. City of Pittsburgh, (1975) 464 Pa. 168, 346 A 2d 269, 291.

Thus, legislative power may not be delegated, but if there is a "delegation" of power, such delegation "must always prescribe the standards that are to govern the administrative agency. . ." State vs. Traffic Tel. Workers' Federation of N.J., (1949) 66 A. 2d 616, 625

Even when standards are reasonably clear, some court holds them bad. See City Saginaw vs. Budd, (1968) 381 Mich. 173, 160 N.W. 2d 906, 908, where an ordinance provided: All buildings or structures which are structurally unsafe . . . of which constitute a fire hazard, or are otherwise dangerous to human life . . . by reason of inadequate maintenance, dilapidation . . . are hereby declared to be public nuisances and shall be abated by alteration, repair, rehabilitation, demolition or removal . . . " A chief inspector ordered demolition of a house, but the Court held: "There was an improper delegation of authority without definable standards."

In Chicago vs. Pennsylvania R. Co., (1968) 41 Ill. 2d 245, 242, N.W. 2d 152, a statute prohibited signs or billboards on any state highway" other than as may be directed by the authority having jurisdiction over such highway." The City of Chicago had such authority. The court held the delegation invalid because of lack of standards.

Because there are no standards established by the Guam Legislature, the "politically responsible" \*branch of the Government of Guam, any attempt by the Banking Board or the Banking Commissioner to expand or increase the facilities of state or national banks (foreign banks to Hawaiians) by way of branches or ATMS, must fail. Moreover, any declaration by an administrative agency of the Government of Guam that ATMs are not branches will constitute the "arbitrary exercise of unnecessary and uncontrolled discretionary power"\* and more importantly, will violate the spirit and letter of Section 30900 of the Banking Code.

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\* Wm. Penn Parking Garage, Inc., Supra

Exhibit S

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August 17, 1995

Hon. Joseph T. Duenas  
Banking Commissioner  
Department of Revenue Taxation  
Government of Guam  
378 Chalan San Antonio  
Tamuning, Guam 96911

**Re: Adjudication - ATMs**

Pursuant to the Board's request, I submit my written Memorandum of Law concerning the absence of Rules and Regulations, Composition of the Board Bias, and wasted efforts. I ask that my letter to you dated April 18, 1995, and another letter from Mr. Cowan of this office dated a few days earlier, be made a part of these proceedings and copies be made available to each Board Member.

I thank you for your courtesy and gentlemanly manner in conducting the affairs of the Banking Board.

  
JOAQUIN C. ARRIOLA

TO: BANKING BOARD, GOVERNMENT OF GUAM

RE: ADMINISTRATIVE ADJUDICATION ACT (ATMs)

ABSENT RULES AND REGULATIONS, THE BANKING BOARD IS WITHOUT AUTHORITY TO CONDUCT ADJUDICATION HEARINGS.

Section 24200, Government Code, reads:

"§24200 Legislative Intent. It is the intent of the Legislature to establish uniform method of making, adopting, promulgating, filing and publishing rule by all agencies of this Territory, to permit public participation therein and provide a method of making rules readily accessible to the public. It is not intended to give to any agency any additional rule-making power or authority and no additional or new power or authority to make or adopt rules is given to any agency by this Act."

Section 24202, Government Code, provides:

"§24202. Same: Circulation and Filing. It shall be the duty of every agency which may have been or hereafter may be clothed with or given any power or authority to make, adopt, promulgate or enforces rules to:

- A. Prepare said rules in a form approved by the Attorney General or other legal counsel of the agency and where required by law, approved by the Governor, and which will conform to a standard system or code of rules adopted by the legislative Secretary for guidance of all agencies.'

(Emphasis Added)

Section 24002, Government Code, reads:

"§24002. Agency. The word 'agency' whenever used in this Title shall mean and include any board, commission, department, division, bureau or officer of the territory of Guam authorized by law to make rules or to adjudicate contested cases. It is the intent that no board, commission, department, division, bureau or officer be excluded from the provisions of this Title, except those in the legislative and judicial branches."

"§96. Duty to Make

**Under some statutory provisions a public administrative body has the duty of making rules and regulations in order to carry out the details of the enactment.**

Under some statutory provisions, a public administrative body has the duty of making rules and regulations in order to carry out the details of the enactment. Whether it is mandatory on a public administrative body to adopt regulations with respect to certain matters depends on the intent of the legislature as expressed in the statute, and, under some statutes, before such a body may take action with respect to certain matters, it may be necessary for it to adopt rules and regulations with respect to such matters." (Emphasis Added)

73 C.J.S. 417

Under Section 24202, supra, it is "mandatory" upon the Banking Board to adopt rule and regulations. A copy of the Administrative Rules and Regulations, Government of Guam is attached, showing that no Rules have ever been adopted or promulgated by the Banking Board.

It is submitted that the Banking Board is without authority to adjudicate the issue of ATMs, or any other issue which is within their jurisdiction, unless Rules & Regulations are mandated by statute, is adopted.

#### The COMPOSITION OF BANKING BOARD IS ILLEGAL.

Section 30011 of the Banking Code reads:

"§30011. Banking Board. (a) There is hereby established in the Division, a Banking Board which shall consist of seven (7) members including the Commissioner of Banking who shall be Chairman.

(b) There shall be at least three (3) members who are executive officers of banks, . . . and at least three (3) members who are not directors, trustees, officers, employees or stockholders of any bank, . . ." (Emphasis added).

According to a list provided counsel containing the names of the Banking Board Members only one (1) is not an "employee" of a bank.

The term "bank" is defined as "any person doing a banking business whether subject to the laws of this or any other jurisdiction." Section 30001, Banking Code.

AGANA, GUAM 96910  
ARRIOLA, COWAN &

The term "banking" is defined in Black's Law Dictionary, 5th Edition, as "The business of banking, as defined by law and custom, consists . . . in receiving deposits payable on demand; . . . making loans of money on collateral security; . . . negotiating loans, . . ."

Certainly a Credit Union, like the Government Employees Guam Federal Credit Union is such a bank by definition noted above. I am informed that Miss Lou Torre, Board member is an employee or an officer of such Union.

Upon information and belief, First Hawaiian Credit Corp, is a sister corporation of First Hawaiian Bank, the applicant in these proceedings, being subsidiaries of a bank holding company. Mrs. Laura Lynn Dacanay is an officer or employee of First Hawaiian Credit Corporation and should be disqualified as a member of the Board. Perhaps not the letter, but the spirit of the law should disqualify her.

We have seven (7) members of the Banking Board—a full Board—only one of whom is "not an officer, director, trustee, employee or stockholder" of any "bank". Such a composition is clearly a violation of the law which requires at least three (3) members who are not affiliated with "banks", and thus, the Board as presently composed, is illegal.

**"ADMINISTRATIVE AGENCIES MUST CONDUCT 'FAIR TRIALS'"  
(CONFLICT OF INTEREST-BIASED)**

Section 30011(e), Banking Code provides:

"(e) . . . No member shall participate in a proceeding before the Board to which

any corporation, partnership or unincorporated association of which he is  
was at any time in the preceding twelve (12) months a director, officer, partner  
employee, member, or a stockholder is a party . . ."

The Banking Commissioner recognized the predicament of certain Board Member  
when he issued his Notice dated July 24, 1995, to the Board Members, cautioning them about  
this provision of the Banking Code. To quote the Banking Commissioner: "The integrity of  
the Board is imperative." I concur!

Present and on record at the Board Hearing on Wednesday, August 16, 1995, were  
bank officials, savings & loans officials, Credit Union officials, and even a finance company  
(if not a "bank"), namely, First Hawaiian Credit Corp. Every one of them had an interest in the  
proceedings; everyone of them had a vested interest in the outcome of the adjudication  
hearing. The lines were drawn: the locals urged the Banking Board to deny First Hawaiian's  
application. The foreigners argued in support. As noted above, only one member of the  
Board can claim that her company or corporation is not a "party" to the proceedings.

The Supreme Court of the United States "recognized that administrative agencies must  
conduct 'fair trials'". Adm. Law, Hornbook Series, Aman & Mayton; Withrow v. Larkin, (1975)  
421 U.S. 35, 95 S. Ct. 1456, 43 L. Ed. 2d 712.

A prejudgment or point of view about a question of law or policy may be ground for  
disqualification. Davis, Adm. Law Treatises, 2nd Ed. Vol. 3, P. 371, §19:1. The Banking  
Commissioner has on numerous occasions, publicly, held that ATMs are not "branches", even  
urging his fellow Board Members to go along. ". . . The line is drawn between an advance



commitment about the facts and some previous knowledge of the facts . . ." Davis, supra p 383 §19.4. The Banking Commissioner fits into the former category, for not only did he know of the facts (concerning ATMs), but he has committed in advance, to support the Application of First Hawaiian. Accordingly, the Banking Commissioner should disqualify himself from an participation in these proceedings. In support thereof, reference is made to Cinderella Caree and Finishing Schools, Inc. v. FTC (DC, 1970), 425 F. 2d 583 and American Cyanamid Co v. FTC (CCA6, 1966), 363 F. 2d 757.

#### AN EXERCISE IN FUTILITY

Assuming (and it seems to be a foregone conclusion) that the Banking Board defines ATMs as not "Branches", such a ruling or decision must be submitted to the Governor, who if he approves, shall transmit to the Legislature in the form of a bill for "adoption, amendment modification, or rejection by the Legislature;" P.L. 22-96 (copy attached).

A bill to define "branch banking" to include ATMs, has been introduced in the Legislature, Bill 349 (PDN erroneously reported it has not been introduced; a Bill does not have a number unless introduced). In due time, the Committee to which it is referred will conduct public hearings and thereafter submit its report to the whole legislative body for their consideration.

Thus, the proceedings conducted by the Banking Board and any future proceedings is a waste of time, money and effort. The Banking Board may be well-advised to spend such

time formulating its Rules and Regulations as mandated by statute.

Attached also is a copy of 5 GCA §9107, defining "Rule".

Respectfully submitted this 17 day of August, 1995.

ARRIOLA, COWAN, & ARRIOLA



By: Joaquin C. Arriola

AGANA, GUAM 96910

ARRIOLA, COWAN &

(Note: The Administrative Adjudication Act (Government Code §24000, et seq.)  
is codified in Title 5 Guam Code Annotated, §9100, et seq.)

BOARD PROCEDURES

TITLE 11 INVESTMENT  
(Orig. Pub. 2-15-75)  
(Rev. 6-30-82)

CHAPTER 3

Division of Insurance, Securities and Banking  
(Department of Revenue and Taxation)

- Subchapter A Banking Board (No rules filed.)
- B Office of the Commissioner of Banking

CHAPTER 3

Banking Board

(No rules filed.)

NOTE: Rulemaking authority vested for regul by the Banking Board, §§3001-3002L, Government Code.

(Editor's Note: The Guam Banking Code is found in Title XXXI, Article 1, §§30000-30007, Government Code.)

P.L. NO. 22-96

E. D. Reyes

D. L. G. Shimizu

J. G. Bamba

R. P. Camacho

J. V. C. Tan

F. E. Santos

A. R. Unpingco

A. C. Blaz

M. D. A. Mambusan

**AN ACT TO REPEAL AND REENACT SUBSECTION (b) OF §9303, TITLE 5, GUAM CODE ANNOTATED, TO REQUIRE THE GOVERNOR TO SUBMIT PROPOSED AGENCY RULES TO THE LEGISLATURE IN BILL FORMAT FOR ADOPTION, MODIFICATION OR REJECTION BY STATUTE**

Section 1. Subsection (b) of §9303, Title 5, Guam Code Annotated, is hereby repealed and reenacted.

Section 2. Chapter not applicable to rules resulting from Supreme Court Act.

**BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAMI**

Section 1. Subsection (b) of §9303, Title 5, Guam Code Annotated, is hereby repealed and reenacted to read:

"(b) Submit the original approved copy to the Governor who if he approves the same, shall transmit the proposed rules to the Legislature in the form of a bill for adoption, amendment, modification or rejection by the Legislature provided, however, that the Election Commission shall submit its proposed rules in the form of a bill directly to the Legislature and not through the Governor. The Legislative Secretary shall maintain a permanent register of all such rules, whether filed by the Governor or the Election Commission, which shall include a notation of the date and hour of such filing thereon.

Unless otherwise specifically provided by law, no rule shall be effective until either approved by statute or it shall have complied with the provisions of this law and forty-five (45) calendar days have elapsed from the date of receipt by the Legislature of its transmittal, and seven (7) legislative days



P.L. NO. 22-96

have elapsed after the elapse of the forty-five (45) calendar days. If the Legislature does not act upon the proposed rules within such combined period, the rules shall be deemed adopted. The Legislative Secretary may request that the agency submit all or part of the record of any public hearings on the rules filed. The Legislature may approve, disapprove or amend any rule or rules so transmitted within the combined period of the forty-five (45) calendar days and the seven (7) legislative days. When the Legislature has passed a bill approving, disapproving or amending rules or a rule so transmitted to it, the operation of such rules or rule shall be stayed for fifteen (15) calendar days after such bill is submitted to the Governor, and in the event such bill is vetoed by the Governor, the rules or rule shall be stayed for an additional seven (7) legislative days. If such bill is approved by the Governor, the rules or rule shall thereupon go into effect. For the purpose of this subparagraph (b) only, legislative day means a calendar day during which the Legislature is in actual session, and during which it engages or may engage in debate, excluded are calendar days in which the Legislature convenes principally for ceremonial purposes, such as for state funerals, and for addresses by the Governor, the Presiding Judge, or the Guam Delegate.

**Section 2. Chapter not applicable to rules resulting from Supreme Court Act.** The procedure for approving agency rules and procedure as set out in this Act and as contained in Chapter 9 of Title 5, Guam Code Annotated, shall not apply to the rules of court described in §1103 of Chapter 1, Title 7, Guam Code Annotated (the Frank G. Lujan Memorial Court Reorganization Act of 1992), and such rules shall be adopted and promulgated as provided in said Chapter.

PUBLIC LAW NO. 22-97

Bill No. 75 (L.S.)  
Date Became Law: March 8, 1994  
Governor's Action: Vetoes/Overridden

5 GCA - GOVERNMENT OPERATIONS  
Div. 1 - Law Applicable to Executive Branch

SOURCE: GC §24006

§9107. Rule. The word rule means any rule, regulation, standard, classification, procedure or requirement of any agency designed to have or having the effect of law or interpreting, supplementing or implementing any law enforced or administered by it, including any regulation under which the agency makes charges for services it provides or to govern its organization or procedure, but does not include regulations, resolutions or directions relating solely to internal policy, internal agency organization or internal procedure which do not directly affect the rights of or procedures available to the public and does not include administrative adjudication.

SOURCE: GC §24007 added by P.L. 9-69, amended by P.L. 13-40, 16-49 and 16-119.

§9108. Administrative Adjudication. Administrative adjudication means that administrative investigation, hearing and determination by any agency of issues or cases applicable to particular parties.

SOURCE: GC §24008 added by P.L. 13-40, approved July 1, 1975.

# Guam Savings

"Where Others Put Branches We Place Roots"

Exhibit U

AUGUST 16, 1995

MEMBERS

GUAM BANKING COMMISSION  
DEPARTMENT OF REVENUE AND TAXATION  
378 CHALAN SAN ANTONIO  
TAMUNING, GUAM 96911

DEAR BANKING COMMISSIONERS:

ON JUNE 29, 1995 I WROTE TO YOU IN MY ROLE AS CHAIRMAN GUAM BANKS AND FINANCIAL GROUP, LTD. ON THE ISSUE OF AUTOMATED TELLER MACHINES (ATM'S) AND BRANCH BANKING.

WE RECEIVED NO RESPONSE.

TODAY I WRITE AS PRESIDENT AND CEO OF GUAM SAVINGS AND LOAN ASSOCIATION, GUAM'S ONLY LOCAL SAVINGS ASSOCIATION.

IT IS OUR UNDERSTANDING THE BOARD IS AGAIN CONSIDERING THE ISSUE OF WHETHER ATM'S SHOULD BE CONSIDERED BANK BRANCHES.

THE ISSUE IS BEING ADVANCED PRIMARILY BY REPRESENTATIVES OF OFF-ISLAND BANKS. THEY PREFACE THEIR DESIRE TO HAVE ATM'S DECLASSIFIED AS BANK BRANCHES BY CALLS THAT GUAM BASED FINANCIAL INSTITUTIONS HAVE A COMPETITIVE ADVANTAGE.

THEY ARE CORRECT, IN THE SAME MANNER, FOR INSTANCE, IN WHICH HAWAII BANKS HAVE A COMPETITIVE ADVANTAGE OVER GUAM BANKS COMING INTO HAWAII, WHICH HAWAII DISCOURAGES.

IN FACT GUAM HAS ONE OF THE MOST LIBERAL BANKING LAWS IN AMERICA FOR ALLOWING FOREIGN BANK ENTRY, I.E., COMPETITION.

HYPOCRISY OF NON-COMPETITIVE ARGUMENT

WHILE THE OFF-ISLAND BANKS RAIL AGAINST BANK OF GUAM, CITIZENS SECURITY BANK AND GUAM SAVINGS, THEY ACTIVELY ADVANCE NONCOMPETITION AS FOLLOWS:

NAVMAR CREDIT UNION THE GUAM BANKERS ASSOCIATION, AN ASSOCIATION WHICH INCLUDES ALL FDIC INSURED INSTITUTIONS IN GUAM, INCLUDING HAWAII, CALIFORNIA AND NEW YORK BASED BANKS, HAS VOTED TO PROTEST THE RECENT EXPANSION OF ELIGIBLE MEMBERSHIP BY NAVMAR CREDIT UNION.

THROUGH THE GUAM BANKERS ASSOCIATION, THE SAME OFF-ISLAND BANKS WHICH INSIST CURRENT ATM LAWS ARE UNCOMPETITIVE WILL TRANSMIT A LETTER THIS WEEK TO THE COMMISSIONER OF BANKING ASKING HIM TO RULE IN A MANNER WHICH LIMIT THE ABILITY OF NAVMAR CREDIT UNION TO ATTRACT NEW CUSTOMERS.

PAGE TWO

THIS ACTION THE OFF-ISLAND BANKS REQUEST WOULD MAKE NAVMAR CREDIT UNION LESS COMPETITIVE.

WHERE IS THEIR SPIRIT OF OPEN COMPETITION IN THIS CASE?

UNWILLINGNESS OF OFF-ISLAND BANKS TO ALLOW HONGKONG BANK, METROPOLITAN BANK AND FIRST COMMERCIAL BANK TO RECEIVE DEPOSITS THE FDIC-INSURED, OFF-ISLAND MEMBERS OF THE GUAM BANKERS ASSOCIATION OPPOSE THE EXPANSION OF DEPOSIT TAKING ABILITY BY NON-FDIC INSURED BANKS, SUCH AS HONGKONG BANK, METROPOLITAN BANK AND FIRST COMMERCIAL BANK.

WHERE DID THEIR SPIRIT OF OPEN COMPETITION VANISH TO THIS TIME?

HOW EASY IT IS NOT FOR A GUAM BANK TO DO BUSINESS IN HAWAII IN 1994 GUAM SAVINGS WROTE TO THE BANKING COMMISSION FOR THE STATE OF HAWAII REQUESTING A BANKING LICENSE APPLICATION, EXPRESSING OUR INTEREST TO DO BUSINESS IN HAWAII AS A BRANCH OF GUAM SAVINGS.

WE RECEIVED NO RESPONSE FOR NEARLY THREE MONTHS AT WHICH TIME WE PICKED UP THE PHONE AND CALLED.

THE HAWAII BANKING COMMISSIONER'S OFFICE TOLD US THEY "LOST" OUR LETTER AND ASKED US TO RESEND IT TO THEM.

WE ASKED THEM AT THAT POINT IF IT IS POSSIBLE FOR GUAM SAVINGS TO BE GRANTED A LICENSE ASSUMING WE MET ALL FINANCIAL CAPITAL PREREQUISITES FOR HAWAII. IN OTHER WORDS, WE ASKED THE HAWAII BANKING COMMISSION, WOULD A BANK FROM GUAM BE ALLOWED TO DO BUSINESS IN HAWAII?

THE HAWAII BANKING COMMISSION TOLD US TO SUBMIT OUR APPLICATION AND THE APPLICATION FEE BEFORE THEY WOULD TELL US WHETHER OR NOT A GUAM FINANCIAL INSTITUTION CAN DO BUSINESS IN GUAM.

FROM THE VERY START THE STATE OF HAWAII'S BANKING COMMISSION ATTEMPTED TO SLOW DOWN AND DISCOURAGE AN ATTEMPT BY A GUAM BASED FINANCIAL INSTITUTION FROM DOING BUSINESS IN HAWAII.

AND IT WORKED.

WHILE OFF-ISLAND BANKS CLAIM GUAM'S BANKING LAWS ARE UNCOMPETITIVE AND THEY ASK GUAM'S BANKING COMMISSION TO ADVANCE THEIR AGENDA, HAWAII'S BANKING COMMISSION THWARTED THE ENTRANCE OF A GUAM BANK INTO HAWAII.



PAGE THREE

POSITION FOR GUAM ON THE FEDERAL HOME LOAN BANK OF SEATTLE BOARD OF DIRECTORS ACTIVELY OPPOSED BY HAWAII BASED, OFF-ISLAND BANK  
THE FEDERAL HOME LOAN BANK SYSTEM IS DIVIDED INTO 12 BANKS. EACH BANK HAS A BOARD OF DIRECTORS COMPRISED OF A REPRESENTATIVE FROM EACH OF ITS MEMBER STATES.

HOWEVER, GUAM AND THE VIRGIN ISLANDS HAVE NOT BEEN PROVIDED A SEAT ON THE BOARD OF DIRECTORS, THOUGH PUERTO RICO AND THE DISTRICT OF COLUMBIA HAVE SEATS ON THEIR RESPECTIVE BOARDS.

HAWAII REPRESENTS GUAM ON THE FEDERAL HOME LOAN BANK OF SEATTLE BOARD OF DIRECTORS.

GUAM SAVINGS HAS SOUGHT THE EXTENSION OF A SEAT TO GUAM SINCE 1993.

