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Senate Chair of the Joint Committee on Banks and Banking

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Chairman Oxley, Ranking Member Frank and Distinguished Members of the Committee.

My name is Andrea F. Nuciforo, Jr. I have served in the Massachusetts state Senate since 1997. Since 1999, I have served as the Senate Chair of the Joint Committee on Banks and Banking.

Thank you for the opportunity to testify today on the effect that recent mergers of banks and other depository institutions have had on communities where the banks, particularly the acquired banks, are located.

I would like to thank Congressmen Frank, Capuano, Lynch, Tierney and the rest of the Massachusetts Congressional delegation for focusing on this issue in Massachusetts. Earlier this year, I participated in a meeting called by Congressman Frank when the news first broke that Bank of America might not fulfill the commitments it made to regulators and to the affected communities.

<u>Bank Mergers Result in Employee Layoffs</u>

I have been increasingly concerned about the community impacts of these mega-mergers between banking institutions. It has been my unfortunate experience to see layoffs, replacement of full-time jobs with part-time jobs, and broken promises from bank officials. When banks merge, jobs are lost. For example:

- The 1995 merger between Fleet Financial Group and Shawmut National Corp. resulted in an estimated 2,000 jobs lost.[1]
- The next year, another 2,000 positions were lost in the plan to merge Bank of Boston and Baybanks Inc.[2]
- According to documents that FleetBoston filed with the Securities and Exchange Commission, at least 4,000 jobs were to be lost when it acquired BankBoston in 1999.[3]
- As part of the FleetBoston takeover of BankBoston, Sovereign Bancorp acquired 278 former FleetBoston branches. Sovereign then laid off 500 bank employees.[4]

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[1] Krasner, Jeffrey, Boston *Herald*, "Fleet to announce first round of layoffs", Jul. 20, 1995, pg. 32.

[2] Carroll, Matt, Boston *Globe*, "Nearby branches face closings: Consolidations may open door for local banks"; Feb. 4, 1996, p.1

[3] New York *Times*, "FleetBoston Is Planning to Lay Off 4,000 Employees", Mar. 11, 2000, p. C.3.

[4] New York *Times*, "Sovereign Set to Dismiss 500 Bank Managers", Nov. 28, 2000, p. C.8.

- Earlier this year, Sovereign announced it would eliminate over 300 jobs in Massachusetts in its merger with Seacoast Financial Services Corp.[5]

Even relatively small mergers result in layoffs. For example, the 2003 purchase of Community National Bank by Citizens Financial Group was described as a “purchase that will barely be noticeable on Citizens’ balance sheet.” Employees were sure to notice, however, because the merger was expected to result in job losses for tellers and other personnel.[6]

The phenomenon is not confined to this state. For example, Cleveland, Ohio was expected to lose hundreds of jobs when Citizens Financial Group purchased Charter One Financial Inc.[7]

The recent merger between Bank of America and FleetBoston appears to be no exception, contrary to the pre-merger promises by those institutions.

- The Boston *Globe* reported that Bank of America would lay off “hundreds of tellers and other branch employees at Fleet banks.”[8]
- Subsequently, the *Globe* reported that Bank of America planned to eliminate 4,500 jobs “on top of 12,500 job cuts that the bank initially said it

[5] Talcott, Sasha, Boston *Globe*, “Sovereign will cut 350 jobs – Mass. reductions planned as part of Seacoast deal”, Apr. 17, 2004, p. D.1.

[6] Reed, Keith, Boston *Globe*, “Citizens Continues Expansion - $116M Hudson Buy Stretches Bank’s Reach Into I-495 Tech Area”, Jul 31, 2003, p. C.1

[7] Fitzgerald, Jay, Boston *Herald*, “Merger pauses Citizens growth: ‘Perfect deal’ means no job losses locally”, May 6, 2004, p.45.

[8] Talcott, Sasha, Boston *Globe*, “Hundreds of Fleet layoffs expected: Bank of America set to make cuts today”, Aug. 18, 2004, p. A.1.

would eliminate during the merger." The total number of losses at Fleet in Massachusetts alone was estimated at 850.[9]

- Within months of the merger, Bank of America moved "[t]hree units originally slated for" Boston out of the State, and a fourth unit had no significant ties to Massachusetts.[10]

The bottom line is that many full time jobs at Fleet in Massachusetts are becoming part-time jobs, or no jobs at all, at Bank of America.