IN 1994 WE WERE TOLD BY THE FEDERAL HOME LOAN BANK OF SEATTLE THAT GUAM AND THE VIRGIN ISLANDS COULD RECEIVE A SEAT ON THE FEDERAL HOME LOAN BANK BOARD OF DIRECTORS ONLY THROUGH LEGISLATION IN THE UNITED STATES CONGRESS.

GUAM'S CONGRESSMAN ROBERT UNDERWOOD INTRODUCED THE NECESSARY LEGISLATION IN 1994 AND AGAIN IN 1995.

CONGRESSMAN UNDERWOOD'S BILL TO ALLOW GUAM TO HAVE EQUAL REPRESENTATION ON THE FEDERAL HOME LOAN BANK BOARD OF DIRECTORS WAS MAKING PROGRESS TOWARDS PASSAGE UNTIL THIS JUNE WHEN THE BILL WAS OPPOSED BY THE FEDERAL HOME LOAN BANK OF SEATTLE.

TO OUR SURPRISE AND DISAPPOINTMENT, WE DISCOVERED THAT ONE OF THE OPPONENTS TO GUAM BEING TREATED EQUALLY WAS THE CURRENT REPRESENTATIVE FOR HAWAII AND GUAM ON THE FEDERAL HOME LOAN BANK BOARD OF DIRECTORS.

THAT REPRESENTATIVE IS MR. RODNEY SHINKAWA, PRESIDENT OF FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF AMERICA.

IN A CONVERSATION ON JULY 13, 1995 MR. SHINKAWA PERSONALLY INFORMED ME THAT HE OPPOSES GUAM BEING EXTENDED A SEAT ON THE BOARD OF DIRECTORS OF THE FEDERAL HOME LOAN BANK OF SEATTLE.

MR. SHINKAWA TOLD ME THE FEDERAL HOME LOAN BANK CAN BE BETTER SERVED WHEN GUAM IS REPRESENTED NOT BY ITSELF, BUT BY HAWAII.

I TOLD MR. SHINKAWA HAWAII CAN NO MORE REPRESENT GUAM THAN IDAHO CAN REPRESENT MONTANA. HE STATED HE STILL OPPOSES GIVING GUAM EQUAL REPRESENTATION.

PAGE FOUR

FOR THOSE WHO ARE NOT AWARE, FIRST FEDERAL SAVINGS AND LOAN OF AMERICA IS THE PARENT COMPANY OF FIRST SAVINGS OF AMERICA, AN OFF-ISLAND BANK DOING BUSINESS IN GUAM SINCE 1984 AND SUPPORTING A CHANGE IN THE ATM LAWS.

IN ADDITION, FIRST FEDERAL SAVINGS AND LOAN OF AMERICA IS OWNED BY THE PARENT COMPANY OF BANK OF HAWAII, ANOTHER OFF-ISLAND BANK SUPPORTING A CHANGE IN THE ATM LAWS.

A SEAT FOR GUAM ON THE BOARD OF THE FEDERAL HOME LOAN BANK OF SEATTLE WOULD BENEFIT THE ENTIRE GUAM COMMUNITY.

ANY BANK WHICH TRULY VALUES THE WELFARE OF GUAM SHOULD BE SUPPORTING GUAM'S INCLUSION ON THE FEDERAL HOME LOAN BANK BOARD OF DIRECTORS.

INSTEAD AN OFF-ISLAND BANK SAYS GUAM IS NOT GOOD ENOUGH WHILE AT THE SAME TIME PUSHING THE DECLASSIFICATION OF ATM'S AS BANK BRANCHES BECAUSE GUAM-BASED BANKS HAVE A COMPETITIVE ADVANTAGE.

WE SAY POPPYCOCK.

IN CLOSING, WE UNDERSTAND A BILL WILL BE INTRODUCED SHORTLY IN THE 23RD GUAM LEGISLATURE TO CLARIFY THAT ATMS ARE BANK BRANCHES.

WE ASK THAT IN LIGHT OF THE HYPOCRISY OF THE OFF-ISLAND BANKS' ARGUMENTS, THE MANNER IN WHICH A GUAM BASED BANK WAS TREATED BY THE HAWAII BANKING COMMISSION AND THE ACTION OF THE PRESIDENT OF ONE OF GUAM'S OFF-ISLAND BANKS AGAINST THE INTERESTS OF GUAM, THE BANKING BOARD DEFER ACTION PENDING THE LEGISLATIVE OUTCOME OF THE BILL.

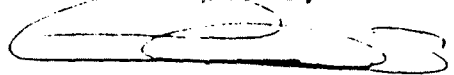
WE ALSO ASK FOR YOUR SUPPORT THAT A SEAT ON THE FEDERAL HOME LOAN BANK BOARD OF DIRECTORS BE EXTENDED TO GUAM, EVEN THOUGH IT WOULD HELP TO MAKE GUAM-BASED BANKS STRONGER.

MAY WE PLEASE HAVE A FORMAL RESPONSE TO OUR LETTER.

THANK YOU.

WITH BEST REGARDS, WE REMAIN,

CORDIALLY YOURS,

  
PHILIP J. FLORES  
PRESIDENT



# Citizens Security Bank (Guam), Inc.

Your Banking Partner

424 West O'Brien Drive, 114 Julale Shopping Center  
Agana, Guam 96910

Post Office Box EQ • Agana, Guam 96910

Tel: (671) 472-1161/2/3/4/5/6

Fax: (671) 472-1177



Exhibit V

August 16, 1995

Mr. Joseph T. Duenas  
Director and Banking Commissioner  
Department of Revenue and Taxation  
378 Chalan San Antonio Street  
Tamuning, Guam 96911

RE: PUBLIC INPUT ON WHETHER ATMS ARE BRANCHES

Dear Banking Commissioner Duenas:

Thank you for allowing us to present our position against the Banking Commission changing the existing ATM definition from branches to non-branches. Both the Attorney General of Guam and FDIC consider ATMs as branches.

Our President, Dan Webb, in his June 26th and 28th Memos spoke against changing the ATMs to non-branches. He supplied information from the Conference of State Bank Supervisors on how other states treat off-site ATMs. Further, he recommends rules and regulations be implemented to control the existing and future installation of ATMs since there are no rules and regulations in place now.

For your information, in 1989, the 20th Guam Legislature entertained Bill 726, Relative to Establishment and Operation of Automatic Teller Machines. The bill was given a public hearing. The same outside banking interests who now want to administratively amend the banking definition of ATMs, were involved in the drafting of Bill 726. Citizens Security Bank and the Bank of Guam spoke against this bill. It never passed the Legislature.

The Bank of Guam in their June 14th letter to you has done an excellent job of outlining clearly the reasons why the Banking Commission should not consider changing the ATMs to non-branches. Citizens Security Bank fully supports the Bank of Guam position paper.

We agree with the Bank of Guam that this issue be held in abeyance until the Interstate Banking Efficiency Act of 1994 can be reviewed since this Act has a broader impact on our banking laws than this single issue.



It would be in the best interest of the people of Guam and the banking community that the Banking Commission work with the Guam Legislature in reframing our banking law to encourage the development of existing local FDIC banks and to meet the challenges ahead of us in making Guam truly a financial center of the Pacific region.

On behalf of the 41 local resident investors of Citizens Security Bank, we ask that nothing be done to change ATMs to non-branches.

Thank you.

Sincerely yours,

A handwritten signature in cursive script, appearing to read 'K. Moylan'.

Kurt S. Moylan  
Chairman

Enclosures:

cc: Board of Directors  
Albino Gabriel  
Jose Leon Guerrero  
Cristobal C. Duenas  
Edward Chiang  
Joseph F. Camacho  
Wilfred Yamamoto  
Antonio R. Unpingco  
Ernesto M. Espaldon  
Dan Webb



## MEMORANDUM

To: Joey Duenas, Director  
Department of Revenue and Taxation

From: Dan Webb, President  
Citizens Security Bank

Subject: ATM's

Date: June 28, 1995

---

Good Morning, Joey:

Just a brief follow up to my memo and our conversation. I have finally received a response from the Conference of State Bank Supervisors. Interestingly, the initial response was erroneously sent to your office on June 19. It was faxed to me after follow up correspondence last week.

At any rate, CSBS has provided me with more complete information about the treatment of off-site ATM's, which I have enclosed for your review. You will note that, as you previously reported, 37 of 53 states and territories do not consider ATM's as branches. However, only six (including Guam) have no statute specifically addressing ATM limitations. Additionally, only 15 (including Guam) permit out of state banks to place ATM's inside the state or Territory. Twenty two require sharing of off-site ATM's and an additional 18 specifically permit shared equipment. Clearly, from this information, the majority of states and territories are more protective of local institutions and tend toward sharing the cost of developing technology.

I hope this information is helpful. Please call if I can add anything.

**MAIN OFFICE:**

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Juilale Shopping Center  
Tel: (671) 472-1161  
Fax: (671) 472-5829

Mailing Address: P.O. Box EQ • Agaña, Guam 96910

**HARMON OFFICE:**

185 Ilipog Drive  
Harmon Industrial Park  
Tel: (671) 646-0881  
Fax: (671) 649-6151



Exhibit-X

## MEMORANDUM

To: Joey Duenas, Director  
Department of Revenue and Taxation

From: Dan Webb, President  
Citizens Security Bank

Subject: ATM's

Date: June 26, 1995

---

Hafa Adai, Joey:

I have given a great deal of thought to this subject over the past few days and have concluded that any change from the status quo can only be detrimental to the local banks and investors.

While I know that your primary intent is to improve services for the consumer, I think it also important that you keep in mind the responsibility to protect local businesses and investors. Changes proposed to permit proliferation of ATM's by off-Island banks will result in an unfair regulatory and economic advantage to the larger banks and will ultimately siphon deposits and profits from Guam.

The FDIC continues to consider an ATM a branch. Installation of an off-site full service machine requires a branch application. A relaxation of Guam's current ATM licensing posture will widen the discrepancy in application process between insured and non-insured banks and will give a tremendous advantage to large, well capitalized off-Island banks.

What is prompting this decision? Have you had any pressure from consumers to install more ATM's? Proponents of this change seem to be only those banks that are in an economic position to immediately gain from relaxation of controls. What are their motives? Will they provide services for free? For how long? (It is curious to me that these same banks - Bank of Hawaii, First Hawaiian and Citibank - have had, for several years, the technological capability to allow their customers access to international networks, but have only in the last year committed the resources necessary to provide debit card service on Guam. And, if I'm not mistaken, Citizens and Bank of Guam were the first banks on Island to offer this service.)

ATM networks are growing as a means of cutting costs and generating fee revenue. Local financial institutions already have installed (or are in the process of installing) over twenty full service machines. Off-Island banks currently have at least six through the wall

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Fax: (671) 649-6151

Mr. Joey Duenas, Director  
Department of Revenue and Taxation  
Page 2

and one off-site machine. Additionally, your predecessor permitted the installation of eleven cash dispensing machines by a Bank of Hawaii subsidiary. How many do we need? Off-Island banks are already at an advantage, with greater pools of trained/skilled staff, more advertising dollars, deeper pockets, lower cost funding and a broader array of sophisticated services. With growing costs and increasing competition, local banks are highly motivated to meet consumer demands. If the demand for more ATM's exists, it seems to me highly likely that local institutions will respond.

Notwithstanding the above arguments for the status quo, any change should consider the following:

- 1.) Licensing should remain within the authority of the Banking Commissioner in order to prevent fraud and ensure that operators are qualified and sufficiently capitalized.
- 2.) Regulations need to consider the ADA requirements and should provide for placement in well lighted heavily trafficked areas to discourage crimes associated with ATM withdrawals.
- 3.) With the growing crime wave, consideration should be give to consumer education on ATM usage.
- 4.) In order to maximize customer utility, consideration should be given to requiring shared ownership of machines. Off-Island banks can currently contract with local banks to install ATM's at any location approved by the Commissioner.

Exhibit Y

LAW OFFICES

*Arriola, Cowan & Bordallo*

C & A BUILDING-P. O. BOX X  
AGANA, GUAM 96910

JOAQUIN C. ARRIOLA  
MARK E. COWAN  
OLIVER W. BORDALLO  
ANITA P. ARRIOLA  
JOAQUIN C. ARRIOLA, JR.

TELEPHONE: (671) 477-9731/3  
TELECOPIER: (671) 477-9734

April 13, 1995

Mr. Joseph T. Duenas  
Insurance Commissioner  
Department of Revenue & Taxation  
Government of Guam  
378 Chalan San Antonio  
Tamuning, Guam 96911

Dear Mr. Duenas:

As counsel to Bank of Guam, we appreciate the opportunity to reply to the request made by First Hawaiian Bank ("FHB") through their counsel, Klemm Blair Sterling & Johnson by letter dated February 10, 1995, for a declaratory ruling and to the comments made by their counsel in connection with that request.

We submit you should decline to issue such a ruling for the following reasons:

1. The Issue Is Hypothetical. The issue is at present entirely hypothetical. As FHB states, they have not applied to open branches exceeding the number they are entitled under Guam law to maintain absent reciprocity from Hawaii. Until FHB or another Hawaii bank seeks to do so, or any Hawaii bank not now doing business in Guam seeks to do business here, this issue will remain hypothetical. As discussed below, Hawaii law has conflicting provisions on the issue and whether Hawaii actually affords reciprocity to Guam banks has never been determined or tested since, as far as we know, no Guam bank has applied for, much less been granted permission to do business or branch into Hawaii. So far as we are aware, no bank from any other of the so-called Intra-Pacific jurisdictions referred to in the Hawaii statute has attempted to do so.

Especially until Hawaii law is clarified little purpose would be served by addressing the issue hypothetically.

2. Insufficient Information Is Presented to Justify the Regulation. The action requested would require not merely interpretation of Guam law, but also Hawaii law. The Hawaii banking statute, which is entitled the Code of Financial Institutions, is approximately some 200 pages in length. FHB has presented merely a few pages of that statute. There are other provisions contained within that code which much more clearly than those cited



Mr. Joseph T. Duenas  
Insurance Commissioner  
April 13, 1995

by FHB bear upon the issue. Expertise and authority to interpret the Guam Banking Code does not carry with it any expertise or authority to interpret the Hawaii Code of Financial Institution. FHB has offered no opinion or statement of the Hawaii regulatory authorities as to what access is actually provided by the Hawaii Code of Financial Institutions as a whole to Guam, or other inter-Pacific banks. FHB offers no opinion of independent Hawaii counsel. FHB cites no practice under the Hawaii Act, to show the extent to which non-Hawaii banks have actually been able to gain access into Hawaii markets under the Hawaii Act.

3. It Is Not Clear That Hawaii Law Affords Reciprocity. At the outset, it should be noted that all involved in this issue should concede that Guam has historically been exceptionally liberal in affording non-Guam banks entry to Guam markets. The Guam Banking Code deals with entry into Guam by non-Guam banks in two sections, one is Section 30900(a), cited by FHB in its memorandum. The other is Section 30500.1. In its original form, Section 30500.1 provided as follows:

Subject to the approval of the Commissioner, a state or national bank may establish an office on Guam and engage in the business of banking on Guam, subject to the provisions of this Title applicable to banks in general. Any state or national bank desiring to engage in the business of banking on Guam shall make application for approval by the Commissioner on such forms as may be designated by the Commissioner. The application shall contain such information as the Commissioner may require.

That section and Section 30900(a) taken together essentially provided that any State or National Bank could branch into Guam. The sole restriction was the two branch limitation contained in Section 30900(a), and even that limitation would be inapplicable, so long as the laws of the foreign bank's home jurisdiction would permit a Guam bank branches in that jurisdiction without such limitation.

Guam therefore historically has allowed non-Guam banks easy access into Guam, permitting them to compete (even though those banks are typically much larger and economically more powerful than Guam banks), against the smaller Guam banks in the relatively small Guam market place.

Mr. Joseph T. Duenas  
Insurance Commissioner  
April 13, 1995

In 1986, the Guam Legislature amended the Banking Code, by modifying Section 30500.1, to provide instead of its original language, in relevant parts as follows:

(a) **State or National Bank; Prohibition Against Transacting Business.** No state or national bank shall transact business in Guam. This Subsection shall not be deemed to prohibit:

\* \* \*

(c) **State Banks; Establishment.** No state bank shall establish or maintain an agency or branch office in Guam unless the state where such bank is domiciled or incorporated permits banks organized under the laws of Guam and national banks headquartered in Guam, to establish and maintain in such state, offices substantially equivalent to agencies or offices substantially equivalent to offices.

(d) **Application.** Any state or national bank desiring to establish or maintain an agency or branch office in Guam shall make application for approval by the Board on such forms as may be designated by the Board. The application shall contain such information as the Board may require.

(e) This Section shall not apply to those state or national banks licensed to engage in banking in Guam prior to the effective date of this Act.

Although that amendment may appear to depart from the previous policy of openness to State bank branching into Guam in reality it continues the policy of allowing such banks to branch into Guam, subject only to the condition that Guam's openness be reciprocated in the laws of the foreign bank's home jurisdiction, in that Guam banks would be permitted access to branch into that jurisdiction.

Section 30500.1 should be read with Section 30900(a), in determining the intention of the Guam Legislature with respect to reciprocity. Both sections speak in general terms, and essentially allow state banks to branch into Guam, when the laws of their home jurisdiction allow the same rights to Guam banks generally. In other words, the reciprocity must be extended not merely to some Guam banks, but to all Guam banks. The language of Section 30500.1, specifically requires that rights be extended to "Guam banks"

Mr. Joseph T. Duenas  
Insurance Commissioner  
April 13, 1995

without qualification. A fair reading of Section 30900(a) is also to the effect that reciprocity means reciprocity extended to all Guam banks generally, and not merely to some banks.

Hawaii has historically followed a protectionist policy, essentially prohibiting non-Hawaii banks from doing business in that State. What Hawaii law provides with respect to Guam banks, as a general matter, is provided not by the Intra-Pacific banking law attached to FHB's request, but instead by the provisions of Hawaii law dealing with banking within Hawaii by foreign banks. HRS §412:5A-300, et. seq. A copy of those provisions is attached. In Hawaii, Guam is a "foreign nation" and a Guam bank a "foreign bank":

'Foreign bank' means a banking company whose home or principal office is located in a foreign nation and whose activities are those usually carried on by banks in such foreign nation, and includes without limitation commercial banks and merchant banks.

'Foreign nation' means any nation other than the United States. The term also includes Puerto Rico, Guam, American Samoa, the Virgin Islands, and any territory, trust territory, dependency, or insular possession of the United States and any political subdivision, territory, trust territory, dependency, or possession of a foreign nation.

Under Hawaii law, a "foreign bank" (HRS §412:5A-302), including a Guam bank, is entirely prohibited from doing business in Hawaii except as to certain limited functions that do not constitute the business of full service banking. HRS §412:5A-302. A "foreign bank" may maintain a representative office (HRS §412:5A-303(a)(1)), accept deposits from non-U.S. citizens and foreign nations (HRS §412:5A-303(a)(3)) and perform other very limited functions (HRS §412:5A-303). Moreover, even these limited rights are afforded only to corporations with assets worldwide of at least Ten Billion Dollars. (HRS §412:5A-304(a)(7)) In other words, as a general matter, Guam banks are permitted to do business in Hawaii, only if they have assets worldwide in excess of Ten Billion Dollars, and then only may perform very limited functions.

Plainly, this is not the reciprocity contemplated by either Section 30500.1 or Section 30900.

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Given the foregoing, and the fact that the Hawaii Legislature enacted the above statutes which explicitly classify Guam banks as "foreign banks" and strictly limiting their access in 1993 at the same time it enacted the Intra-Pacific banking statute, is unclear what if anything the Hawaii Legislature intended to accomplish or did accomplish by that latter enactment. Although the Intra-Pacific banking statute contemplates that some Guam banks may be eligible for admission under that statute if Guam law meets certain action it does not provide that all Guam banks are entitled to entry, or acknowledge the sufficiency of Guam law to meet the criteria of the narrow Intra-Pacific bank exception to Hawaii's protectionist Financial Institutions Code.

The statute permits entry only to banks which first prove and continue to meet (HRS §412:5-404) certain conditions as to the location of their deposits, and also their ownership. HRS §412:5-400 (Guam law imposes no similar restrictions on entry of non-Guam banks.) Given the general terms of the Guam statute, the reciprocity contemplated by Guam law is plainly and simply that Hawaii would allow any Guam bank authority to transact a general banking business in Hawaii (a privilege Guam would then plainly and simply afford Hawaii banks), not merely those Guam banks whose deposits are located in a particular area or whose owners are located in a particular area.

Moreover, the laws of the home jurisdiction of the bank seeking admission as an Intra-Pacific bank into Hawaii must meet certain requirements. HRS §412:5-400(2) The Hawaii Banking Code requires in effect as to Guam banks that Guam law permit entry not merely to a Hawaii bank, but to a holding company of a Hawaii bank, and also not merely permit establishment of new branches, but also mergers and acquisitions of existing assets or operations. These are matters not specifically dealt with by or provided in the Guam Banking Code. The Guam Banking Code allows entry to "banks", not bank holding companies, Section 30500.1. A national bank can convert to a territorial bank or vice versa, Sections 30601 and 30606 but mergers are apparently permitted only with national banks or that result in a territorial bank, not a resulting state bank. Sections 30601, 30602 and 30603. Very conceivably a Hawaii Banking official reviewing the application for admission of a Guam bank, might view Guam law as deficient in these respects.

When Hawaii in 1993 enacted both the general prohibition on Guam banks doing business in Hawaii, as well as the provisions of the Intra-Pacific banking statute, Guam law already existed in its present form. The amendment to Section 30500.1 had been adopted some years previously by the Guam Legislature. If Hawaii was satisfied with Guam law, it could have simply said so. It is curious why instead it adopted a general classification of Guam as "foreign," and established a general prohibition on all Guam banks conducting business in Hawaii, with the ambiguous addition of the Intra-Pacific

*Arriola, Cowan & Bordallo*

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banking statute. What it accomplished by this exercise other than the interjection of tokenism "window dressing," or further confusion into the reciprocity issue is unclear.