Bank Mergers Result in Golden Parachutes

While employee layoffs are one constant of bank mergers, spectacular executive payouts are another. It is easy to see one reason bank executives - both those who stay and those whom the merger phases out - like these deals. They are rewarded handsomely. For example:

- Joel Alvord, Shawmut's chief executive, reportedly was to receive a compensation package of more than $2 million when Shawmut was acquired by Fleet Financial Group back in 1995.[11]

- After the merger of FleetBoston and BankBoston in 1999, newspaper reports indicated that Fleet CEO Terrence Murray received $20.2 million and Fleet President Chad Gifford received $15.6 million "in the wake of the acquisition."[12]

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[9] Talcott, Sasha, Boston *Globe*, "Bank of America to cut more jobs: Firm: Most trims will come from outside the state", Oct. 8, 2004, p. D.1.

[10] Fitzgerald, Jay, Boston *Herald*, "BofA dangles big carrot: Lewis pledges major, not minor, operation for hub", Sep. 2, 2004, p. 49.

[11] Blanton, Kimberly, Boston *Globe*, "Deal worth $2m to Alvord: Filing discloses projected merger layoff costs," May 2, 1995, p. 35.

[12] Kerber, Ross, Boston *Globe*, "FleetBoston paid executives millions in merger", Mar. 11, 2000, p. A.1.

- The deal between Toronto-Dominion Bank and Banknorth Group is expected to reward eight high-ranking officials at Banknorth with $36 million.[13]
- The Bank of America and Fleet deal also resulted in a great boon for executives. Chad Gifford reportedly received over $17 million in salary, bonuses, stock options and restricted stock right before the merger, although the company said the awards had nothing to do with the merger.[14] Gene McQuade was set to play a major Boston role in the reconfigured Bank of America, but he left in June with a reported $25 million in severance.[15] Another executive who was purported to play a major role in Boston, Brad Warner, left in August with a $20 million package.[16]

<u>The Need to Act</u>

The current approval system for bank mergers does not do an adequate job of eliciting sufficient information on the effect of a proposed merger on employment or on holding banks accountable for pre-merger employment promises. The recent experience with Bank of America and Fleet appears to be a prime example.

In testimony before the Massachusetts Board of Bank Incorporation and before the Federal Reserve Board, officials at Bank of America Corporation and FleetBoston Financial Corporation stated that "we will sustain total employment levels in New

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[13] Portsmouth *Herald*, "Banknorth sale could bring millions to execs", Sep. 23, 2004. (at www.seacoastonline.com/news/09232004/business/39202.htm).

[14] Talcott, Sasha, Boston *Globe*, "Fleet awards Gifford $11m - 5 others also get big pay packages", Mar. 3, 2004, p. D.1.

[15] Bunker, Ted, *Boston Magazine*, "Negative Balance", Dec. 2004. (at www.bostonmagazine.com/ArticleDisplay.php?id=469).

[16] Id.

England and will sustain our levels of customer-facing employees."[17] Officials also stated in a letter to Congressman Frank that "Bank of America has also pledged to maintain current employment levels in New England, including all customer facing employees."[18] Regulators took the bank at its word. In its March 2004 opinion approving the merger, the Board of Bank Incorporation cited Bank of America's commitment "that all 'customer facing positions', which is a significant number, will be retained."[19] Five months later, the Bank laid off tellers in Massachusetts and turned full-time jobs into part-time jobs. In advance of the layoffs of tellers and other branch employees, managers reportedly were given a series of talking points. It is significant that the very first question attempts to address the fact that "[employees] were told not to expect impact to customer-facing positions."[20]

It appears as well that Bank of America was unclear in what exactly it meant by its promise to maintain "current" levels of employment in New England. At the Federal Reserve hearing in January, a bank official stated that "a key component of our agreement was the unprecedented commitment … to maintain Fleet's current employment level in New England."[21] After shareholder approval of the transaction in March, bank officials again reportedly "stressed … that [it] will retain approximately the

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[17] Testimony of Chad Gifford, Federal Reserve Board, Public Hearing Re Application of Bank of America Corporation To Acquire FleetBoston Financial Corporation, Federal Reserve Bank of Boston, Jan. 14, 2004, p. 13. [Gifford Testimony].

[18] "Congressman Barney Frank Protests Cuts Being Made by the Bank of America", Aug. 26, 2004 (at www.house.gov/frank/BofAcuts2004.html).

[19] Board of Bank Incorporation, *Decision Relative to the Petition of Bank of America Corporation, Charlotte, North Carolina, To Acquire FleetBoston Financial Corporation, Boston, Massachusetts,* Mar. 31, 2004.

[20] Talcott, "Hundreds of Fleet layoffs expected", p. A.1.