Sincerely,

  
MARK E. COWAN

MEC/ams

cc: Bank of Guam

boglc040795.fhb

TESTIMONY OF PHILIP J. FLORES  
ON BILL NUMBER 349  
AN ACT TO ADD SUBSECTION (C) TO SUBSECTION 30900,  
GOVERNMENT CODE (GUAM BANKING CODE) TO DEFINE BRANCH  
BANKING

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE ON WAYS AND MEANS, I AM PHILIP J. FLORES, PRESIDENT AND CHAIRMAN OF GUAM SAVINGS, GUAM'S ONLY LOCAL SAVINGS ASSOCIATION, AND I COME HERE TODAY TO TESTIFY IN FAVOR OF BILL NUMBER 349, AN ACT TO ADD SUBSECTION (C) TO SUBSECTION 30900, GOVERNMENT CODE (GUAM BANKING CODE) TO DEFINE BRANCH BANKING.

IT IS NO SECRET THAT THIS HAS BECOME AN ISSUE OF THE OUTSIDE BANKS VERSUS THE THREE LOCAL BANKS.

FURTHER, IT IS NOT AN ISSUE OF CUSTOMER SERVICE BUT RATHER MARKET DOMINANCE OF SMALLER LOCALLY OWNED BANKS BY OUTSIDE BANKS.

GUAM BANKING LAW IS FAIR

THE OUTSIDE BANKS CLAIM AS A RESULT OF THE GUAM BANKING LAW, THE THREE LOCAL BANKS HAVE A COMPETITIVE ADVANTAGE. HOW, I ASK YOU, CAN YOUR SMALL LOCALLY OWNED BANKS HAVE A COMPETITIVE ADVANTAGE OVER AN \$8 BILLION DOLLAR BANK, A \$13 BILLION BANK, A \$200 BILLION DOLLAR BANK?

THE FACT IS WE CANNOT AND THERE IS NO SUBSTANCE TO THIS ARGUMENT MADE BY THE FINANCIAL BEHEMOTHS.

THE OUTSIDE BANKS ARE CORRECT HOWEVER IN SAYING THAT THE LOCAL BANKING LAW, WHICH BILL 349 WOULD STRENGTHEN, BENEFITS LOCAL BANKS.

IT IS THAT WAY EVERYWHERE.

AS AN EXAMPLE, LET ME PROVIDE TO YOU THE EXPERIENCE OF GUAM SAVINGS AND OUR ATTEMPT TO ENTER THE STATE OF HAWAII.

IN 1994 GUAM SAVINGS WROTE TO THE BANKING COMMISSION FOR THE STATE OF HAWAII REQUESTING A BANKING LICENSE APPLICATION, EXPRESSING OUR INTEREST TO DO BUSINESS IN HAWAII AS A BRANCH OF GUAM SAVINGS.

WE RECEIVED NO RESPONSE FOR NEARLY THREE MONTHS AT WHICH TIME WE PICKED UP THE PHONE AND CALLED.

THE HAWAII BANKING COMMISSIONER'S OFFICE TOLD US THEY "LOST" OUR LETTER AND ASKED US TO RESEND IT TO THEM.

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WE ASKED THEM AT THAT POINT IF IT IS POSSIBLE FOR GUAM SAVINGS TO BE GRANTED A LICENSE ASSUMING WE MET ALL FINANCIAL CAPITAL PREREQUISITES FOR HAWAII. IN OTHER WORDS, WE ASKED THE HAWAII BANKING COMMISSION, WOULD A BANK FROM GUAM BE ALLOWED TO DO BUSINESS IN HAWAII?

THE HAWAII BANKING COMMISSION TOLD US TO SUBMIT OUR APPLICATION AND THE APPLICATION FEE BEFORE THEY WOULD TELL US WHETHER OR NOT A GUAM FINANCIAL INSTITUTION CAN DO BUSINESS IN GUAM.

FROM THE VERY START THE STATE OF HAWAII'S BANKING COMMISSION ATTEMPTED TO SLOW DOWN AND DISCOURAGE AN ATTEMPT BY A GUAM BASED FINANCIAL INSTITUTION FROM DOING BUSINESS IN HAWAII.

AND IT WORKED.

WHILE OFF-ISLAND BANKS CLAIM GUAM'S BANKING LAWS ARE TOO RESTRICTIVE, THESE SAME BANKS THRIVE IN A MARKET WHICH WILL NOT ALLOW GUAM BANKS TO ENTER THEIR STATE.

AS IT IS GUAM HAS ONE OF THE MOST LIBERAL BANKING LAWS IN AMERICA FOR ALLOWING FOREIGN BANK ENTRY, I.E., COMPETITION. WHERE ELSE IN AMERICA CAN YOU FIND SO MANY BANKS FROM SO MANY OTHER STATES OPERATING FULL SERVICE BRANCHES?

CERTAINLY NOT IN HAWAII.

AND WHILE WE SPEAK OF THE BANKING COMMISSION IN HAWAII DISCOURAGING ENTRY OF GUAM BANKS INTO HAWAII, THE GUAM BANKING COMMISSION HAS SITTING MEMBERS WHO ARE OFFICERS OF TWO HUGE BANK HOLDING COMPANIES, CITIBANK OF NEW YORK, AND FIRST HAWAIIAN BANK OF HAWAII.

I DOUBT YOU WOULD SEE THIS IN ANY OTHER STATE.

HYPOCRISY OF NON-COMPETITIVE ARGUMENT

WHILE THE OFF-ISLAND BANKS RAIL AGAINST BANK OF GUAM, CITIZENS SECURITY BANK AND GUAM SAVINGS, THEY ACTIVELY ADVANCE NONCOMPETITION AS FOLLOWS:

NAVMAR CREDIT UNION THE GUAM BANKERS ASSOCIATION, AN ASSOCIATION WHICH INCLUDES ALL FDIC INSURED INSTITUTIONS IN GUAM, INCLUDING HAWAII, CALIFORNIA AND NEW YORK BASED BANKS, HAS VOTED TO PROTEST THE RECENT EXPANSION OF ELIGIBLE MEMBERSHIP BY NAVMAR CREDIT UNION.

THROUGH THE GUAM BANKERS ASSOCIATION, THE SAME OFF-ISLAND

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COMMUNITY PARTICIPATED IN AN UNANIMOUS VOTE DIRECTING THE PRESIDENT OF THE GUAM BANKERS ASSOCIATION TO TRANSMIT A LETTER TO THE COMMISSIONER OF BANKING ASKING THE COMMISSIONER TO RULE IN A MANNER WHICH LIMIT THE ABILITY OF NAVMAR CREDIT UNION TO ATTRACT NEW CUSTOMERS.

WHERE IS THEIR SPIRIT OF OPEN COMPETITION AND CUSTOMER SERVICE IN THIS CASE?

UNWILLINGNESS OF OFF-ISLAND BANKS TO ALLOW HONGKONG BANK, METROPOLITAN BANK AND FIRST COMMERCIAL BANK TO RECEIVE DEPOSITS THE FDIC-INSURED, OFF-ISLAND MEMBERS OF THE GUAM BANKERS ASSOCIATION OPPOSE THE EXPANSION OF DEPOSIT TAKING ABILITY BY NON-FDIC INSURED BANKS, SUCH AS HONGKONG BANK, METROPOLITAN BANK AND FIRST COMMERCIAL BANK.

WHERE DID THEIR SPIRIT OF OPEN COMPETITION AND CUSTOMER SERVICE VANISH TO THIS TIME?

OPPOSITION TO MERRIL LYNCH'S PUBLIC MARKETING FOR DEPOSITS WHEN MERRIL LYNCH ADVERTISED COMPETITIVE INTEREST RATES TO BE PAID ON T.C.D.'S EARLIER THIS YEAR, THE FDIC-INSURED, OFF-ISLAND MEMBERS OF THE GUAM BANKERS ASSOCIATION, THROUGH THE GUAM BANKERS ASSOCIATION, OPPOSED MERRIL LYNCH'S SOLICITATION FOR DEPOSITS.

AGAIN, WHAT HAPPENED TO THEIR SPIRIT OF OPEN COMPETITION AND CUSTOMER SERVICE?

SERVICE FOR OUR ISLAND COMMUNITY

SOME OF THE OUTSIDE BANKS TALK OF "REFOCUSING" ON OUR AREA. THAT IS NICE TO SEE, BUT TRUE CUSTOMER SERVICE IS NEVER LOSING THAT FOCUS. AND IF YOU ALLOW ME TO MAKE THE JUMP HERE, DOES NOT "REFOCUSING" CONNOTE HAVING LOST THE FOCUS FOR A WHILE?

I CAN SPEAK FOR GUAM SAVINGS, BANK OF GUAM AND CITIZENS SECURITY BANK IN SAYING NONE OF US HAS EVER LOST OUR FOCUS ON OUR COMMUNITY.

WHICH IS WHY WE HAVE ALREADY DEPLOYED AND ARE DEPLOYING MORE ATMS THROUGHOUT GUAM TO MEET OUR CUSTOMERS' DEMANDS. WHICH IS WHY WE HAVE JOINED IN A LOCAL ELECTRONIC SWITCH, MARINET, WHICH INCLUDES BANK OF GUAM, CITIZENS SECURITY BANK, GUAM SAVINGS, CITIBANK, MOBIL OIL AND CALVO ENTERPRISES TO PROVIDE BETTER CUSTOMER SERVICE TO OUR COMMUNITY.

(FIRST HAWAIIAN IS ALSO REPRESENTED ON THE BOARD OF MARINET AND



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WHICH IS WHY WE INVITE ALL OUTSIDE BANKS TO JOIN MARINET WHERE INSTANTANEOUSLY THEIR CUSTOMERS WILL HAVE ACCESS TO OVER 30 MORE ATMS THROUGHOUT GUAM.

THIS WOULD ALLOW CUSTOMERS OF ANY BANK ACCESS TO ALL ATMS ON GUAM AND AT A FRACTION OF THE COST OTHERWISE CHARGED.

THAT IS TRUE CONCERN FOR CUSTOMER SERVICE.

LAST YEAR GUAM SAVINGS LED THE FIGHT TO RELIEVE THE BURDEN OF TYPHOON INSURANCE FOR OUR RESIDENTIAL MORTGAGE CUSTOMERS. WHEN WE RECEIVED PERMISSION FROM REGULATORY AGENTS TO DROP THE BURDENSOME TYPHOON INSURANCE REQUIREMENT, WE DID SO FOR OUR CUSTOMERS IMMEDIATELY.

BUT OTHER THAN CITIBANK, THE OTHER OUTSIDE BANKS ARE NOT WAIVING THE TYPHOON INSURANCE REQUIREMENT, EXCEPT ON THE EXCLUSIONARY, SO-CALLED "CASE-BY-CASE" BASIS, INCLUDING AT LEAST TWO OF THE HAWAII INSTITUTIONS. WHERE IS THEIR CONCERN FOR CUSTOMER SERVICE HERE?

AND SPEAKING OF MORTGAGES, WE PULLED UP TODAY ON INTERNET RESIDENTIAL INTEREST RATES IN HAWAII AS PROVIDED BY THE HONOLULU BOARD OF REALTORS RESEARCH DEPARTMENT.

DID YOU KNOW THAT FOR A HOME LOAN IN GUAM FROM ANY ONE OF THE THREE HAWAII BANKS, AND I INCLUDE FIRST SAVINGS IN THE TERM BANK, YOU WOULD PAY MORE IN GUAM THAN YOU WOULD FOR THE EXACT SAME LOAN IN HAWAII.

AS A CASE IN POINT, A 30-YEAR FIXED RATE LOAN AT FIRST SAVINGS' PARENT COMPANY, FIRST FEDERAL SAVINGS IN HAWAII, IS MADE AT 7.750% WITH 2 POINTS.

IN GUAM HOWEVER THE SAME LOAN IS MADE BY FIRST SAVINGS NOT AT 7.750% WITH 2 POINTS, BUT AT 9.00% WITH 3 POINTS!

AS YOU PROBABLY KNOW, FIRST SAVINGS AND BANK OF HAWAII ARE OWNED BY THE SAME BANK HOLDING COMPANY.

SENATORS, WHEN THEY CHARGE YOU MORE FOR A LOAN IN GUAM THAN THEY WOULD ONE OF THEIR CUSTOMERS IN HAWAII, YOU REALIZE THE OUTSIDE BANKS' CONCERN IS NOT FOR THE LOCAL CONSUMER, BUT FOR PROFITS.

AND THAT IS THE CASE WITH ATMS. THE OUTSIDE BANKS LOOK NOT TO CUSTOMER SERVICE OR THE PEOPLE OF GUAM, THEY LOOK INSTEAD TO MARKET DOMINANCE, TO BEING THE BIGGEST, TO BEING THE MOST PROFITABLE.

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AND THEY HAVE NO CONCERN FOR WHAT WOULD HAPPEN TO THE LOCAL INSTITUTIONS IN THE MEANTIME.

CAN YOU IMAGINE THE AFFECT OF DOMINANCE OF OUR MARKET BY OUTSIDE BANKS? CAN YOU IMAGINE THE DISAPPEARANCE THROUGH MERGER OR BUYOUT OF ONE OF YOUR LOCAL BANKS BECAUSE THEY COULD NO LONGER COMPETE WITH THE GIANTS?

CAN YOU IMAGINE WHAT WOULD HAPPEN IF ONE OF THE OUTSIDE BANKS ASKING GUAM TO FURTHER LIBERALIZE ITS BANKING LAWS WAS PURCHASED OR OTHERWISE SWALLOWED UP SUCH AS CHASE MANHATTAN BANK WAS LAST WEEK? WHAT WOULD THAT NEW BANK FROM NEW YORK OR CALIFORNIA OR ILLINOIS OR FLORIDA OR NORTH CAROLINA DO WITH GUAM, WITH OUR CONSUMERS?

CAN YOU REMEMBER WHEN BANK OF AMERICA SAID ALL THEY WANT TO DO IS HELP THE PEOPLE OF GUAM, UNTIL THEY DECIDED TO MAKE MORE MONEY BY SELLING AND ABANDONING OUR MARKET?

POSITION FOR GUAM ON THE FEDERAL HOME LOAN BANK OF SEATTLE BOARD OF DIRECTORS ACTIVELY OPPOSED BY HAWAII BASED, OFF-ISLAND BANK  
THE FEDERAL HOME LOAN BANK SYSTEM IS DIVIDED INTO 12 BANKS. EACH BANK HAS A BOARD OF DIRECTORS COMPRISED OF A REPRESENTATIVE FROM EACH OF ITS MEMBER STATES.

HOWEVER, GUAM AND THE VIRGIN ISLANDS HAVE NOT BEEN PROVIDED A SEAT ON THE BOARD OF DIRECTORS, THOUGH PUERTO RICO AND THE DISTRICT OF COLUMBIA HAVE SEATS ON THEIR RESPECTIVE BOARDS.

HAWAII REPRESENTS GUAM ON THE FEDERAL HOME LOAN BANK OF SEATTLE BOARD OF DIRECTORS.

GUAM SAVINGS HAS SOUGHT THE EXTENSION OF A SEAT TO GUAM SINCE 1993.

IN 1994 WE WERE TOLD BY THE FEDERAL HOME LOAN BANK OF SEATTLE THAT GUAM AND THE VIRGIN ISLANDS COULD RECEIVE A SEAT ON THE FEDERAL HOME LOAN BANK BOARD OF DIRECTORS ONLY THROUGH LEGISLATION IN THE UNITED STATES CONGRESS.

GUAM'S CONGRESSMAN ROBERT UNDERWOOD INTRODUCED THE NECESSARY LEGISLATION IN 1994 AND AGAIN IN 1995.

CONGRESSMAN UNDERWOOD'S BILL TO ALLOW GUAM TO HAVE EQUAL REPRESENTATION ON THE FEDERAL HOME LOAN BANK BOARD OF DIRECTORS WAS MAKING PROGRESS TOWARDS PASSAGE UNTIL THIS JUNE WHEN THE BILL WAS OPPOSED BY THE FEDERAL HOME LOAN BANK OF SEATTLE.

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TO OUR SURPRISE AND DISAPPOINTMENT, WE DISCOVERED THAT ONE OF THE OPPONENTS TO GUAM BEING TREATED EQUALLY WAS THE CURRENT REPRESENTATIVE FOR HAWAII AND GUAM ON THE FEDERAL HOME LOAN BANK BOARD OF DIRECTORS.

THAT REPRESENTATIVE IS MR. RODNEY SHINKAWA, PRESIDENT OF FIRST FEDERAL SAVINGS OF AMERICA, ONE OF THE BANKS I MENTIONED PREVIOUSLY IN THIS TESTIMONY.

IN A CONVERSATION ON JULY 13, 1995 MR. SHINKAWA PERSONALLY INFORMED ME THAT HE OPPOSES GUAM BEING EXTENDED A SEAT ON THE BOARD OF DIRECTORS OF THE FEDERAL HOME LOAN BANK OF SEATTLE.

MR. SHINKAWA TOLD ME THE FEDERAL HOME LOAN BANK CAN BE BETTER SERVED WHEN GUAM IS REPRESENTED NOT BY ITSELF, BUT BY HAWAII.

I TOLD MR. SHINKAWA HAWAII CAN NO MORE REPRESENT GUAM THAN IDAHO CAN REPRESENT MONTANA. HE STATED HE STILL OPPOSES GIVING GUAM EQUAL REPRESENTATION.

A SEAT FOR GUAM ON THE BOARD OF THE FEDERAL HOME LOAN BANK OF SEATTLE WOULD BENEFIT THE ENTIRE GUAM COMMUNITY.

ANY BANK WHICH TRULY VALUES THE WELFARE OF GUAM SHOULD BE SUPPORTING GUAM'S INCLUSION ON THE FEDERAL HOME LOAN BANK BOARD OF DIRECTORS.

INSTEAD AN OFF-ISLAND BANK, THE SAME ONE WHICH WILL NOT WAIVE TYPHOON INSURANCE REQUIREMENTS AND WHICH CHARGES MORE ITS GUAM BORROWERS THAN IT DOES ITS HAWAII BORROWERS, SAYS GUAM IS NOT GOOD ENOUGH WHILE AT THE SAME TIME IT PUSHES FOR THE LIBERALIZATION OF GUAM'S BANKING LAWS.

IN CLOSING, WE AGAIN STATE THE PUSH BY OUTSIDE BANKS AGAINST BILL NUMBER 349 IS NOT IN THE NAME OF CUSTOMER SERVICE, IT IS PART OF A PLAN FOR MARKET DOMINANCE.

GIVE THE OUTSIDE BANKS EQUALITY. PROVIDE THEM THE SAME TREATMENT THE STATE OF HAWAII AND OTHERS PROVIDE TO OUTSIDE BANKS.

PASS BILL NUMBER 349.

I AM RESPECTFULLY AVAILABLE FOR QUESTIONS YOU MAY HAVE.

THANK YOU.

ROMAN G. B. CASTRO  
Vice President & Manager

August 16, 1995

Commissioner Joseph T. Duenas  
Members of the Guam Banking Board  
c/o Department of Revenue & Taxation  
378 Chalan San Antonio  
Tamuning, Guam 96911

SUBJECT: **Testimony of Bank of Hawaii Relating to Remote Network  
Automated Teller Machines (Remote ATM's)**

Dear Commissioner Duenas and Members of the Guam Banking Board:

My name is Roman Castro. I am a Vice President with Bank of Hawaii, and I am here to present testimony to strongly urge the Banking Board to support a determination to clarify that Remote Network Automated Teller Machines (Remote ATM's) are not "branches" under Guam Banking Laws.

Bank of Hawaii has been doing business in Guam since 1961, and we have been especially proud of our thirty four-year history and record of banking and service to the communities we are allowed to serve in Guam. We appreciate this opportunity to testify before the Banking Board to present our position.

At Bank of Hawaii, we believe ATMs should not be treated as branches under Guam law, and I would like to emphasize and summarize four key points orally, and submit a detailed discussion of the four points for your review and consideration.

First, the majority of states, including the State of Hawaii, now draw a distinction between remote ATMs and "brick and mortar" branch offices. The Banking Board is urged to draw a similar distinction.

Second, there is substantial federal case law and regulatory precedent to support the Banking Board's proposed determination. Even in other statutory contexts where the consequences of determining an ATM's status are entirely different (and would have far less drastic consequences), federal courts have found such ATMs not to be branches, and there is authority developing at the Office of

Commissioner Joseph T. Duenas  
August 16, 1995  
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the Comptroller of the Currency ("OCC") confirming this view. Significantly, the federal courts have developed a three-part test for a branch. Unless an ATM meets all three parts of the test, including the requirement that the ATM give the bank a "competitive advantage" over other banks, the Banking Board should not treat an ATM as a branch.

Third, the advantages to the public of allowing ATM expansion without geographic restriction, and the disadvantages which would otherwise result, far outweigh any benefits that would be conferred by a restrictive decision on ATMs. It is in the best interests of consumers for the Banking Board to determine that ATMs are not branches.

Fourth, the Banking Board may and should promulgate regulations which impose an appropriate degree of regulations on ATMs, even though they are not branches. The Hawaii laws governing ATMs provide a model for the Banking Board to consider.

The discussion that is attached is intended to support, in detail, the summary of the four key points I have just presented. Because it is lengthy and further supported with exhibits, I will not take the time to read it in its entirety. Please, however, review the attached discussion, and use it as a reference for your determination discussion and action.

Again, thank you for this opportunity to present this testimony, and I respectfully urge the Banking Board to determine that ATMs are not branches under Guam law.

Sincerely,



Roman Castro  
Vice President

Attachments

Attachment: Testimony of Bank of Hawaii Relating to Remote Network Automated Teller Machines (Remote ATMs)

A detailed discussion of four key points to support a determination that ATMs are not branches under Guam law is set forth below.

1. State Regulation of ATMs and Branches

The majority of states, including the State of Hawaii, draw a distinction between remote ATMs and branch offices.<sup>1</sup> Because ATMs typically involve substantially less of an investment than branch offices and only offer routine transaction services, most states have not imposed lengthy approval procedures on ATMs or based capital requirements on the number of ATMs. Furthermore, a number of states, including Hawaii, also permit out-of-state banks to engage in banking through ATMs or give in-state banks permission to establish ATMs in other states with similar laws.<sup>2</sup> Like these states, the Banking Board should draw a distinction between ATMs and branches, and allow all banks to establish ATMs without restriction.

2. Federal Regulation of ATMs and Branches

The federal courts have developed a three-part test which must be satisfied for a facility to be a branch for purposes of the McFadden Act,<sup>3</sup> and the Banking Board should consider this test within the context of Guam law. First, the facility must perform at least one of the core banking functions of receiving deposits, paying checks, or lending money.<sup>4</sup> Second, the facility must be "established" (that is, owned or rented) by the bank.<sup>5</sup> Third, and perhaps most importantly for purposes of your decision, the convenience to the public of the facility's location must give the

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<sup>1</sup> For a recent summary of state electronic fund transfer laws, see Conference of State Bank Supervisors, A Profile of State-Chartered Banking, 15th ed (1994), Washington, D.C., pp. 187-195.

<sup>2</sup> K. Spong, Banking Regulation: Its Purposes, Implementation and Effects, 15th ed. (1994), Federal Reserve Bank of Kansas City, pp. 148.

<sup>3</sup> 12 U.S.C. §36(f).

<sup>4</sup> *Clarke v. Securities Industry Association*, 479 U.S. 388 (1987).

<sup>5</sup> *Independent Bankers Association of America v. Smith*, 534 F.2d 921 (D.C. Cir.), cert. denied, 429 U.S. 862 (1976) ("*IBAA v. Smith*"); *Independent Bankers Association of New York v. Marine Midland Bank*, 757 F.2d 453 (2d Cir. 1985), cert. denied, 476 U.S. 1186 (1986).

bank a competitive advantage over other banks (national or state) in obtaining customers (the "competitive advantage test").<sup>6</sup> All of these factors, including the competitive advantage test, must be satisfied in order for a bank office or facility to be a branch.<sup>7</sup>

The OCC has recognized the development of regional and nationwide ATM networks, and has proposed rules which incorporate the competitive advantage test.<sup>8</sup> If the proposed rules are adopted, ATMs would no longer be considered branches, making it easier to expand ATM networks. Significantly, the proposed rules incorporate case law and OCC precedent that a bank-owned facility that does not provide a means to attract customers to the bank is not a branch. According to the OCC's commentary on the proposed rules, an example is a facility that does not provide services to attract bank customers because the facility is generally available to customers of other banks who may receive substantially similar services pertaining to their accounts at other banks on substantially similar terms. This would include an ATM that, because of its linkage to a network, is generally accessible by customers of other banks on a comparable basis.

The Federal Deposit Insurance Corporation ("FDIC") and the Office of Thrift Supervision ("OTS") also distinguish between a branch and an electronic off-premise facility for regulatory purposes. The FDIC distinguishes between a branch and a remote service facility ("RSF"), which includes an ATM. When an FDIC-

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<sup>6</sup> First National Bank v. Dickenson (Plant City), 396 U.S. 122, 190 S.Ct. 337, 24 L.Ed.2d 312 (1969); IBAA v. Smith, 534 F.2d 921, n.3. The court in IBAA v. Smith concluded that:

[A]ny facility that performs the traditional bank functions of receiving or disbursing funds is a "branch" of a national bank within the meaning of section 36(f) if (1) the facility is established (i.e., owned or rented) by the national bank, and (2) it offers the bank's customers a convenience that gives the bank a competitive advantage over other banks (national or state) that do not operate similar facilities.

IBAA v. Smith, *supra*, 534 F.2d at 951-952 (emphasis added).

<sup>7</sup> See generally, OCC Interp. Letter No. 634, 1993-1994 Transfer Binder, Fed. Banking L. Rep. (CCH) ¶83,520 (July 23, 1993).

<sup>8</sup> 59 Fed. Reg. 61034 (November 29, 1994).

insured institution wants to establish (by owning or leasing) an RSF,<sup>9</sup> the institution must file a letter with the appropriate regional director stating the location and confirming that the chosen site is not in a nationally recognized historic place.<sup>10</sup> By implication, an institution that wishes to open an ATM, without owning or leasing the facility, can do so without following this procedure. The procedures for opening a branch are set forth in a separate regulation from that governing RSFs.<sup>11</sup> The OTS distinguishes between a branch and a remote service unit ("RSU"). A branch office is defined as "any office other than [a federal savings association's] home office, agency office, data processing or administrative office or a remote service unit."<sup>12</sup> RSUs, which include point-of-sale terminals, cash-dispensing machines, and ATMs, are not regulated by the OTS as branches, satellites or other types of facilities or agencies of a federal savings association.<sup>13</sup> Subject to the Electronic Fund Transfer Act and Regulation E, a thrift may establish or use RSUs and participate with others in RSUs on an unrestricted geographic basis but cannot use RSUs to open a savings, demand or loan account.<sup>14</sup> A thrift may also share a RSU controlled by a financial institution or another party not subject to federal regulatory oversight only if such financial institution or other party agrees in writing that the RSU is subject to such oversight from the OTS as it deems necessary.<sup>15</sup>

### 3. Public Policy Considerations.

The Banking Board should weigh the advantages and disadvantages of determining that an ATM does not constitute a branch. On the plus side, the Banking Board should consider the significant consumer demand for electronic banking and the positive effects that such a determination would have on

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<sup>9</sup> 12 C.F.R. §303.0(b)(23).

<sup>10</sup> 12 C.F.R. §303.2(c)(2).

<sup>11</sup> 12 C.F.R. §303.2(a).

<sup>12</sup> 12 C.F.R. §545.91.

<sup>13</sup> 12 C.F.R. §545.141(a)(3).

<sup>14</sup> 12 C.F.R. §545.141(b).

<sup>15</sup> 12 C.F.R. §545.142.



consumers. ATMs provide many advantages for those individuals who utilize them.

- Customers would enjoy 24-hour availability for routine transactions.
- Travelers and vacationers do not have to carry large amounts of cash with them.
- Smaller banks and other financial institutions could actually achieve competitive equality with larger institutions.
- The sharing of ATMs avoids the possible monopolistic control that larger institutions could exert.
- Advanced technology will allow banks such as Bank of Hawaii to refine ATM delivery and communications systems, thereby increasing access and reducing costs for consumers.

Conversely, the Banking Board must consider possible disadvantages of allowing ATM expansion. Clearly, such a decision would remove the protection currently enjoyed by Guam-chartered banks against incursions in the Guam market by competitors. However, geographic constraints are, by their very nature, anti-competitive and inconsistent with the public policy goal of maintaining a competitive banking system. Furthermore, a decision to restrict ATM expansion (through application of the two-branch limitation) would be inconsistent with trends in the banking industry. Given the enactment of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994,<sup>16</sup> the clear trend is not only to liberalize historic restrictions on the geographic scope of banking operations, but to prohibit discriminatory treatment of out-of-state banks. Thus, from an economic standpoint, a restrictive determination by the Banking Board would hinder competition, prevent ATM systems from reaching the high transaction volumes necessary for efficient operation, and leave the public with less convenient banking facilities on Guam.

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<sup>16</sup> Pub. L. No. 103-328, 108 Stat. 2338, reprinted in 1994 U.S.C.C.A.N. (108 Stat.) 2338.

A restrictive position on ATMs could also have an adverse impact on the ability of banks to meet their responsibilities under the new Community Reinvestment Act ("CRA") rule,<sup>17</sup> thereby affecting low- and moderate-income areas and individuals on Guam. Under the "service test" established by the new CRA rule (which implicitly recognizes the distinction between branches and ATMs), greater weight will be given to full-service branches over alternative systems for delivering retail banking services (e.g., ATMs, ATMs not owned or operated by or exclusively for the bank, banking by telephone or computer, etc.). However, ATMs will be considered to the extent that they are effective alternatives in providing needed services to low- and moderate-income areas and individuals. The use of ATMs thus provides an important mechanism for meeting CRA obligations in Guam since certain banks are limited to two branches.

If the Banking Board decides that ATMs should be treated as branches for purposes of the two-branch limitation, then a bank such as Bank of Hawaii will be limited not only in terms of its ability to branch, but to establish ATMs, thereby hampering such bank's ability to serve its customers and help meet the credit needs of Guam. Alternatively, if the Banking Board decides that ATMs are not branches, then a bank such as Bank of Hawaii would be better able to service its Guam customers and fulfill its CRA commitment -- that is, to increase the availability and effectiveness of alternative systems for delivering retail banking services to low- and moderate-income areas and individuals on Guam through ATMs.

Weighing all the public policy factors, it seems clear that the advantages to consumers of excluding ATMs from the branch definition far outweigh any interest in protecting Guam-chartered banks from competition. If ATM systems are to achieve their full potential for cutting transaction costs and providing greater convenience, and consumers are to enjoy these benefits, then ATMs should not be treated as branches.

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<sup>17</sup>

60 Fed. Reg. 22156 (May 4, 1995).

4. Hawaii's ATM Laws as Model.

If the Banking Board determines that ATMs should not be treated as branches, ATMs may nevertheless be regulated by the Banking Board. Bank of Hawaii urges your adoption of ATM regulations which would impose requirements regarding the opening, relocating or closing of ATMs, similar to the requirements in Sections 412:3-506 and 412:3-508 of the Hawaii Revised Statutes ("H.R.S."). The Hawaii laws require notice to the Commissioner of Financial Institutions within 30 days after the ATM is opened, relocated or closed. Significantly, such laws were part of the comprehensive Code of Financial Institutions which recodified in 1993 all laws relating to financial institutions, consistent with changes in the marketplace and the federal regulatory structure, but did not impose undue regulatory burdens on financial institutions. Such legislation was the result of a joint three-year effort involving state regulators and the various financial industries. A copy of the pertinent Hawaii laws is attached for your consideration as Exhibit A.

Bank of Hawaii would welcome the opportunity to work with the Banking Board in developing ATM regulations.

5. Recommendations.

Bank of Hawaii respectfully recommends that the Banking Board adopt the Initial Determinations, with revisions as follows:

a. Initial Determination 2 is overly broad, and should be revised to limit the scope of regulation to the primary subject before the Banking Board -- that is, ATMs. The ramifications of regulating the other types of electronic banking mentioned in this initial determination have not yet been fully explored by the Banking Board, and it would appear premature to make a determination at this time that they should be regulated.

b. Initial Determination 4 should be revised to exclude the following devices from the definition of an ATM:  
(i) a telephone or an electronic processing device situated at or within the premises of a bank customer that is used only for transactions between that customer and the financial institution;  
(ii) merchant operated terminals; and (iii) point of sale

terminals. Home banking equipment is analogous to a telephone in function, regardless of whether information is transmitted by means of telephone or cable lines; such equipment should not be regulated as an ATM. Merchant operated terminals and point of sale terminals should be excluded from ATM regulation because such equipment is commonly owned by the merchant.

c. The Banking Board should adopt a determination confirming its decision to promulgate regulations which would impose notice requirements regarding the opening, relocating or closing of ATMs, similar to the requirements set forth in H.R.S. Sections 412:3-506 and 412:3-508.

EXHIBIT A

The following sections of Hawaii Revised Statutes are attached:

§412:1-109

§412:3-501

§412:3-502

§412:3-506

§412:3-508

§412:5-400

**§412:1-109 Definitions.** As used in this chapter, except as otherwise specifically provided herein:

"Affiliate" with respect to an existing or proposed financial institution or a financial institution holding company, means any company that controls the financial institution or the financial institution holding company and any other company that is under common control with the financial institution or the financial institution holding company. The following shall not be considered to be an affiliate:

- (1) Any company, other than a financial institution, that is a subsidiary of a financial institution;
- (2) Any company engaged solely in holding or leasing the premises of a financial institution;
- (3) Any company engaged solely in conducting a safe deposit business;

- (4) Any company engaged solely in holding obligations of the United States or its agencies or obligations fully guaranteed by the United States or its agencies as to principal and interest; and
- (5) Any company where control results from the exercise of rights arising out of a bona fide debt previously contracted, but only for the period of time specifically authorized under applicable state or federal law or regulation.

"Aggregate net contribution to capital" of a company means the sum of amounts employed to purchase capital stock of a company and to make contributions to the company's capital and surplus, less amounts received upon the sale or redemption of capital stock of the company or received in distributions with respect to the company's capital stock other than amounts received in distributions from the accumulated net earnings of the company.

"Aggregate outstanding investment" in a company means the sum of amounts employed to purchase capital stock of a company, to make contributions to the company's capital and surplus and to invest in obligations of the company, less amounts received upon the sale or redemption of capital stock of the company, amounts received in distributions with respect to the company's capital stock other than distributions from the accumulated net earnings of the company, and amounts received to retire obligations of the company.

"Appropriate federal regulatory agency" means, with respect to a financial institution or financial institution holding company, any one or more regulatory agencies of the federal government referred to in the following sentence which either (1) insures the deposits of the financial institution or financial institution holding company, or (2) has the power and duty to conduct periodic general examinations of the affairs of the financial institution or financial institution holding company by virtue of the legal characterization of the financial institution or financial institution holding company under federal law, and not by virtue of the fact of affiliation of the financial institution or financial institution holding company with any other person or an alleged violation of a specific law. Subject to the preceding sentence, an appropriate federal regulatory agency may be the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Reserve Board, the Office of Thrift Supervision, the National Credit Union Administration or any regulatory agency of the federal government which shall succeed to the insurance or supervisory duties of one of the foregoing.

"Capital" means: (1) the aggregate par value or other amount received and allocated to the issued and outstanding capital stock of a financial institution; or (2) the total amount of a mutual association or a credit union's outstanding and unimpaired membership shares or share accounts.

"Capital stock" means the units of interest, whether or not having a par value, common or preferred, legally issued by a financial institution or other corporation, which represents a fractional ownership interest in the institution or corporation. The term does not include shares or membership in a mutual savings and loan association or credit union.

"Circuit court" means the court established in each of the judicial circuits of this State pursuant to chapter 603 and which has jurisdiction under section 412:1-108 over a matter.

"Commissioner" means the commissioner of financial institutions of this State.

"Common stock" means all capital stock of a financial institution or other corporation that is not preferred stock.

"Company" means any corporation, partnership, trust (business or otherwise), association, joint venture, pool syndicate, unincorporated organization, or any form of business entity not specifically listed herein and, unless specifically excluded, a financial institution; provided that "company" does not mean any trust existing on July 1, 1993, which under its terms must terminate within twenty-five years, or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust.

"Comparable financial institution" means:

- (1) In the case of a bank that is a Hawaii financial institution, a national banking association, and vice versa;
- (2) In the case of a savings and loan association or savings bank that is a Hawaii financial institution, a federal savings and loan association or federal savings bank, and vice versa; and
- (3) In the case of a credit union that is a Hawaii financial institution, a federal credit union, and vice versa.

"Conservator" means a person appointed by the commissioner to take possession and control of a Hawaii financial institution for a temporary period in order to preserve and protect the assets of the institution for the benefit of its depositors, beneficiaries, creditors, and shareholders or members.

"Control" means, unless the context clearly requires otherwise, directly or indirectly, solely or through another person or transaction, or in concert with another:

- (1) Owning or having the power to vote twenty-five per cent or more of any class of voting securities;
- (2) Owning or having the power to exercise twenty-five per cent or more of the votes of a mutual association, credit union, or other entity whose voting rights are not determined by voting securities;
- (3) Owning or having the power to vote ten per cent or more of any class of voting securities if:
  - (A) the issuer of that class of securities has issued any class of securities under section 12 of

the Securities Exchange Act of 1934, as amended; or (B) immediately after the acquisition, no other person will own a greater percentage of that class of voting securities;

- (4) Having the power to elect by any means a majority of the directors; or
- (5) Having the power to exercise a dominant influence over management, if so determined by the commissioner after notice and a hearing.

No depository institution or trust company shall be deemed to own or control a company by virtue of its ownership or control of shares in a fiduciary capacity, unless that depository institution or trust company has sole voting power over a sufficient number of voting securities of the company to constitute control hereunder.

"Deposit" or "deposits" means money or its equivalent received or held by a person in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a demand, checking, savings, time, passbook, negotiable order of withdrawal, thrift or share account, or which is evidenced by its passbook, certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument, or a check, draft or share draft drawn against a deposit account and certified by a person, on which the person is primarily liable.

"Depository institution" means a financial institution that is authorized to accept deposits under its chartering or licensing authority and includes a bank, savings bank, savings and loan association, depository financial services loan company, credit union, or intra-Pacific bank.

"Director" means any member of the board of directors of a financial institution, whether or not receiving compensation. An advisory director is not considered a director if the advisory director (1) is not elected by the shareholders of the financial institution, (2) is not authorized to vote on matters before the board of directors, and (3) provides solely general policy advice to the board of directors.

"Division" means the division of financial institutions of the department of commerce and consumer affairs of this State.

"Executive officer" of a financial institution means a person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the financial institution, whether or not: (1) the officer has an official title, (2) the title designates the officer as an assistant, or (3) the officer is serving without salary or other compensation. The chairperson of the board, the president, every vice president, the secretary, and the treasurer of a financial institution are considered executive officers, unless (1) the officer is excluded, by resolution of the board of directors or by the bylaws of the financial institution, from participation (other than in the capacity of a director) in major policymaking functions of the financial institution, and (2) the officer does not actually participate in such major policymaking functions. An executive officer of a financial institution includes an executive officer of any subsidiary of the financial institution, unless the executive officer of the subsidiary (1) is excluded (by name or by title) from participation in major policymaking functions of the financial institution by resolutions of the boards of directors of both the subsidiary and the financial institution, and (2) does not actually participate in such major policymaking functions.

"Federal" means belonging to, part of, or related to the government of the United States of America.

"Federal financial institution" means a national banking association, federal savings bank, federal savings and loan association or federal credit union.

"Federal Home Loan Bank" means a federal home loan bank created and organized under the authority of the Federal Home Loan Bank Act.

"Federal Reserve Bank" means a federal reserve bank created and organized under the authority of the Federal Reserve Act.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System created and described in the Federal Reserve Act.

"Financial institution" means a Hawaii financial institution, and unless the context indicates otherwise, a federal financial institution or foreign financial institution.

"Financial institution holding company" is a holding company which controls a Hawaii financial institution or which controls another financial institution holding company. The following persons shall not be deemed to come within the definition of a financial institution holding company:

- (1) A registered dealer who acts as an underwriter or member of a selling group in a public offering of the voting securities of a financial institution or of a financial institution holding company;
- (2) A person who acts as proxy for the sole purpose of voting at a designated meeting of the security holders of a financial institution or of a financial institution holding company;
- (3) A person who acquires control of a financial institution or of a financial institution holding company by devise or descent; or
- (4) A pledgee of a voting security of a financial institution or of a financial institution holding company who does not have the right, as pledgee, to vote such voting security.

"Financial institution subsidiary" means: (1) a financial institution that is controlled by a financial institution holding company, or (2) a financial institution holding company that is controlled by another holding company.

"Foreign financial institution" means a person, other than a Hawaii financial institution or a federal financial institution whose operations are principally conducted in this State, which is authorized to engage under the laws of its jurisdiction of organization, or does engage, in the business of accepting deposits or making loans or engaging in the trust business.

**"Hawaii financial institution"** means a corporation or credit union which holds a charter or license under this chapter or under prior Hawaii law, authorizing it to accept deposits, to make loans in excess of the rates permitted in chapter 478, or to engage in the business of a trust company, and includes a corporation, mutual savings and loan association or credit union existing and chartered as a Hawaii financial institution or licensed to transact business in this State on July 1, 1993. A Hawaii financial institution may be a bank, savings bank, savings and loan association, depository financial services loan company, nondepository financial services loan company, trust company, credit union, or intra-Pacific bank.

**"Holding company"** means any company which controls another company.

**"Impaired capital and surplus"** or similar language relating to impairment of capital or surplus, means that a financial institution has less than the minimum amount of capital and surplus required under this chapter for that type of financial institution.

**"In concert with another"** means (1) knowing participation in a joint activity or interdependent conscious parallel action towards a common goal whether or not pursuant to an express agreement; or (2) a combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement, or other arrangement, whether written or otherwise.

**"Insolvency"** means, with respect to a financial institution, that the value of its assets is insufficient to pay its depositors and its creditors.

**"Institution-affiliated party"** means any of the following:

- (1) Any director, officer, employee or controlling shareholder of, or agent for, or other person that controls a financial institution;
- (2) Any person who has filed or is required to file an application to become a financial institution with the commissioner or an application to acquire control of a Hawaii financial institution or financial institution holding company with the commissioner;
- (3) Any shareholder, consultant, joint venture partner, and any other person as determined by the commissioner (by rule or case-by-case) who participates in the conduct of the affairs of a financial institution; or
- (4) Any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in any of the following which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the financial institution:
  - (A) Any violation of law or rule,
  - (B) Any breach of fiduciary duty, or
  - (C) Any unsafe or unsound practice.

**"Loans and extensions of credit"** by a financial institution means any direct or indirect advance of funds (including obligations of makers and endorsers arising from the discounting of commercial paper) to or for the benefit of a person made on the basis of any obligation of that person to repay the funds. "Loans and extensions of credit" includes a contractual commitment to advance funds. "Contractual commitment to advance funds" means (1) an obligation to make payments, directly or indirectly, to a third party contingent upon default by the financial institution's customer in the performance of an obligation under the terms of that customer's contract with the third party or upon some other stated condition, or (2) an obligation to guarantee or stand as surety for the benefit of a third party. The term includes, but is not limited to, standby letters of credit, guarantees, puts or other similar arrangements; but does not include commercial letters of credit and similar instruments where the issuer expects the beneficiary, to draw upon the issuer, which do not guaranty payment of a money obligation, and which do not provide for payment in the event of default of the account party.

**"Obligation"** means any bond, debt, debenture, loan, note or similar undertaking.

**"Obligor"** means a person owing an obligation.

**"Open to the public"** means accessible or available to the general public during regular business hours without special permission.

**"Operations are principally conducted"** where total deposits placed with a person together with deposits placed with its subsidiaries are largest.

**"Paid-in capital"** means the amount of capital actually received by the financial institution for its capital stock, membership shares or share accounts, as the case may be.

**"Passbook"** means any book, statement of account, or other record used by a financial institution to record deposits, withdrawals, interest, dividends and changes.

**"Person"** means a natural person, entity or organization, including without limitation an individual, corporation, joint venture, partnership, sole proprietorship, association, cooperative, estate, trust, or governmental unit.

**"Preferred stock"** means capital stock in a financial institution or other corporation which entitles its holders to some preference or priority over the owners of common stock, usually with respect to dividends or asset distributions in liquidation.

**"Principal shareholder"** means a person other than a financial institution, that, directly or indirectly, or acting through or in concert with another, owns, controls, or has the power to vote more than ten per cent of any class of voting securities of a financial institution. Shares owned or controlled by a member of an individual's immediate family are considered to be held by the individual. As used in this definition



"immediate family" means the spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

"Receiver" means a person appointed by the commissioner to take possession and control of a Hawaii financial institution for the purpose of liquidating and winding up the affairs of the institution.

"Related interest" means (1) a company that is controlled by a person or (2) a political or campaign committee that is controlled by a person or the funds or services of which will benefit a person.

"Retained earnings" means the net income of a financial institution earned since its inception which has not been distributed to its shareholders or transferred or allocated to capital stock or surplus or, as the case may be, the accumulated deficits of the financial institution. The term "retained earnings" is interchangeable with the term "undivided profits".

"State" or "this State" means the State of Hawaii, its political subdivisions, agencies, and departments.

"Stock financial institution" means a financial institution which issues shares of capital stock as evidence of fractional ownership in the institution. The term does not include mutual savings and loan associations or credit unions.

"Subsidiary" means a corporation, joint venture, partnership, or other company that is controlled by another corporation.

"Surplus" means an amount received by a financial institution for its capital stock, membership shares, or share accounts, as the case may be: (1) in excess of the par value of any shares having par value; or (2) in excess of the amount allocated to shares without par value, membership shares or share accounts. "Surplus" also means an amount transferred or allocated to the financial institution's surplus from retained earnings, and, unless the context otherwise clearly requires, "surplus" includes retained earnings, whether or not transferred or allocated to surplus. [L 1993, c 350, pt of § 1; gen ch 1993]

#### Revision Note

In definitions of "company" and "Hawaii financial institution", "July 1, 1993" substituted for "the effective date of this chapter".

#### PART V. PLACES OF BUSINESS

**§412:3-501 Authorized places of business.** (a) A Hawaii financial institution may conduct business at one or more of the following places of business, to the extent authorized:

- (1) The principal office of a Hawaii financial institution is the place of business that it designates as its executive headquarters in this State. A financial institution may, but need not, conduct other businesses permitted under its charter or license at its principal office; provided that for the purposes of this section, the terms "principal office," "home office," and "main office" are interchangeable;
- (2) A branch is a place of business open to the public where a financial institution shall be authorized to conduct all businesses permitted under its charter or license, except for the maintenance of its executive headquarters;
- (3) An agency is a place of business open to the public where a financial institution may conduct only specific businesses approved by the commissioner in writing;
- (4) An automatic teller machine or ATM is a place of business, either at a fixed location or mobile, consisting of an on-line or off-line, staffed or unstaffed, electronic processing device, including associated equipment and structures, that is situated at a premises separate from a financial institution's principal office, branch, agency, or support facility, at which deposits of cash or instruments, or cash disbursement transactions between a person and one or more financial institutions are accomplished, whether instantaneous or otherwise, through or by means of electronic or automated signals or impulses including the human voice; provided that it shall not mean a telephone or an electronic processing device situated at or within the premises of a bank customer that is used only for transactions between that customer and the financial institution. The term does not include merchant operated terminals and point of sale terminals; and

- (5) A support facility is a place of business that is not generally open to the public, where a financial institution conducts limited types of significant business operations of the financial institution, including but not limited to data processing, clerical activities, and storage.
- (b) In addition to conducting business at a place of business described in subsection (a), a Hawaii financial institution may conduct business in any other manner or place necessary or convenient; provided that deposits of cash or instruments shall not be received, checks, negotiable orders of withdrawal or share drafts shall not be paid, and cash shall not be disbursed, except at an authorized principal office, branch or automatic teller machine or at any agency or support facility which has been authorized by the commissioner to accept deposits or disburse cash. [L 1993, c 350, pt of §1; gen ch 1993; am L 1994, c 107, §9]

**§412:3-502 Foreign financial institution.** No foreign financial institution shall receive deposits, lend money, or pay checks, negotiable orders of withdrawal or share drafts from any [principal] office, branch, agency, automatic teller machine, or other location in this State, unless expressly authorized by this chapter, other laws of this State, or federal law; provided, that nothing in this section shall prohibit any foreign financial institution from participating in the disbursement of cash through an automatic teller machine network or from operating from any location in this State as a mortgage broker licensed under chapter 454, or as a real estate collection servicing agent registered under chapter 454D. [L 1993, c 350, pt of § 1]

**§412:3-506 Opening or relocating automatic teller machine or support facility.** A Hawaii financial institution which opens or relocates an automatic teller machine or support facility shall within thirty days thereafter submit a letter to the commissioner containing the following information:

- (1) The location of the automatic teller machine or support facility;
- (2) A description of the type of functions which the automatic teller machine or support facility will perform; and
- (3) The date or anticipated date of opening or relocation. [L 1993, c 350, pt of § 1]

**§412:3-508 Closing automatic teller machine or support facility.** A Hawaii financial institution shall provide notice to the commissioner of its closure of an automatic teller machine or support facility within thirty days of the closing. The notice shall contain the location of the automatic teller machine or support facility closed and the date of closing. [L 1993, c 350, pt of § 1]

September 6, 1995

Committee on Ways & Means  
The Honorable Francis E. Santos, Chairperson  
Twenty Third Guam Legislature  
155 Hesler Street  
Agana, Guam 96910

RE: **Bill No. 349, An Act to Add Subsection (c) to Section 30900,  
Government Code (Guam Banking Code) to Define "Branch" Banking**

Dear Chairperson Santos and Members of the Committee on Ways & Means:

My name is Richard Dahl, and I am the President and Chief Operating Officer for Bancorp Hawaii, Inc. and Bank of Hawaii. Thank you for this opportunity to testify in opposition of Bill No. 349. Rather than cover specific points of opposition, I would like to take this opportunity to orally elaborate on the key points, below, that are more directly related to the future of banking in Guam and its role in the Pacific Region. The key points are:

1. Guam is an important hub for the region and an important hub for Bank of Hawaii.
2. Bank of Hawaii has participated in Guam's community and its development for the past 34 years.
3. Guam's economy is growing and Bank of Hawaii wants to continue to participate in its development.
4. The issue in Bill No. 349 cannot be viewed as a contest between Guam chartered financial institutions and those not chartered in Guam---the issue should be looked at in light of today's global economy and what is good for the consumer and what is good for Guam's future.

Committee on Ways & Means  
The Honorable Francis E. Santos, Chairperson  
Page 2

5. Bank of Hawaii would like to offer its assistance to the Guam Banking Board and the Guam Legislature to:
- a. explore the options available under the interstate branching federal legislation which will go into effect in June 1997, and
  - b. develop a transition plan for unrestricted branching by the effective date.

Bank of Hawaii is committed to Guam and its future, and it our hope that you will seriously consider the effects of restrictive legislation that may run counter to Guam's long term vision for the Region. In closing, I would like to leave you with an article published in today's Pacific Daily News that accurately reflects our optimism, intentions and hopes for Guam and the Pacific Region.

Again, thank you for this opportunity to testify on this bill, and I solicit your support for an open banking system that will benefit all of Guam's consumers.

Sincerely,

(Original Signed)

Richard J. Dahl  
President & Chief Operating Officer

# Bankoh refocuses on Guam

By LLOYD JOJOLA  
Daily News Staff

A new thrust on the region as a whole, that is what's in store for Guam and Micronesia, according to Richard J. Dahl, president of Bancorp Hawaii Inc. and Bank of Hawaii.

Dahl, along with several other Bank of Hawaii executives, are on Guam for several reasons: to unveil their Guam Economic Report today, and to look over the western Pacific arm of their corporation, he said.

"We're refocusing on one of the major markets, which is Guam," Dahl said. "In the past we had decentralized authority in the Pacific. We're taking a new thrust on the region as a whole ... taking pro-active participation in the west Pacific."

Dahl said the region, specifically Guam, now has the technological facilities necessary for the bank to expand and enhance services such as automated teller machines and payment systems.

"Guam is the most sophisticated market place in the western Pacific," Dahl said. "We see Guam as a focal point for expansion into Asia."

Presently, the bank has branches in Hong Kong, the Philippines, Seoul, Singapore, Taipei and Tokyo. Its offices in the western Pacific include Saipan, Kosrae, Pohnpei, Yap, Guam and Palau.

## Regional hub

While the aforementioned Pacific Rim branches will act as a catalyst into Asia, said Dahl, Guam's place in the pack would allow it to act as a regional hub.

However, there are some obstacles to the fulfillment of that vision, including Guam's restrictive banking laws.

Dahl's talk of expansion ironically comes a day before the Legislature holds a hearing on Bill 349. The bill, if passed, would legally define automated teller machines as bank branches.

Under Guam law, state and national banks not chartered in the territory are limited to two branches on island, and ATMs have been included in the definition. Bank of Hawaii representatives plan on providing testimony against the bill at the public hearing.

Andy Jordanou, Guam country manager for the Bank of Hawaii on Guam, said the bank hopes to lift the restrictions by appealing to those people the restrictions affect the most — the consumer.

"We're trying to reach out to the community and provide the best service possible," Jordanou said. "In order to do that here, in order to be better able to accommodate them, we need to provide people needed services."

"Bank of Guam is a tremendous com-

petitor. But ultimately what will have to be answered is, 'What do consumers want?'" Dahl said.

While the Guam banking issue is one to be determined later, Dahl said the fact the corporation has the ability to look at the western Pacific in general is because of what it learned in Hawaii.

"Hawaii has taught us a lot of lessons," Dahl said. "When you are an island bank, you tend to learn. You have to make sure you choose the right direction."

## Budget woes loom ahead

By WILLIAM M. WELCH  
Gannett News Service

WASHINGTON — Congress and President Clinton are facing an autumn of confrontation, where a shutdown of government looms unless there is a break in the stalemate over taxes and spending reductions.

The differences are so wide, the spending issues so complex and the pressures of the 1996 presidential campaign so strong, both sides are warning there could be a protracted shutdown.

Key issues include welfare reform, tax reduction, program cuts and an overhaul of federal health-care plans.

Clinton and the White House warn of a "train wreck," a disaster scenario in which the president rejects the cuts in GOP budget bills as excessively harsh and the public suffers the consequences.

What lies ahead is a series of budgetary bills and deadlines, each posing its own confusing array of potential outcomes:

■ Oct. 1 is the deadline for providing monies to run the government in the new federal fiscal year. GOP leaders vowed fiscal 1996 would be the first in a seven-year plan to reach a balanced budget.

The cuts needed are large and contentious. If Congress fails to pass the 13 spending bills for government opera-

## NATION

tions by Oct. 1, or if Clinton vetoes them, the federal government could shut down, sending employees home.

Congress and Clinton could agree to stop-gap measures that keep the government going on the previous year's budgets. This has become routine in recent years, but requires at least some agreement between the GOP-led Congress and the Democratic White House.

Initially, both sides may prefer the threat of a shutdown to try to push the other side to an agreement.

■ Later this fall the government's need for cash will exceed the \$4.9 trillion limit on its authority to borrow.

Congress and the president can raise the debt ceiling. But many congressional conservatives say this time around, they won't do that unless it's coupled with other measures that reduce increases in spending.

■ A third factor is what's known as the "reconciliation bill." An omnibus piece of legislation, the bill would include the GOP tax cut and implement earlier decisions to cut \$270 billion over seven years from Medicare, the health program for the elderly, and cut \$186 billion from Medicaid, the health program for the poor.

**PART IV. INTRA-PACIFIC BANKS**

**§412:5-400 Definitions.** In this chapter:

**"Intra-Pacific bank"** is a depository institution or a banking company (1) engaged in the type of business permitted to banks chartered by this State, (2) whose home office is located in a reciprocal region, (3) a majority of whose deposits together with the deposits of its subsidiaries and affiliates are held in a reciprocal region, and (4) which is not directly or indirectly owned or controlled by any holding company other than an intra-Pacific bank holding company.

**"Intra-Pacific bank holding company"** is a holding company whose subsidiary banking companies hold a majority of the aggregate deposits in a reciprocal region.

**"Reciprocal region"** means any one of the territories or countries of Guam, American Samoa, the Federated States of Micronesia, the Republic of Palau, the Commonwealth of the Northern Marianas, or the Republic of the Marshall Islands, only so long as:

- (1) Its economy is based on the United States dollar; and
  - (2) Its laws allow a bank that is a Hawaii financial institution or its holding company to establish and operate a branch or acquire the assets or control of or merge with a bank or bank holding company in that territory or country, under terms and conditions which are substantially comparable to or less restrictive than the laws of this State concerning the commencement of operations, acquisitions, change of control and mergers of banks and bank holding companies.
- [L 1993, c 350, pt of §1]





**First Hawaiian Bank**

Exhibit DD

MAITE BRANCH, 400 Route 8, Mongmong, GU 96927

**John K. Lee**  
Senior Vice President &  
Regional Supervisor of Guam Branches

September 6, 1995

Honorable Francis Santos, Chairman  
COMMITTEE ON WAYS & MEANS  
TWENTY-THIRD GUAM LEGISLATURE  
TERRITORY OF GUAM  
Agana, Guam

**RE: PUBLIC HEARING ON BILL 349  
SEPTEMBER 6, 1995**

Dear Mr. Chairman and Members of the Committee:

I am John Lee, Senior Vice-President and Regional Supervisor of First Hawaiian Bank. I am testifying today with regard to Bill No. 349 which is an Act to add Subsection (c) to Section 30900, Government Code, which purports to define "branch" banking. Subsection (c), as proposed, however, does not define what constitutes a branch, but ensures that consumer bank communication terminals ("CBCTs"), automated teller machines ("ATMs") and other electronic devices will be treated as a branch for purposes of restricting non-territorial banks from establishing remote ATMs.

While we were aware that Bill 349 was pending, the only notice provided to us of this hearing was a newspaper notice which appeared in yesterday's Pacific Daily News. Our testimony is, therefore, not as thorough as it would otherwise be had we, and the general public, been given better notice of the hearing. We would, therefore, request the Committee's indulgence in allowing us to provide additional testimony after the close of the hearing.

The timing of the introduction of this Bill and the timing of this hearing leave little doubt that both are a result of recent deliberations undertaken by the Banking Board pursuant to its statutory mandate to define terms in the Banking Code not otherwise defined, and to make rulings and adopt rules and regulations governing the conduct of banking in Guam. First Hawaiian Bank supports the Banking Board's recent efforts to adopt a modern and sensible definition of what constitutes a branch bank and the adoption of reasonable

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regulations governing the establishment and operation of ATMs. In fact, the Banking Board has passed a resolution supporting a definition of branch bank that does not include ATMs. This resolution is based upon a realization that consumer convenience and benefit would be promoted by such a definition. Substantial testimony, both written and oral, was provided to the Banking Board in connection with its determination. For this Committee's edification, portions of our testimony in support of the Banking Board's determination are included as attachments to this letter.

With respect to the definition proposed in Bill 349, let there be no mistake that First Hawaiian Bank opposes any bill which would adopt such a definition. First Hawaiian Bank opposes any definition that would include ATMs as a branch, and further opposes the specific definition proposed.

The specific definition of branch bank utilized in Bill 349 is so sweeping as to potentially include personal computers, on line debit card systems, telephones and other electronic devices through which customers can communicate with their banks. The definition might even include a territorial bank ATM which, through a network, can be utilized to obtain funds from an account in a non-territorial bank. Whatever the intent of this bill, we hope that the intent is not to completely eliminate the use of electronic devices in banking.

More important, however, is the fact that if the Legislature enacts this particular bill, it will be ensuring that the consumers of Guam will not receive the full range of modern and convenient banking services which are available to consumers who reside in the United States or elsewhere. In addition, this Legislature will be ensuring that local citizens who choose not to bank with a territorially chartered bank will receive less than equal treatment than citizens who choose to bank with a non-territorial bank. Should this bill become law, it will be the banking consumers of Guam who will lose.

Proponents of regulations or legislation limiting state chartered banks from utilizing remote ATMs in Guam have argued that their position is justified because of disparate treatment accorded them by jurisdictions other than Guam. That is not, and never was, the intent of the two-branch

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restriction or for the restriction on ATMs. The two-branch restriction was developed as a tool to allow for the growth of the Bank of Guam. The history and background behind the enactment of Public Law 12-8, effective March 23, 1973, clearly show that the reason for the two-branch limitation at the time of its enactment was for the express purpose of protecting the Bank of Guam from the competition of state and national banks doing business in the Territory at that time. In researching the history of Guam's banking laws, we discovered what appears to be testimony in favor of the enactment of Public Law 12-8 by Mr. Jesus S. Leon Guerrero, then President of the Bank of Guam. A copy of Mr. Leon Guerrero's letter is attached hereto in its entirety. The third full paragraph of the first page states as follows:

Let us be candid and honest about the whole thing. We are talking about the Bank of Guam which just opened for business two months ago versus the world giants in banking. You might say, we can establish branches any time we want to. Correct. But it will take at least a year of operations before we are ready to start branching. In the meantime, the other banks who are equipped with the capital and capability can saturate the island with branches in one year keeping us out completely.

The policy behind Public Law 12-8, therefore, and the policy behind restricting ATMs, was to provide the Bank of Guam with an environment wherein it could flourish. It clearly has done so. As of today, the Bank of Guam has no fewer than 11 physical branches and dozens of ATMs installed at various locations in Guam. It has grown and prospered under the protection of Public Law 12-8 for approximately twenty-three years. This growth has been at the expense of consumers who choose not to bank with territorial banks. Public Law 12-8 has served its purpose. The time has come for a change in the banking industry of this Territory which will benefit all of the consumers of Guam who deserve the convenience and up-to-date electronic services that increased competition in the ATM field will provide. Should Bill 349 become law, the interest of the consumer will be further sacrificed for no valid reason.

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Some may raise the issue that Citizens Security Bank is also a local bank and should also be entitled to protection from out-of-state competition. In actuality, however, with respect to ATMs, the state chartered banks and national banks are not the prime competition of Citizens. Their prime competition in that area is quite clearly the Bank of Guam which already has a far greater advantage than state chartered banks purportedly had back in 1973. If the purpose of the Legislature in restricting branching and ATMs is to protect the interest of existing local banks and encourage the formation of new local banks, once a local bank reaches a particular level of maturity, such as the Bank of Guam has, perhaps it, too, should be regulated so as to provide an opening for the new local banks.

The economic conditions in Guam today are significantly different than they were twenty-five years ago. State chartered banks and national banks which entered the Guam market decades ago provided a foundation for the economic growth of Guam and continue to do so. First Hawaiian Bank for one has historically maintained a loan portfolio in excess of its Guam depository base. In other words, Hawaii deposits of First Hawaiian Bank have subsidized growth in Guam. We, too, have a commitment to this Territory and to the customers who have loyally banked with us for many years. There is no further justification for depriving these customers of the technological advances now available to them with respect to their banking needs.

There is no evidence that allowing all banks in Guam to utilize ATMs under reasoned and well drafted regulations will in any way damage any locally chartered bank. Smaller banks have not only survived in states which permitted interstate banking and liberalization of competition, but have actually prospered. Community banks can and do compete with larger state and national banks in the banking industry.

In summary, First Hawaiian Bank opposes this bill on the grounds that it will not be in the best interest of the banking consumers in the Territory of Guam and on the basis that its language, as written, is overbroad. Instead, First Hawaiian Bank encourages the Legislature to allow the Banking Board to do what it is charged statutorily to do: make rulings, define otherwise undefined terms, and adopt reasonable and carefully drafted rules and regulations

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governing the banking industry in Guam. This bill will truly be a step backwards in Guam's banking evolution. This Legislature in its wisdom, should not take such an unfortunate step.

Respectfully submitted,

FIRST HAWAIIAN BANK

JOHN K. LEE  
Senior Vice President and  
Regional Supervisor

Attachments

Mr. Chairman and members of the committee. My name is Jesus S. Leon Guerrero, President of Bank of Guam.

Bill No. 212 is a simple measure. The purpose is to clarify the intent of the Legislature with regard to sub-paragraph (A) of Section 30900 of the Guam Banking Code. If I remember correctly, the intent of this provision was to limit the number of branches a state or national bank can have in Guam to the number of branches then in existence so that a territorial or local bank may have a reasonable chance for success. Under this provision only one national bank is entitled to an additional branch. The others already had 2 or more branches in operation.

Unfortunately, this provision as finally written into the code is somewhat ambiguous and can be read that any state or national bank licensed to do business in Guam before the enactment of the code may establish 2 additional branches after the effective date of the code. This means that the 5 national and state banks may establish 10 additional branches, almost double the number of branches they had prior to enactment of the code. This is contrary to the protective spirit of the code since rather than protect the interest of a local bank, it threatens the very survival of a local bank. I am certain this was not the intent of the legislature, hence, clarification is in order.

Let us be candid and honest about the whole thing. We are talking here about Bank of Guam which just opened for business 2 months ago versus the world giants in banking. You might say, we can establish branches any time we want to. Correct. But it will take at least a year of operation before we are ready to start branching. In the meantime, the other banks who are

equipped with the capital and capability can saturate the island with branches in one year keeping us out completely. Should this happen, Guam will be the place where outside banks succeed in keeping out a local bank. It cannot be done in Hawaii. California or any other state of the Union. Have you ever seen a branch of a California bank in Hawaii or vice versa? It is not discriminating. I am not saying that they should get out. No. They can keep what they have but further branching should be restricted. It is tough enough to compete with the present branches considering that 3 of them are the largest banks in the world and 2 of them are the largest from the state of Hawaii, without adding 10 more branches. It is not discriminating for the territory to protect the interest of its own creation. Not being an attorney, I do not wish to dwell on the question of law but I suggest that the legislative counsel look into the Clayton Anti-Trust Act and the Interstate Commerce Act. Also a review of the case between Transamerica Corporation and the Board of Governors of the Federal Reserve System 206 F 2 d 163 might be interesting.

I wish it were possible for me to say reject this bill since I am never afraid of competition. However, in this case, you and I have the responsibility to protect the interest of the first and only local bank, its customers, staff and primarily the 900 shareholders who are all residents and U.S. citizens of Guam. Under these circumstances, I can not ~~help~~ but strongly urge the passage of Bill No. 212. Guam perhaps is over-banked at this time which also suggest and I recommend that the legislature look into the possibility of declaring a bank moratorium for at least 2 years so that a complete study of our banking needs can be made before the entry of another bank to Guam is approved.

Thank you

16 / JESUS LEON CERRERO

LAW OFFICES  
KLEMM, BLAIR, STERLING & JOHNSON  
A PROFESSIONAL CORPORATION

Exhibit FF

J. BRADLEY KLEMM  
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THOMAS C. STERLING  
RICHARD L. JOHNSON  
ELIZABETH ROBERTSON  
VINCENT E. LEON GUERRERO  
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February 10, 1995

OF COUNSEL  
WILLIAM B. CLEARY

VIA HAND DELIVERY

Mr. Joseph Duenas  
Acting Commissioner of Banking  
DEPARTMENT OF REVENUE & TAXATION  
Government of Guam  
Insurance, Securities, Banking  
& Real Estate Branch  
378 Chalan San Antonio  
Tamuning, Guam 96911

RE: REQUEST FOR DECLARATORY RULING

Dear Mr. Commissioner:

Pursuant to §§24207 and 30012 of the Government Code of Guam, First Hawaiian Bank hereby requests of the Banking Board declaratory rulings with respect to the following questions:

1. Does Hawaii Revised Statutes §412:5-400, et seq., constitute a "reciprocal arrangement" for purposes of §30900 of Guam's Government Code?

2. Given today's advanced state of technology with respect to customer bank communication terminals ("CBCT") and automated teller machines ("ATM"), the proliferation of networks pursuant to which users of cards issued by various institutions may access their accounts through CBCTs, ATMs and similar machines, the preemption provisions of the Code of Federal Regulations with respect to the branching of federal savings associations and other similar factors changing the nature of the banking business from a "brick and mortar" business to an electronic business, are CBCTs or ATMs considered "branches" for purposes of Guam's banking law?

Reserving its right to submit further materials in support of its request for declaratory ruling, First Hawaiian Bank submits the following in support of its position on the above issues:



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I. Hawaii Revised Statutes §412:5-400, et seq. Constitutes a "Reciprocal Arrangement" as said term is used in §30900(a) of the Government Code.

Government Code §30900(a) states in full as follows:

A bank engaging in the banking business on Guam pursuant to the provisions of this Title may operate one or more branch banks within Guam, subject to the approval of the Banking Board and upon demonstrating to the Board that (1) there is sufficient need for such branch, and (2) that the proposed branch has reasonable opportunity to be economically self-sustaining; provided, however, that after the effective date of this Act, no state or national bank may establish more than two branches on Guam, except as may be provided by reciprocal arrangement with a state or territory of the United States, and those state or national banks licensed to engage in banking in Guam prior to the effective date of this Act and having more than two branch banks in Guam prior thereto may maintain such additional branch banks, but shall not establish any additional branch banks. The application to establish such branch bank shall be considered by the Board after public hearing at which all interested parties may present their reasons and any evidence in favor or against the establishment of said branch bank.

In 1993, the State of Hawaii adopted as a part of the Hawaii Revised Statutes §§412:5-400 through 412:5-407. This new part to the Hawaii banking statutes was titled "Intra-Pacific Banks". An Intra-Pacific bank, according to the statute, is a depository institution or banking company engaged in the type of business permitted to banks chartered by the State of Hawaii whose home office is located in a reciprocal region, a majority of whose deposits, together with the deposits of its subsidiaries and affiliates, are held in the reciprocal region, and which is not directly or indirectly owned or controlled by any holding company other than an

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Intra-Pacific bank holding company. H.R.S. §412:5-400. The term "reciprocal region" as used within the statute specifically includes the Territory of Guam. However, Guam is included as a reciprocal region only to the extent that its laws allow a bank that is a Hawaii financial institution or its holding company to establish an operating branch, or acquire the assets or control of, or merge with, a bank or bank holding company in the territory under terms and conditions substantially comparable to or less restrictive laws of the State of Hawaii concerning the commencement of the operations, acquisition, change of control and mergers of banks and bank holding companies.

Provided that a territory or country qualifies as a reciprocal region, an Intra-Pacific bank may establish or acquire one or more branches in the State of Hawaii if it obtains the prior approval of the Commissioner to operate such branch or branches. H.R.S. §412:5-401. In order to obtain such an approval, the applicant shall file an application which shall include copies of the applicant's articles of incorporation and by-laws, and a certificate of good standing in its home jurisdiction. The Commissioner of Banking of the State of Hawaii is required to determine that the laws of the reciprocal region allow a Hawaii bank or financial institution to establish and operate a branch in the territory or country where the applicant is domiciled, that the applicant's controlling persons are of good moral character and sound financial standing, its management is competent and sufficiently experienced, it is likely to comply with all applicable laws and its establishment will serve the public convenience and advantage.

It is respectfully submitted that the Intra-Pacific banking statutes adopted by the State of Hawaii specifically conform to the requirements of §30900(a) of the Government Code of Guam and thus constitute a "reciprocal arrangement" pursuant to which Hawaii banks and financial institutions may exceed the two branch limits otherwise provided for in Guam. A full and complete copy of Hawaii's banking legislation including the part on Intra-Pacific banking is attached to this letter as Exhibit "A" and incorporated herein by this reference. First Hawaiian Bank is not presently applying to open or operate an additional branch within the territory. It does, however, seek a declaratory ruling from the Banking Board that the Intra-Pacific bank legislation adopted by the State of Hawaii is precisely the type of arrangement

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envisioned by the Guam Legislature in adopting §30900(a) of the Government Code.

The Banking Board of the Territory of Guam clearly has the authority to make this determination under §30012 of the Government Code of Guam. That section states that the Board shall have the power to "implement by regulation any provision of this Title, and to define any term not defined in this Title." The Board, thus clearly has the authority to define the term "reciprocal arrangement" as said term is not otherwise defined within the code. In addition, the Board has the authority to adopt regulations implementing §30900 of the code. First Hawaiian Bank, therefore, respectfully requests a declaration that the Intra-Pacific banking provisions of the Hawaii Revised Statutes constitutes a reciprocal arrangement as that term is used in §30900(a) of the code and, if necessary, the adoption of a regulation by the Board so stating.

**II. Automatic Teller Machines (ATM) or Customer Bank Communication Terminals (CBCT) do not Constitute Branches under Guam's Banking Laws.**

The issue of whether ATMs constitute branches within Guam's Banking Laws has an unclear history. That history is recounted to some degree in an Attorney General's Memorandum (Opinion) dated November 12, 1986, reference number RT86-1628, a copy of which is attached hereto and incorporated herein by this reference as Exhibit "B". In that opinion, an assistant attorney general opined that ATMs constitute branches based upon Independent Bankers Association v. Smith, 534 F.2d 921 (D.C. Cir. 1976). That case, together with others cited in the opinion construed the MacFadden Act which regulates the branching of national banks. The opinion further discussed previous actions of Guam's Banking Board which had determined that ATMs were not branches. Specific reference was made to the minutes of the January 17, 1984, Guam Banking Board meeting held in conjunction with an application by Fort San Houston Bank. These minutes clearly indicate that it was the opinion of the Board that ATMs are not branches. The minutes of a March 19, 1985 meeting of the board apparently also addressed the issue in somewhat of an oblique fashion.

It is First Hawaiian Bank's position that the Banking Board had the authority to make the interpretation it made in 1984 pursuant to §30012(2) of the Government Code giving the Board the power to define any term not otherwise defined in

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the banking laws of the territory. The banking laws of this territory do not, as the Attorney General's Opinion pointed out, define the term "branch". The action of the Banking Board in approving the Fort Sam Houston application, therefore, was a proper exercise of the Board's rule or definition making authority under §30012(2). The Attorney General's Opinion made absolutely no mention of this power of the Board and thus overlooked the statutory basis for the Board's actions.

The Attorney General's Opinion, further, did not discuss other cases which reached conclusions contrary to that reached by the court in Independent Bankers Association v. Smith, supra. For example, in State of Oklahoma v. Bank of Oklahoma, 409 F.Supp. 71 (N.D. Okla. 1975). The District Court in Oklahoma reached the exact opposite holding reached by the District of Columbia Court of Appeals in Independent Bankers Association v. Smith, supra. The District Court in Oklahoma, faced with what it called the difficult task of applying a 50 year old statute to an industry undergoing great changes as a result of modern electronic technology, supported an interpretive ruling by the comptroller of the currency the CBCTs and ATMs were not branches. While it is true that there is conflicting authority on this point, First Hawaiian Bank submits that the Banking Board's 1984 determination was, in fact, the proper one. The Board's prior determination in the Fort Sam Houston case has been vindicated by subsequent occurrences.

The first subsequent occurrence which is plainly obvious to anyone utilize banking services today, is the increased use of electronic technology within the industry. On-line and off-line point of sale debit cards, increased use of credit cards, telephone bill paying services, ATM networks which can be accessed by cards issued by hundreds of institutions, and the like, all highlight the change in banking from an industry which used to be firmly rooted in physical structures located in definite places to one which can be accessed by a variety of computer and telecommunication facilities worldwide. The industry has undergone tremendous change since the introduction of Guam's banking statutes and it is the responsibility and function of the Banking Board to promulgate regulations and definitions which conform the statutes to these ever changing conditions.

Further developments have also highlighted the discriminatory nature of any determination that ATMs

To Mr. Joseph Duenas

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constitute "branches". As an example, 12 C.F.R. 556 was amended in 1992 to provide that a federal savings association may branch in any state of the United States and its territories, except as provided in the federal regulations. The regulation further provided that it preempted any state law purporting to address the subject of branching by a federal savings association. Thus, at this point in time, any federal savings association can come to Guam and branch irrespective of local restrictions. Even if ATMs are considered branches for purposes of Guam's banking law, the federal regulations would preempt that law. As long as compliance was had with the federal regulations, such an association could establish ATMS irrespective of any contrary Guam law. In addition, the acquisition of First Savings by First Federal Savings & Loan out of Hawaii owned in turn by the same holding company that owns the Bank of Hawaii have provided at least one Hawaii banking institution in Guam with the ability to establish ATMs in the same manner as a territorial bank could establish them. It is for this reason that such devices have been established in numerous locations throughout the island including most, if not all, Pay-Less stores. This places other state banks at an extreme competitive disadvantage and highlights the need for further definitions or rule making activities in this area by the Banking Board.

Unlike many other jurisdictions, Guam has not adopted regulations governing ATMs notwithstanding the reference in its 1984 minutes that it intended to do so. A treatise published in 1986 indicated that fourteen states, those being Connecticut, Georgia, Idaho, Maine, Michigan, Nebraska, New Mexico, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Washington and Wisconsin had statutes declaring the electronic terminals did not constitute branches. Six states had statutes declaring that such terminals did constitute branches. Those states were California, Delaware, Massachusetts, New Hampshire, New Mexico and New York. The New Mexico statute applied to off premises, unmanned terminals only. The electronic funds transfer statutes of 17 states were completely silent on the issue, those being Arkansas, Colorado, Hawaii, Illinois, Indiana, Kansas, Maryland, Minnesota, Mississippi, Montana, New Hampshire, Oregon, Tennessee, Texas, Virginia and West Virginia. Thirteen other states did not have electronic funds transfer enabling statutes at all. That is the category into which Guam must be deemed to fall. The treatise also states that whether or not a state labels the electronic terminals as branches, most

To Mr. Joseph Duenas

Date February 10, 1995

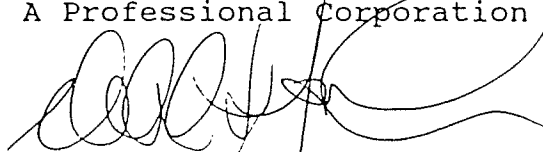
Page 7

states have enacted electronic funds transfer legislation imposing fewer restrictions upon terminals than those for branch banks. Guam, for whatever reason, has not kept up with the times and has not seen fit to deal definitively with this issue.

Since publication of that treatise, the situation has of course changed. We will update this information shortly and provide it to you. In the case of Hawaii, at least, its Code of Financial Institutions, portions of which are attached as Exhibit "C", clearly shows that ATMs are not considered branches. Section 412:3-503 sets forth the requirement for obtaining regulatory approval for opening or relocating principal offices, branches or agencies, but not ATMs. Section 412:3-506, relating to opening or relocating ATMs, contains no approval requirement, only a requirement of notice within thirty days after the ATM is opened or relocated.

In light of authorities and arguments stated above, First Hawaiian Bank respectfully requests a determination from the Banking Board that ATMs and CBCTs do not constitute branches under Guam's banking laws. Absent such a determination, First Hawaiian Bank respectfully submits that the Banking Board should seek comment and promulgate regulations governing the establishment and operation of ATMs and CBCTs within the territory so as to put all financial institutions operating in Guam on an equal competitive footing which will in turn benefit the consumers of banking services in Guam by making those services more convenient for all irrespective of the particular institution with which a consumer determines to do business.

Respectfully submitted,  
KLEMM, BLAIR, STERLING & JOHNSON  
A Professional Corporation



RICHARD L. JOHNSON  
Attorneys for First Hawaiian Bank

Enclosures

cc: Mr. John Lee

Exhibit GG

§ 412:5-306

BANKS AND FINANCIAL INSTITUTIONS

§ 412:5-400

(4) Of small business investment companies operating under the Federal Small Business Investment Act of 1958;

(5) Of bank service corporations, subject to the provisions of the Bank Service Corporation Act, 12 U.S.C. §§ 1861-1862;

(6) Of a corporation whose stock is acquired or purchased to save a loss on a preexisting debt secured by such stock; provided, that the stock shall be sold within twelve months of the date acquired or purchased, or within such further time as may be granted by the commissioner;

(7) Of an international banking corporation established pursuant to article 5A of this chapter or an Edge corporation or an Agreement corporation established or authorized pursuant to section 25a of the Federal Reserve Act, 12 U.S.C. § 631; and

(8) Of a captive insurance company incorporated under the laws of the United States, or any state or territory thereof, or the District of Columbia. [L 1993, c 350, pt of § 1]

U.S. Code. — The Federal Small Business Investment Act of 1958 (Act of Aug. 21, 1958, P.L. 85-699, 72 Stat. 689), referred to in paragraph (g)(4) of this section, is codified generally at 16 U.S.C. § 694a et seq.

#### § 412:5-306. Deposits made by banks.

A bank may deposit any of its funds with (1) a federal reserve bank or a federal home loan bank in any amount, or (2) another depository institution, provided that the net deposits in any one depository institution does not exceed twenty-five per cent of the bank's capital and surplus, unless otherwise permitted by federal law. In this section, "net deposits in any one depository institution" means the sum of (1) balances, other than demand balances, due from the institution and (2) demand balances due from the institution, less any demand balances due to that institution if that office of the institution in which the deposit is made is located in the United States. [L 1993, c 350, pt of § 1]

### PART IV. INTRA-PACIFIC BANKS

#### § 412:5-400. Definitions.

In this chapter:

"Intra-Pacific bank" is a depository institution or a banking company (1) engaged in the type of business permitted to banks chartered by this State, (2) whose home office is located in a reciprocal region, (3) a majority of whose deposits together with the deposits of its subsidiaries and affiliates are held in a reciprocal region, and (4) which is not directly or indirectly owned or controlled by any holding company other than an intra-Pacific bank holding company.

"Intra-Pacific bank holding company" is a holding company whose subsidiary banking companies hold a majority of the aggregate deposits in a reciprocal region.

§ 412:5-401

BANKS AND FINANCIAL INSTITUTIONS

§ 412:5-402

"Reciprocal region" means any one of the territories or countries of Guam, American Samoa, the Federated States of Micronesia, the Republic of Palau, the Commonwealth of the Northern Marianas, or the Republic of the Marshall Islands, only so long as:

- (1) Its economy is based on the United States dollar; and
- (2) Its laws allow a bank that is a Hawaii financial institution or its holding company to establish and operate a branch or acquire the assets or control of or merge with a bank or bank holding company in that territory or country, under terms and conditions which are substantially comparable to or less restrictive than the laws of this State concerning the commencement of operations, acquisitions, change of control and mergers of banks and bank holding companies. [L 1993, c 350, pt of § 1]

§ 412:5-401. Required approval.

No intra-Pacific bank or intra-Pacific bank holding company may engage in business in this State, except in one of the following three forms:

- (1) Branch. An intra-Pacific bank may establish or acquire one or more branches in this State if it obtains the prior approval of the commissioner under this chapter to operate such branch or branches;
- (2) Subsidiary of an intra-Pacific bank. An intra-Pacific bank may establish or acquire, directly or indirectly, the assets of or control over or merge with a bank that is a Hawaii financial institution or its holding company if the intra-Pacific bank obtains the prior approval of the commissioner and:
  - (A) Complies with the requirements of this chapter as to mergers and acquisitions; and
  - (B) Obtains a charter under this chapter to engage in business as a bank;
- (3) Subsidiary of an intra-Pacific bank holding company. An intra-Pacific bank holding company may establish or acquire, directly or indirectly, the assets of or control over or merge with a bank that is a Hawaiian financial institution or acquire control over or merge with, its holding company if the intra-Pacific bank holding company obtains the prior approval of the commissioner and:
  - (A) Complies with the requirements of this chapter as to mergers and acquisitions; and
  - (B) Obtains a charter under this chapter to engage in business as a bank. [L 1993, c 350, pt of § 1]

§ 412:5-402. Procedure to obtain approval.

(a) In order to obtain prior approval of the commissioner, the applicant shall file the application required by and comply with the provisions of article 3. In addition to any information required under article 3, the application shall contain the following information:

- (1) The applicant's articles of incorporation and bylaws, or other basic governing documents; and



## § 412:5-403

## BANKS AND FINANCIAL INSTITUTIONS

## § 412:5-405

(2) A certificate from the appropriate regulatory body where its home office is located, indicating that the applicant is in good standing in that jurisdiction.

(b) In approving any transaction under this part, the commissioner shall consider in addition to the grounds for approval contained in article 3, the following:

(1) The laws of the reciprocal region allow a bank that is a Hawaii financial institution or its holding company to establish and operate a branch or acquire the assets or control of or merge with a bank or bank holding company in that territory or country, under terms and conditions which are substantially comparable to or less restrictive than the laws of this State concerning the commencement of operations, acquisitions, change of control and mergers of banks and bank holding companies; and

(2) The applicant's controlling persons are of good moral character and sound financial standing, its management is competent and sufficiently experienced, it is likely to comply with all applicable laws, and its establishment will serve the public convenience and advantage.

(c) Where an intra-Pacific bank branch is being established, the minimum number and qualifications of persons serving on the board of directors of an intra-Pacific bank shall be established by the applicable law of its home office. [L 1993, c 350; pt of § 1]

§ 412:5-403. Examination and regulation.

Every intra-Pacific bank shall be subject to examination and regulation by the commissioner, and shall pay fees and costs to the same extent as any bank chartered under the laws of this State. [L 1993, c 350, pt of § 1]

§ 412:5-404. Termination of authority of intra-Pacific bank.

The authority of any intra-Pacific bank to engage in the business of a bank in this State pursuant to this part shall automatically terminate at such time as it no longer meets the definition of an intra-Pacific bank under section 412:5-400. In such case it shall:

(1) Immediately notify the commissioner of that circumstance;

(2) Cease accepting deposits in this State, and cease making loans and investments in this State;

(3) Within thirty days, adopt a plan for the orderly liquidation of its assets, or its orderly divestiture pursuant to this chapter, and submit such plan to the commissioner; and

(4) Take such other measures and actions as shall be directed by the commissioner. [L 1993, c 350, pt of § 1]

§ 412:5-405. Termination of authority of intra-Pacific bank holding company.

(a) A financial institution holding company ceases to be an intra-Pacific bank holding company at such time as it no longer meets the definition of an intra-Pacific bank holding company under section 412:5-400.

§ 412:5-406

BANKS AND FINANCIAL INSTITUTIONS

§ 412:5-407

(b) A financial institution holding company which loses its status as an intra-Pacific bank holding company shall immediately divest itself of its direct or indirect control of any financial institution subsidiary chartered or approved by this State. Failure to accomplish such divestiture within thirty days after termination of its intra-Pacific bank holding company status shall be grounds for the suspension or revocation of the financial institution subsidiary's charter or approval. [L 1993, c 350, pt of § 1]

§ 412:5-406. Paid-in capital and surplus.

Every intra-Pacific bank engaged in banking in this State shall at all times have paid-in capital and surplus of not less than the minimum amount provided by this chapter for banks which are Hawaii financial institutions. [L 1993, c 350, pt of § 1]

§ 412:5-407. Same powers and duties as banks.

An intra-Pacific bank engaged in banking in this State shall have all powers and duties allowed by and imposed on all banks chartered by this State, including without limitation the authority to accept deposits, make loans, borrow money and make investments, and the duty to file reports with the commissioner and insure its deposits in this State with a federal agency. An intra-Pacific bank shall also be subject to and liable for all fines and penalties provided by this chapter. [L 1993, c 350, pt of § 1]

## ARTICLE 5A. INTERNATIONAL AND FOREIGN BANKING

**Effective date.** — This article became effective July 1, 1993.

**Cross references.** — As to foreign business corporations, see §§ 415-106 to 415-131.

### OPINIONS OF ATTORNEY GENERAL

**Foreign bank or trust company had to be certificated under former chapter.** — There was no rule of statutory construction to support the contention that the removal of statutory limitations on foreign banks by the 1988 repeal of former § 403-16 constituted the specific statutory empowerment necessary to allow an out-of-state institution to perform acts as a corporate indenture trustee in this State. The proposed activities of a foreign financial institution to act in a fiduciary capacity and exercise fiduciary powers in Hawaii as a corporate indenture trustee for a variety of debt financing instruments would have exceeded the authorization in existence until 1988 and could not then be conducted in the absence of any statutory authority; thus, such financial insti-

tution could not qualify to engage in trust activities under former § 403-33, and had to obtain a license under former chapter 406 in order to lawfully do the business it proposed to do in Hawaii. Op. Att'y Gen. No. 90-5 (1990).

**Foreign banks may not solicit deposits through local newspaper advertisements nor through direct mailing.** Institutional advertising is permissible. Op. Att'y Gen. No. 60-93 (1960).

**Branch offices of foreign association in Hawaii on or before May 16, 1941.** — Former chapter 407 permitted a foreign savings and loan association in Hawaii on or before May 16, 1941, to operate branches in addition to its original local office. Op. Att'y Gen. No. 65-25 (1965).

BEFORE THE BANKING BOARD  
OF THE TERRITORY OF GUAM

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FIRST HAWAIIAN BANK'S POSITION ) NO. \_\_\_\_\_  
PAPER IN SUPPORT OF THE BANKING )  
BOARD'S PROPOSAL )

COMES NOW FIRST HAWAIIAN BANK ("FHB") and files this its position paper in support of the BANKING BOARD OF GUAM'S (the "Banking Board") of the Department of Revenue and Taxation of the Government of Guam, following proposals for adoption:

1. Electronic banking has created and will continue to create additional means for banks and other financial institutions to expand the scope of their operations;

2. Electronic banking, such as remote network ATMs, debit cards, point of sale terminals, automated clearing house transactions, check and credit verification systems, home and office banking terminals, wire transfers and other electronic payments, should be defined and regulated within the banking laws of the Territory of Guam.

3. Remote network automated teller machines should be defined as not being "branches" under Guam's banking laws for purposes of the two-branch limitation found in Guam Government Code § 30900.

4. Automated teller machines should be defined as an unmanned, freestanding electronic information processing device which may be located separate and apart from a financial institution's principal office, branch or detached

facility, which uses either the direct transmission of electronic impulses to a financial institution or the recording of electronic impulses or other indicia of a transaction for delayed transmission to a financial institution in order to perform financial transactions. Financial transactions mean cash withdrawals, deposits, account transfers, payments from deposits, loan or thrift accounts, disbursements under preauthorized credit agreements or loan payments and other similar routine financial transactions initiated by an account holder.

1. IMPROVEMENT OF CONSUMER SERVICES

FHB supports the Banking Board's efforts to provide the banking consumers of Guam with modern, convenient and competitive banking services. In addition to the issues and findings set forth in the Banking Board's proposal, dated June 29, 1995, a copy of which is attached hereto as Exhibit "A", FHB submits that another basic reason for regulation of banking by the Banking Board is the promotion of competitive and convenient banking services to be provided to the consumers of Guam.

FHB requested by its letter, dated February 10, 1995, for a declaratory ruling on whether or not remote ATMs were to be considered branches under Guam's banking law. FHB requested this declaratory ruling to enable it to serve its customers with the most up-to-date banking services which modern technology can provide. Because of the Territory of Guam's

limitation upon branch banks, the consumers of Guam have not been given the full opportunity to use ATM services which consumers in the U.S. mainland, other territories and abroad take for granted.

The convenience and versatility an ATM provides for the consumer's benefit is undisputed. Using an ATM, the consumer may access their checking or savings accounts through ATMs located at a bank or savings and loan other than their own financial institution, including public places such as shopping malls and retail outlets, and other locations. However, Guam's consumers have not been afforded reasonable access to current banking technology (including customer or bank communication terminals ("CBCT")), ATMs and automatic teller networks, depending upon which banking institution they choose. For example, local banks in Guam have advertised their numerous remote ATM locations and the convenient service available at each location. FHB submits that local banks in Guam have recognized the extraordinary benefits they can bestow upon their customers through an ATM network and have been providing such services through ATMs located at grocery stores, convenience stores, shopping malls and other locations. FHB submits that it is in the public interest for all banks in the Territory of Guam to be allowed to establish remote ATMs as allowed by the Banking Board for the benefit of the consumers of Guam.

The modern trend in banking emphasizes increased technology and reduced restriction upon the banking industry's access to the consumer. Banking is no longer a "brick and mortar" business, but rather a "high-tech" electronic business. The services and convenience that may be provided to the consumers of Guam by remote ATMs is common knowledge. FHB supports the Banking Board's efforts to provide such modern and consumer-friendly services through remote ATMs to the people of the Territory of Guam.

2. AUTOMATIC TELLER MACHINES (ATM) OR CUSTOMER  
BANK COMMUNICATION TERMINALS (CBCT) DO NOT  
CONSTITUTE BRANCHES UNDER GUAM'S BANKING LAWS

A. HISTORICAL PERSPECTIVE IN GUAM

The issue of whether ATMs constitute branches within Guam's Banking Laws has been clarified by the recent Attorney General's Opinion (the "Opinion"), dated April 21, 1995, a copy of which is attached hereto as Exhibit "B". This Opinion reversed the previous 1986 opinion of the Attorney General (holding that an ATM is a branch) and held that the 1986 opinion was provided as guidance only to the Banking Board and was not meant to "tie the Board's hands" in terms of defining branch banks to include or exclude ATMs and CBCTs. In addition, the Opinion expressly affirms that it is a matter for the Banking Board to decide whether or not the terms ATM or CBCT are included within the definition of branch banks.

**B. INHERENT AUTHORITY OF THE BANKING BOARD**

FHB agrees with the Attorney General's Office that the Banking Board has the authority to adopt its proposal that an ATM is not within the definition of "branch bank," pursuant to §30012(2) of the Government Code giving the Board the power to define any term not otherwise defined in the banking laws of the territory. The banking laws of this territory do not, as the Opinion points out, define the term "branch" or "branch bank." FHB submits that the Banking Board should allow all consumers of Guam reasonable and convenient access to modern banking technology, such as remote ATMs.

The Banking Board has the authority to define the terms pursuant to which territorial and national banks conduct their branch and ATM banking business. § 30012(2) GUAM GOV'T CODE. On this point, FHB submits that the Banking Board's 1984 determination was, in fact, the proper one. The Board's prior determination (that ATMs are not branches) in the Fort Sam Houston case has been vindicated by subsequent occurrences.

**C. MODERN TREND**

The use of electronic technology within the banking industry today is an important part of consumer services. On-line and off-line point of sale debit cards, increased use of credit cards, telephone bill paying services, ATM networks which can be accessed by cards issued by hundreds of institutions, and the like, all highlight the change in banking from an industry which used to be firmly rooted in

physical structures located in definite places to one which can be accessed by a variety of computer and telecommunication facilities worldwide. These changes highlight the banks' efforts to provide convenient, cost-efficient services to their consumers. The industry has undergone tremendous change since the introduction of Guam's banking statutes and it is the responsibility and function of the Banking Board to promulgate regulations and definitions which conform the statutes to these ever changing conditions. FHB will submit additional testimony and materials (if such be needed) at the public hearing to document this electronic age of banking.

Consumers today are travelers upon an information highway accessed by their personal computers. Every day a greater number of consumers purchase computers to access information data bases through the Internet and other communication systems. Consumers may use their personal computers to monitor home finances, educate their children, conduct family correspondence and a myriad of other applications. Consumers at many banks now or in the near future will also be able to use their personal computers to access their bank accounts, to transfer funds and to pay bills. Many banks also offer some of these functions through telephone transfer services, in which the consumer's phone is in effect a computer terminal. The Banking Board would certainly not deem a home personal computer or a telephone to be a "branch." FHB submits that there is no compelling reason to define an ATM as a "branch,"



because its functions are so similar to computers and phones electronically linked to a bank. FHB supports the Banking Board's efforts to remove the barriers blocking Guam's consumers from access to ATMs.

FHB believes that the banks who best understand customers' needs in this technological age will be successful in providing convenient and economic services to satisfy their needs. There is an unparalleled change in the manner in which financial services are being delivered to consumers today. The Banking Board now has the opportunity to allow such services to be provided to the consumers of Guam. The banking institutions in Guam have recognized this fact and it is for this reason that such remote ATMs have been established in numerous locations throughout the island.

The establishment of remote ATMs is also possible as a result of the removal of restrictions upon banking services provided by savings and loan associations. Specifically, 12 C.F.R. 556 was amended in 1992 to provide that a federal savings and loan association may branch in any state of the United States and its territories, except as provided in the federal regulations. The regulation further provided that it preempted any state law purporting to address the subject of branching by a federal savings and loan association. Thus, at this point in time, any federal savings and loan association can come to Guam and branch irrespective of local restrictions. Even if ATMs are considered branches for

purposes of Guam's banking law, the federal regulations would preempt that law. As long as compliance was had with the federal regulations, such an association could establish ATMs irrespective of any contrary Guam law. An example of this type of arrangement is the acquisition of a savings and loan association by a holding company that owns both banks and savings and loan associations. This type of acquisition has provided the opportunity to at least one banking institution in Guam to use ATMs owned by a savings and loan to establish ATMs with no access charge to the customers.

D. GUAM'S OPPORTUNITY TO ADOPT THE MODERN TREND

Unlike many other jurisdictions, Guam has not adopted regulations governing ATMs notwithstanding the reference in its 1984 minutes that it intended to do so. Subject to updated information, as of March 1995, thirty-seven states and the Commonwealth of Puerto Rico do not consider electronic terminals, such as ATMs, as bank branches. Eight (8) states have statutes declaring that such terminals constitute branches. Those states are California, Delaware, Mississippi, Missouri, New Mexico, Ohio, Pennsylvania and Vermont. The New Mexico statute applies to off premises, unmanned terminals only. The banking statutes of seven states are completely silent on the issue, those being Arizona, Colorado, Oklahoma, Tennessee, Texas, including the District of Columbia and the Virgin Islands. This is the category into which Guam must be deemed to fall. Whether or not the foregoing states have

labeled electronic terminals as branches, the majority of states have enacted electronic funds transfer legislation imposing fewer restrictions upon terminals than those for branch banks. Guam, for whatever reason, has not kept up with the times and has not seen fit to deal definitively with this issue. The regulation of ATMs by the states is no longer in a state of flux. The majority trend is that an ATM does not constitute a "branch bank."

### 3. CONCLUSION

In light of authorities and arguments stated above, FHB respectfully requests that the Banking Board adopt its proposal and define that ATMs and CBCTs do not constitute branches under Guam's banking laws and the issuance of a definition of the terms "branch" or "branch bank" or "branch bank" and "automatic teller machine." Absent such a determination, FHB respectfully submits that the Banking Board should seek comment and promulgate regulations governing the establishment and operation of ATMs and CBCTs within the territory so as to put all financial institutions operating in Guam on an equal competitive footing with respect to this service or convenience which will in turn benefit the consumers of banking services in Guam by making those services

more convenient for all irrespective of the particular institution with which a consumer determines to do business.

Respectfully submitted this \_\_\_\_\_ day of August, 1995.

**FIRST HAWAIIAN BANK**

By \_\_\_\_\_  
**JOHN K. LEE**  
Senior Vice President and  
Regional Supervisor

ATTACHMENTS: Exhibits "A" & "B"

Remote Network Automated Teller Machines  
(Remote ATM's)

Authority:

The authority over this issue is based on Title XXXI, GCA, Article II Section 30010.(a) "There is hereby established within the Division of Insurance, Securities and Banking of the Department of Revenue and Taxation an Office of Commissioner of Banking Which shall be charged with supervision of banking activities in Guam ...", Section 30011.(a) "There is hereby established in the Division a Banking Board which shall consist of seven (7) members including the Commissioner who shall be Chairman.", and Section 30012.(a) (2) "Implement by regulation any provision of this Title, and to define any term not defined in this Title."

Question:

Letter from First Hawaiian Bank (dated February 10th, 1995) requesting a declaratory ruling on whether Remote Atm's are considered "branches" under Guam's banking law for purposes of the two branch limitation found in Section 30900. GCA.

Issues and Findings:

1) The most basic reason for regulation of banking is depositor protection. Banking poses a number of unique problems for customers and creditors. Many bank customers use a bank primarily when writing and cashing checks and carrying out other financial transactions. To do so, these bank customers must usually maintain a deposit account. As a consequence, bank customers assume the role of bank creditors and become linked with the fortunes of their bank. This contrasts with most other businesses, where customers simply pay for goods and/or services and never become creditors of the business.

Apart from just being concerned about individual depositors, banking regulation must also seek to provide a stable monetary framework for making payments. With the vast volume of transactions conducted every day by individuals and businesses, a safe and acceptable means of payment is critical to the health of our economy. Another aspect of a good banking system is that customers are provided quality services at competitive prices. One of the purposes of bank regulation, therefore, is to create a regulatory framework that encourages efficiency and competition and ensures an adequate level of banking services throughout the economy.

Electronic banking has created another means for banks to expand the scope of their operations. In terms of transaction services, the development of automated teller machines (ATM's) has been a major element in furthering electronic banking. The majority of states now draw a distinction between electronic off-premises facilities; such as remote ATM's and regular branch offices. Because electronic facilities typically involve less of an investment than branch

offices and only offer routine transaction services, most states have not imposed lengthy approval procedures on such facilities or based capital requirements on the number of facilities.

2) Attorney General Opinion RT 86-1628 ruled that ATM's are considered as "branches" under several non-Guam legal decisions, but that there is no statutory, regulatory or case law in Guam on the issue. Said opinion was not based on any Guam law or regulation; but was based on several cases from other jurisdictions, stating in part of the opinion that... "For the time being, ATM's should be considered branches, .....". Further said opinion acknowledged that the Guam Banking Board had in a request by the Fort Sam Houston Bank "decided that solely for purposes of Fort Sam Houston's application, ATM's were not branches.". This appears in the minutes of the January 17, 1984 Guam Banking Board Minutes, on page 4: "After discussions, the Board ruled that in the absence of express language in the Banking Code, it is the opinion of the Board that ATM's are not branches, however, the Board is in the process of proposing regulations for clarification ....". The minutes of the March 19, 1985 meeting address this same issue: "The Automatic Transfer (Teller) Machine was discussed and it was pointed out that it appears from the minutes of the previous meeting . . . that the Board approved it as not a branch bank. It was pointed out that it was only to accommodate Fort Sam Houston Bank and that a case-by-case should be considered based on the machines capability and limitations.".

3) The Attorney General has issued an information memorandum dated April 21, 1995. That memorandum revised the previous 1986 opinion of the Attorney General that ruled that ATM's should be considered as bank branches for the time being under non-Guam case law. In his latest memorandum, the Attorney General removed from the 1986 opinion the language stating that ATM's should be considered as bank branches for the time being under non-Guam case law. Instead, the Attorney General has indicated unequivocally that it is the Banking Board that has the power to make the decision of whether ATM's are bank branches.

4) One argument which seems to indicate that these remote network ATM's are not branches is that these machines are not bank specific. For example, it is possible to take your Otto ATM card issued by First Hawaiian Bank to its customers and use this Otto card at a Bank of Guam Pacific Express ATM to transfer money from a FHB savings account to a FHB checking account (this is a deposit), withdraw money from a FHB savings or checking account (this is a withdrawal), obtain a cash advance from a FHB credit line account (this is a loan), and inquire about a FHB bank account balance. Given that all these First Hawaiian Bank transactions can be done at a Bank of Guam Pacific Express ATM, the question is if these machines are branches, whose branch is this ATM? Bank of Guam, because they own the machine or First Hawaiian Bank because all the transactions conducted are First Hawaiian Bank transaction? In a traditional brick and mortar branch, for example, a First Hawaiian Bank customer would be unable to transact First Hawaiian Bank business in the Bank of Guam Agana Branch. Such a customer would be told to go to the nearest FHB branch to do his business. There are many other technological advances in electronic banking that may further redefine banking in the future such as how would we treat home banking (people with pc computers will in the near future be able access their bank account from home). The electronic advancements seem to

indicate that these machines are consumer devices which allow greater access to these consumer's bank accounts. Additionally since these remote network ATM's perform routine transaction services, and they are called automated TELLER machines, several states view these machines as just that "TELLERS" and have regulated these remote ATM's by requiring that these remote ATM's be assigned and under the direct control of a specific branch of the bank that owns the remote ATM.

#### Initial Determinations:

In view of the Issues and Findings, the following Initial Determinations are hereby proposed for adoption by the Banking Board after a hearing:

- 1) Electronic banking has created and will continue to create additional means for bank and other financial institutions to expand the scope of their operations.
- 2) Electronic banking such as Remote Network ATM's, debit cards, point of sale terminals, automated clearinghouse transactions, check and credit verification systems, home and office banking terminals, wire transfers and other electronic payments, should be defined and regulated within the banking laws of the Territory of Guam.
- 3) Remote Network Automated Teller Machines should be defined as not being "branches" under Guam's Banking Laws for purposes of the two branch limitation found in Section 30900. GCA.
- 4) Automated Teller Machines should be defined as an unmanned free-standing electronic information processing device which may be located separate and apart from a financial institution's principal office, branch or detached facility, which uses either the direct transmission of electronic impulses to a financial institution or the recording of electronic impulses or other indicia of a transaction for delayed transmission to a financial institution in order to perform financial transactions. Financial Transactions mean cash withdrawals, deposits, account transfers, payments from deposit, loan or thrift accounts, disbursements under preauthorized credit agreement or loan payments and other similar routine financial transactions initiated by an account holder.
- 5) The Banking Board shall hold a hearing on August 16, 1995, for the purpose of issuing Final Determinations and Rules and Regulations.

  
\_\_\_\_\_  
JOSEPH T. DUENAS, Chairman

\_\_\_\_\_  
DAN WEBB, Member

\_\_\_\_\_  
DANIEL L. PEREZ, Member

  
\_\_\_\_\_  
MARJORIE Y. ROBATO, Member

\_\_\_\_\_  
RASHID HABIB, Member

  
\_\_\_\_\_  
LAURA-LYNN DACANAY, Member

\_\_\_\_\_  
LOURDES TORRE, Member

DATE: JUNE 29, 1995



Exhibit II



GOVERNMENT OF GUAM  
AGANA, GUAM 96910

April 21, 1995

Memorandum (Informational) Ref: DRT 95-0486

To: Commissioner of Banking

From: Attorney General

Subject: Branch Banking and ATMs

This office is in receipt of your request of April 14, 1995, in which you requested the assistance of this office regarding the following:

REQUEST NO. 1: Does the Hawaii Revised Statutes §412:5-400, et seq., constitute a "reciprocal arrangement" for the purposes of Government Code §30900?

ANSWER: See discussion.

REQUEST NO. 2: Under Guam Law are Automated Teller Machines (ATMs) and Customer Bank Communication Terminals (CBCTs) "branch" banks?

ANSWER: Case law strongly suggests that ATMs and CBCTs that are neither owned nor rented by a bank are not "branches" of that bank. However, if the ATM or CBCT is owned or rented by a bank, then it is an open question as to whether or not such ATM or CBCT is a branch. See discussion.

STATEMENT OF FACTS:

In November 1986 this office issued an opinion (RT 86-1628) which indicated that the Attorney General believed the Guam banking law considered CBCTs and ATMs to be "branch" banks. The facts underlying that opinion were: (a) Guam law restricts non-territorial banks to two branches; (b) the Bank of Hawaii (a non-territorial bank) already had two branches; (c) the Bank of Hawaii wanted to install ATMs at various locations separate from its main and branch sites (ie, shopping centers); and (d) Guam law was silent on whether ATMs were considered branch banks. The opinion provided, in part:



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April 21, 1995  
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In conclusion, there is no law controlling the situation on Guam namely no statute, no case law, and no statutory definition of "branch". However, cases which dealt with similar issues at both the state and federal level have determined that ATMs are indeed branches. If the Banking Commissioner were to hold to the contrary, he should expect these same cases to be mentioned in arguments against this position.

In February 1995 First Hawaiian Bank's representatives wrote to the Commissioner of Banking in support of First Hawaiian's application to install ATMs at various locations on Guam. As was the case with the Bank of Hawaii, above, First Hawaiian Bank already has two (2) branches. Thus, if ATMs continue to be considered branch banks, First Hawaiian Bank could not install the ATMs and still stay within the required two branch limit.

In April 1995 the Legal Counsel for the Department of Revenue and Taxation (DRT) sent the Director of Revenue (Commissioner of Banking) a memorandum concerning the above mentioned letter from the First Hawaiian Bank's representative. The lengthy memorandum indicated that the Banking Board was authorized to review and act upon the request of First Hawaiian Bank, but that the matter should be approached judiciously. The DRT Legal Counsel also submitted to the DRT Director a Position Paper concerning the First Hawaiian Bank application to install ATMs. In that paper, the Legal Counsel indicated, in part:

The Banking Board has started the review of this question. We have requested additional data from other jurisdictions and we intend to address this issue from the perspective of a well thought out, well informed, and deliberated decision. We believe that the Attorney General should be asked to revisit his earlier opinion and either seek to answer this question based on the data both locally and externally available acknowledging the tremendous change in traditional banking concepts and the impact of the electronic revolution which has occurred, or defer to the banking board on this matter.

In mid-April 1995 the Banking Commissioner provided this office with all the information stated above and requested that we review our opinion RT 86-1628 as suggested immediately above.

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DISCUSSION OF REQUEST NO. 1:

Does the Hawaii Revised Statutes §412:5-400, et seq., constitute a "reciprocal arrangement" for the purposes of Government Code §30900?

The Guam law that underpins this question provides, in part:

§ 30900. Branch banks. (a) A bank engaging in the banking business on Guam pursuant to the provisions of this Title may operate one or more branch banks within Guam, subject to the approval of the banking board and upon demonstrating to the Board that (1) there is sufficient need for such branch, and (2) that the proposed branch has reasonable opportunity to be economically self-sustaining; provided, however, that after the effective date of this Act, no state or national bank may establish more than two branches on Guam, except as may be provided by reciprocal arrangement with a state or territory of the United States, and those state or national banks licensed to engage in banking in Guam prior to the effective date of this Act and having more than two branch banks in Guam prior thereto may maintain such additional branch banks but shall not establish any additional branch banks. The application to establish such branch bank shall be considered by the Board after public hearing at which all interested parties may present their reasons and any evidence in favor or against the establishment of said branch bank.

§ 30011. Banking Board. (a) There is hereby established in the Division [the Department of Revenue and Taxation] a Banking Board which shall consist of seven (7) members including the Commissioner [Director of DRT] who shall be Chairman.

§ 30012. Powers of Board and Commissioner: (a) In addition to other powers conferred by this Title, the Board shall have power to:

(1) Regulate its own procedure and practice.

(2) Implement by regulation any provision of this Title, and to define any term not defined in this Title.

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- (3) Restrict the withdrawal of deposits from all or one or more territorial banks where the Board finds that extraordinary circumstances make such restrictions necessary for the proper protection of depositors in the affected institution.
- (4) Authorize a territorial bank until the close of the next regular session of the Legislature (a) to participate in a public agency hereafter created under the laws of Guam or of the United States, the purpose of which is to afford advantages or safeguards to banks or to depositors and to comply with all requirements and conditions imposed upon such participants; and (b) to engage in any banking activity in which banks subject to the jurisdiction of the Federal government may hereafter be authorized by Federal legislation to engage.
- (5) Order the holder of shares in a territorial bank to refrain from voting said shares on any matter if it finds that such order is necessary to protect the institution against reckless, incompetent or careless management, safeguard the funds of depositors, or prevent the wilful violation of this Title or of any lawful rule or order issued thereunder. In such a case the shares of such a holder shall not be counted in determining the existence of a quorum or a percentage of the outstanding shares necessary to take any corporate action.
- (6) Order any person to cease violating a provision of this Title or a lawful regulation issued thereunder or to cease engaging in any unsound banking practice.
- (7) Affirm, modify, reverse or stay the enforcement of any order or ruling of the Commissioner.
- (8) Establish such rules and regulations as may be necessary for the operation and management of savings banks.
  - (b) The Board may remove a director, trustee, officer or employee of territorial bank who becomes ineligible to hold his position or, who after receipt of an order to cease under the preceding subsection, violates this Title or a lawful regulation or order issued thereunder, or is dishonest or who is reckless or grossly incompetent in the conduct of banking business. It shall be a criminal offense against this Title for any such

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person, after receipt of a removal order, to perform any duty or exercise any power of any territorial bank for a period of three (3) years. A removal order shall specify the grounds thereof and copy of the order shall be sent to the bank concerned. The Board may recommend removal of a director, trustee, officer or employee of a national or state bank.

- (c) Notice and hearing shall be provided in advance of any action taken by the Board except the formulation of regulations of general application. In cases involving extraordinary circumstances requiring immediate action the Board may take such action but shall promptly a subsequent hearing upon application to rescind the action taken.
- (d) Members of the Board shall have access to any record of the Division, with reference to banking matters.
- (e) In addition to other powers conferred by this Title, the Commission shall have power to require a bank to:
  - (1) Maintain its accounts in accordance with such regulations as he may prescribe having regard to the size of the organization.
  - (2) Observe methods and standards which he may prescribe for determining the value of various types of assets.
  - (3) Charge off the whole or part of an asset which at the time of the Commissioner's action could not lawfully be acquired.
  - (4) Write down an asset to its market value.
  - (5) Record liens and other interests in property.
  - (6) Obtain a financial statement from a prospective borrower to the extent that the bank can do so.
  - (7) Obtain insurance against damage to real estate taken as security.

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- (8) Search, or obtain insurance for, the title to real estate taken as security.
- (9) Maintain adequate insurance against such other risks as the Commissioner may determine to be necessary and appropriate for the protection of depositors and the public.
- (f) The Commissioner and the Board shall have the power to subpoena witnesses, compel their attendance, require the production of evidence, administer an oath and examine any person under oath in connection with any subject relating to a duty imposed upon or a power vested in the Commissioner or the Board. These powers shall be enforced by the District Court of Guam. An individual who claims privilege against self incrimination may nevertheless be compelled to testify, but he shall not be prosecuted or subjected to a penalty or forfeiture on account of anything concerning which he has testified under such compulsion, except for perjury committed in his testimony. Removal from an office or employment with a territorial bank is not the imposition of a penalty or forfeiture.
- (g) The Board may, on petition of any interested person and after hearing, issue a declaratory order with respect to the applicability to any person, property or state of facts of this Title or a rule issued by the Board. The order shall bind the Board and all parties to proceeding on the state of facts alleged unless it is modified or reversed by a court having jurisdiction. A declaratory order may be reviewed and enforced in the same manner as other orders of the Board, but the refusal to issue a declaratory order shall not be reviewable.
- (h) No person shall be subjected to any civil or criminal liability for any act or omission to act in good faith in reliance upon a subsisting order, regulation or definition of the Board notwithstanding a subsequent decision by a court invalidating the order, regulation or definition.  
(emphasis supplied)

Memo to Commissioner of Banking  
April 21, 1995  
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The answer to whether or not the above stated Hawaii Revised Statutes §412:5-400, et seq. is clearly a matter for the Banking Board to decide. First, the term "reciprocal agreement" as set out above is a term of art which is most appropriately defined by the Banking Board. Further, Guam's party to such a reciprocal arrangement would have to be the Banking Board by virtue of its responsibility to "Implement by regulation any provision of this Title ..."

#### DISCUSSION OF REQUEST NO. 2:

Under Guam Law are Automated Teller Machines (ATMs) and Customer Bank Communication Terminals (CBCTs) "branch" banks?

As in Request No. 1, the Government Code sections set out above underpin our answers here.

First, it is still our view that the Banking Board is charged with the responsibility to "... define any term not defined in this Title ...". The terms Automated Teller Machine (ATM) and Customer Bank Communication Terminal (CBCT) are not defined in Guam law, and thus whether or not those terms are defined to be branch banks is ultimately a matter for the Banking Board to decide. Via our 1986 opinion on this matter, this office did conclude, based on the existing legal precedents, that ATMs and CBCTs could be reasonably defined to be branch banks, and that to do otherwise might be going against the greater weight of legal authority on the subject.

It must be kept in mind that our 1986 opinion was based on the assumption that the ATM or CBCT in question was owned or rented by a single bank. In Independent Bankers Association of New York State, Inc. v. Marine Midland Bank, 757 F. 2d 453 (2nd Cir. 1985), the U.S. Court of Appeals declared that ATMs owned and operated by third parties (not a particular bank) were not branches of the bank. That is, if an ATM or CBCT is owned and operated by a company other than a particular bank and if such ATM or CBCT is useable to transact business with several different banks, then such ATM or CBCT would not be considered a branch of a bank. If, on the other hand, a particular bank owns or rents an ATM or CBCT and represents it as its own machine, such ATM or CBCT may well be considered a branch of that bank.

Memo to Commissioner of Banking

April 21, 1995

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The research done by the DRT Legal Counsel and our own research appears to have found no new legal authority that would cause us to alter our earlier position with respect to bank owned or rented ATMs or CBCTs. Granted that in the intervening years since our 1986 opinion the use of electronic banking has become more widespread, but no new case or statutory law has come down to reinterpret bank owned or rented ATMs and CBCTs as not being branch banks.

We issued our 1986 opinion only as guidance to the Banking Board and it was not meant to "tie the Board's hands" in terms of defining branch banks to include or exclude ATMs and CBCTs. Upon reflection, it might have been better if we had done as indicated in the above mentioned DRT Legal Counsel's Position Paper, "... perhaps the AG should have deferred to the banking board rather than give an opinion."

Thus, via this memorandum, we are revising our opinion RT 86-1628 to: (1) clarify that our advice was predicated on the bank owning or renting the ATMs or CBCTs in question, and (2) remove our admonition to the Banking Commissioner:

If the Banking Commissioner were to hold to the contrary, he should expect these same cases to be mentioned in arguments against this position.

Inasmuch as there is no definitive legal interpretation answer to this particular question, we would advise the Banking Board to: (1) work with the DRT Legal Counsel to review and revise, if appropriate, the definition of "branch banks" to definitely include or exclude ATMs and CBCTs, or (2) to introduce legislation which will explicitly define the terms.

This memorandum is informational only and is not issued as an opinion of the Attorney General. For a faster response to any inquiry about this memorandum, please use the reference number shown.



CALVIN E. HOLLOWAY, SR.



September 6, 1995

Committee on Ways & Means  
The Honorable Francis E. Santos, Chairperson  
Twenty Third Guam Legislature  
155 Hesler Street  
Agana, Guam 96910

RE: **Bill No. 349, An Act to Add Subsection (c) to Section 30900,  
Government Code (Guam Banking Code) to Define "Branch" Banking**

Dear Chairperson Santos and Members of the Committee on Ways & Means:

My name is Richard Dahl, and I am the President and Chief Operating Officer for Bancorp Hawaii, Inc. and Bank of Hawaii. Thank you for this opportunity to testify in opposition of Bill No. 349. Rather than cover specific points of opposition, I would like to take this opportunity to orally elaborate on the key points, below, that are more directly related to the future of banking in Guam and its role in the Pacific Region. The key points are:

1. Guam is an important hub for the region and an important hub for Bank of Hawaii.
2. Bank of Hawaii has participated in Guam's community and its development for the past 34 years.
3. Guam's economy is growing and Bank of Hawaii wants to continue to participate in its development.
4. The issue in Bill No. 349 cannot be viewed as a contest between Guam chartered financial institutions and those not chartered in Guam---the issue should be looked at in light of today's global economy and what is good for the consumer and what is good for Guam's future.

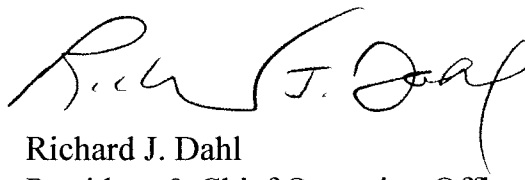
Committee on Ways & Means  
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5. Bank of Hawaii would like to offer its assistance to the Guam Banking Board and the Guam Legislature to:
- a. explore the options available under the interstate branching federal legislation which will go into effect in June 1997, and
  - b. develop a transition plan for unrestricted branching by the effective date.

Bank of Hawaii is committed to Guam and its future, and it our hope that you will seriously consider the effects of restrictive legislation that may run counter to Guam's long term vision for the Region. In closing, I would like to leave you with an article published in today's **Pacific Daily News** that accurately reflects our optimism, intentions and hopes for Guam and the Pacific Region.

Again, thank you for this opportunity to testify on this bill, and I solicit your support for an open banking system that will benefit all of Guam's consumers.

Sincerely,



Richard J. Dahl  
President & Chief Operating Officer

# Bankoh refocuses on Guam

By LLOYD JOJOLA  
Daily News Staff

A new thrust on the region as a whole, that is what's in store for Guam and Micronesia, according to Richard J. Dahl, president of Bancorp Hawaii Inc. and Bank of Hawaii.

Dahl, along with several other Bank of Hawaii executives, are on Guam for several reasons: to unveil their Guam Economic Report today, and to look over the western Pacific arm of their corporation, he said.

"We're refocusing on one of the major markets, which is Guam," Dahl said. "In the past we had decentralized authority in the Pacific. We're taking a new thrust on the region as a whole ... taking proactive participation in the west Pacific."

Dahl said the region, specifically Guam, now has the technological facilities necessary for the bank to expand and enhance services such as automated teller machines and payment systems.

"Guam is the most sophisticated market place in the western Pacific," Dahl said. "We see Guam as a focal point for expansion into Asia."

Presently, the bank has branches in Hong Kong, the Philippines, Seoul, Singapore, Taipei and Tokyo. Its offices in the western Pacific include, Saipan, Kosrae, Pohnpei, Yap, Guam and Palau.

## Regional hub

While the aforementioned Pacific Rim branches will act as a catalyst into Asia, said Dahl, Guam's place in the pack would allow it to act as a regional hub.

However, there are some obstacles to the fulfillment of that vision, including Guam's restrictive banking laws.

Dahl's talk of expansion ironically comes a day before the Legislature holds a hearing on Bill 349. The bill, if passed, would legally define automated teller machines as bank branches.

Under Guam law, state and national banks not chartered in the territory are limited to two branches on island, and ATMs have been included in the definition. Bank of Hawaii representatives plan on providing testimony against the bill at the public hearing.

Andy Jordanou, Guam country manager for the Bank of Hawaii on Guam, said the bank hopes to lift the restrictions by appealing to those people the restrictions affect the most — the consumer.

"We're trying to reach out to the community and provide the best service possible," Jordanou said. "In order to do that here, in order to be better able to accommodate them, we need to provide people needed services."

"Bank of Guam is a tremendous com-

petitor. But ultimately what will have to be answered is, 'What do consumers want?'" Dahl said.

While the Guam banking issue is one to be determined later, Dahl said the fact the corporation has the ability to look at the western Pacific in general is because of what it learned in Hawaii.

"Hawaii has taught us a lot of lessons," Dahl said. "When you are an island bank, you tend to learn. You have to make sure you choose the right direction."

## Budget woes loom ahead

By WILLIAM M. WELCH

Gannett News Service

WASHINGTON — Congress and President Clinton are facing an autumn of confrontation, where a shutdown of government looms unless there is a break in the stalemate over taxes and spending reductions.

The differences are so wide, the spending issues so complex and the pressures of the 1996 presidential campaign so strong, both sides are warning there could be a protracted shutdown.

Key issues include welfare reform, tax reduction, program cuts and an overhaul of federal health-care plans.

Clinton and the White House warn of a "train wreck," a disaster scenario in which the president rejects the cuts in GOP budget bills as excessively harsh and the public suffers the consequences.

What lies ahead is a series of budgetary bills and deadlines, each posing its own confusing array of potential outcomes:

■ Oct. 1 is the deadline for providing monies to run the government in the new federal fiscal year. GOP leaders vowed fiscal 1996 would be the first in a seven-year plan to reach a balanced budget.

The cuts needed are large and contentious. If Congress fails to pass the 13 spending bills for government opera-

## NATION

tions by Oct. 1, or if Clinton vetoes them, the federal government could shut down, sending employees home.

Congress and Clinton could agree to stop-gap measures that keep the government going on the previous year's budgets. This has become routine in recent years, but requires at least some agreement between the GOP-led Congress and the Democratic White House.

Initially, both sides may prefer the threat of a shutdown to try to push the other side to an agreement.

■ Later this fall the government's need for cash will exceed the \$4.9 trillion limit on its authority to borrow.

Congress and the president can raise the debt ceiling. But many congressional conservatives say this time around, they won't do that unless it's coupled with other measures that reduce increases in spending.

■ A third factor is what's known as the "reconciliation bill." An omnibus piece of legislation, the bill would include the GOP tax cut and implement earlier decisions to cut \$270 billion over seven years from Medicare, the health program for the elderly, and cut \$186 billion from Medicaid, the health program for the poor.

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September 6, 1995

Committee on Ways & Means  
The Honorable Francis E. Santos, Chairperson  
Twenty Third Guam Legislature  
155 Hesler Street  
Agana, Guam 96910

RE: **Bill No. 349, An Act to Add Subsection (c) to Section 30900,  
Government Code (Guam Banking Code) to Define "Branch" Banking**

Dear Chairperson Santos and Members of the Committee on Ways & Means:

My name is Roman Castro, and I am a Vice President at Bank of Hawaii. Thank you for this opportunity to testify on Legislative Bill No. 349. I am one of over 250 local resident employees of Bank of Hawaii, and I am proud of my employer's 34 plus years of commitment and generous community service to Guam and its people, and I am here to testify in opposition of Bill No. 349.

Bill 349 seeks to add a Subsection to Section 30900 of the Guam Banking Code to very broadly define consumer bank communications terminals (CBCTs) and automated teller machines (ATMs) as a type of CBCTs as branches. By defining CBCTs as branches, whether on or off premises or whether attended or unattended, this bill would very broadly restrict Bank of Hawaii and other financial institutions not incorporated in Guam from utilizing the ever increasing availability of technological advances for the benefit and convenience of their customers.

Because Section 30900 of the Guam Banking Code limits non-locally chartered banks to two branches, those banks that have the allowable number of branches under the law may not provide existing and future cost efficient technology for their customers convenience off bank premises. ATMs to service customers in neighborhood shopping centers, electronic point of sale devices in stores to execute debit or credit card purchase transactions, or banking by phone from your home to check account balances, make transfers or payments would be

prohibited under this bill. As a matter of fact, Bank of Hawaii's "Bank by Phone" existing service to customers is in jeopardy under the proposed legislation.

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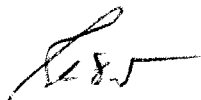
There is significant consumer demand for “electronic banking,” and we believe this prohibition severely disregards the needs of the consumer for availability and access to convenient cost efficient electronic banking services.

The introduction of this legislation comes at the advent of the new federal interstate banking and branching law, and at a time when all banks need to remain competitive in a highly competitive global market. As a local born resident and employee of Bank of Hawaii for 24 years, I am concerned that this legislation threatens the livelihood and morale of every local resident employee of employers like Bank of Hawaii who are not given the opportunity to effectively compete, globally, for the benefit and convenience of the consumer.

While this matter is an emotional issue for all of us in the banking industry on Guam, we believe there are legal and regulatory precedence, consumer advantages and business purposes for not determining CBCTs, including ATMs, as branches. At a recent hearing held by the Guam Banking Board, I had the occasion to testify on behalf of Bank of Hawaii, and I am taking the liberty of enclosing my testimony for your review, reference and consideration.

Bank of Hawaii is strongly opposed to Bill No. 349, as it is designed to broadly restrict our bank and other banks not chartered in Guam from utilizing the ever increasing technological advances for the benefit and convenience of their customers and consumers in general, and we urge the Committee on Ways & Means to seriously consider the adverse impact the bill will have on the future of Guam’s banking industry. We clearly see this legislation as a matter for Guam’s consumers, as they, too, will be restricted in their choice for cost efficient and quality banking services. Thank you.

Sincerely,



Roman Castro  
Vice President

**REVENUE AND TAXATION**

Exhibit NN

GOVERNMENT OF GUAM

JOSEPH T. DUENAS, Director

CARL E. TORRES, Deputy Director

SEP 06 1995

Honorable Francis E. Santos  
Chairman, Committee on Ways and Means  
Twenty-Third Guam Legislature  
Agana, Guam 96910

Dear Mr. Chairman and Members of the Committee:

My name is Joseph T. Duenas. I am the Director of the Department of Revenue and Taxation and the Banking Commissioner. I welcome this opportunity to submit my testimony on Bill 349:

**AN ACT TO ADD SUBSECTION (c) TO SECTION 30900 GOVERNMENT  
CODE (GUAM BANKING CODE) TO DEFINE "BRANCH" BANKING**

I wish to advise this Committee that the Banking Board at a meeting held on August 18th issued the following declaratory ruling:

**"Remote Automated Teller Machines" (Remote ATM's) which perform all financial transactions except accepting cash/check deposits and cash/check loan payments are not considered branches and are not subject to the two (2) branch limitation of §30900 G.C. The declaratory ruling shall not be effective until proper rules and regulations have been adopted governing the licensing, placement and operations of "Automated Teller Machines" (ATM's) and "Remote Automated Teller Machines" (Remote ATM's).**

The Banking Board is proposing Rules and Regulations governing the Definitions, Licensing, Placement and Operations of a "Bank Branch", "Automated Teller Machines" (ATM's) and "Remote Automated Teller Machines" (Remote ATM's) for the Territory of Guam.

The passage of Bill 439 may be premature and may cause a hardship for the banking consumers of our island. I believe that Bill 439, as written, may mean that a computer linked by telephone or even a telephone itself, could be considered a bank branch.

I respectfully request that you allow the Banking Board to complete its work and submit its Rules and Regulations to you so that you will be allowed more information for your review.

As always I will attempt to answer any questions you may have.

Sincerely,



JOSEPH T. DUENAS  
Director/Banking Commissioner

1994-1995 GBA OFFICERS

PRESIDENT: ROBERT A. MORRIS - HONGKONG BANK  
VICE PRESIDENT: RASHID HABIB - CITIBANK  
SECRETARY: JOHN ARROYO - GUAM SAVINGS  
TREASURER: JAMES ISAAC - UNION BANK



GUAM BANKERS ASSOCIATION MEMBERS

<u>BANK</u>	<u>MEMBER</u>	<u>FACSIMILE NUMBER</u>	<u>TELEPHONE NUMBER</u>
Allied Bank	Noel Cruz	649-5002	646-9143
Asahi Bank	Masatoshi Saito	477-0842	477-0841
	Romy Angel	477-4751	
Bank of Guam	Dan Perez	477-5454	477-4751/9
Bank of Hawaii	Roman Castro	477-7533	472-9781/7
Bank of Nauru	Bereka Tanaera	649-9646	649-9252/3
Century Bank	Joe Guevara	477-9766	477-9761/5
Citibank	Rashid M. Habib	477-9441	475-4198
Citizens Security	Dan Webb	472-1177	472-1161/5
First Commercial Bank	Bing Chang Hsu	477-8921	472-6864/5
First Hawaiian	John Lee	475-7886	477-7851/4
First Savings	Zeny Santos	632-0407	632-0331
Guam Savings	John Arroyo	472-1483	472-8160
Hongkong Bank	Robert Morris	646-3767	646-3757
Metro Bank	Esmeralda Capiral	472-6012	477-8834
Oceanic Bank	Alex Lim	637-2295	637-1037
Union Bank	James Isaac	472-3284	477-8810/5

TWENTY-THIRD GUAM LEGISLATURE  
1995 (First) Regular Session

Bill No. 349 (LS)

Introduced by:

F.E. Santos   
T.C. Ada 

**AN ACT TO ADD SUBSECTION (c) TO SECTION 30900,  
GOVERNMENT CODE (GUAM BANKING CODE) TO  
DEFINE "BRANCH" BANKING.**

**BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF  
GUAM:**

Section 1. Subsection (c) is hereby added to Section 30900,  
Government Code (Guam Banking Code) to read as follows:

(c). As used herein, the term "branch bank" shall include  
"CBCT" consumer-bank communication terminals, including any  
on-or off premises electronic devise either manned or unmanned (but  
not employing bank personnel) activated by a bank customer to  
communicate instructions to his bank regarding the transfer of funds  
to and from his bank accounts. An automated teller machine  
("ATM") is a type of unmanned CBCT."