[21] Gifford Testimony, p. 11.

same number of employees that Fleet has now in New England, or about 21,000."[22] In September, bank officials stated that that number "was likely closer to 20,000 - and that the number probably included a mix of part- and full-time jobs, rather than the total full-time equivalent number."[23] The officials indicated that the real number of full time employees was only 17,900.[24]

Federal law currently provides little recourse for regulators or communities to whom these statements have been made. We should therefore expect that forward-thinking statements about employment levels will continue to be offered by banks when seeking regulatory approval. Indeed, in September 2004, officials at Banknorth, when describing the proposed merger with Toronto-Dominion, stated that they would cut no jobs: "We're not parsing words. We're not wordsmithing. Zero."[25]

Bank mergers like those discussed above, with the attendant layoffs and executive bonuses, will continue unabated. In fact, many experts expect merger activity to increase.[26] And the acquiring banks are increasingly coming from outside the country. For example, Toronto-Dominion is reaching into the United States in an attempt to acquire Banknorth. The public comment period set by the Federal Reserve ended just last week. Even before the acquisition has been approved, bank officials have indicated that Toronto-Dominion will continue its foray into the American market and is targeting banks in New York, New Jersey and Pennsylvania for future takeovers.[27] Similarly, the

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[22] Fitzgerald, Jay, "Bank of America, Fleet shareholders OK deal", Mar. 18, 2004, p. .

[23] Fitzgerald, "BofA dangles big carrot," p. 49.

[24] Id.

[25] Kathleen McLaughlin, Banknorth Promises no layoffs in Mass., N.H.", Sep. 7, 2004.

[26] Fogarty, Thomas A., USA Today, "Bank of America, Fleet would create No. 2 bank", Oct. 27, 2003.

[27] Boston *Globe*, "Toronto-Dominion plans more US deals", Sep. 29, 2004.

Royal Bank of Scotland, through its North American unit Citizens Bank, has recently purchased Charter One Financial. Analysts expect RBS and other European banks to continue buying bank properties in the United States as part of "an extended US shopping spree."[28]

We know that bank executives will continue to propose and attempt to close more mergers. We also know that the current system for vetting the impact of a merger on a local community is not working. Now is the time for this Committee to act.

The Board of Bank Incorporation in Massachusetts

Here in Massachusetts, we have an entity called the Board of Bank Incorporation, consisting of the Commissioner of the Division of Banks, the State Treasurer, and the Commissioner of the Department of Revenue. The Board must approve a bank merger in this state. One of the factors that the Board considers in the approval process is whether a merger will promote "public convenience and advantage."[29] Among the many factors going into this test is the existence, or lack thereof, of "job creation plans." The statute does not explicitly address job loss, although the BBI will occasionally refer to this factor in its decisions.

The BBI's power and authority are dwarfed, necessarily with respect to these mega-mergers that affect many states, by the approval powers of the Federal Reserve under the Bank Holding Company Act. But it does have some power within the state.

The BBI needs additional authority. In addition to explicitly requiring an analysis of job losses triggered by any proposed merger, the Board should be given increased

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[28] European Banker, "Across the pond – Europe's banks make waves", May 2004, EB226. (at www.lafferty.com/newsletter_article_home.php?id=2&issueid=460&articleid=7030#).

[29] Mass. Gen. L. c. 167A, §4.

enforcement authority if a bank does not live up to its promises post-merger. As a matter of state law, I and other members are considering empowering the BBI to give it the authority to ensure that promises made are promises kept. I know my co-chair on the State Committee on Banks and Banking has filed a bill for the next legislative session, and I look forward to working with him and the other members of the Massachusetts Legislature to ensure we give the Board the state authority necessary to protect employment in Massachusetts.

Federal Law and Suggested Changes Relative to Bank Mergers

From a regulatory standpoint, I find it troubling that, apart from a cursory mention summarizing public comments, the issues of layoffs, job creation and employment did not factor in the 58 page order from the Federal Reserve Board approving the merger of Bank of America Corporation and FleetBoston Financial Corporation. While it is troubling, it is not surprising, because the Bank Holding Company Act does not require that employment be part of the Federal Reserve Board's calculation.[30] I believe it should.

Under Federal law, the Board, in determining whether to approve a proposed merger, is to consider seven factors including: (1) competitive factors, including the "convenience and needs of the community to be served"; (2) financial and managerial resources and future prospects of the company or companies and the banks; (3) supervisory factors; (4) deposit concentration limits; (5) the effectiveness of the company or companies in combating money laundering; (6) a consideration of the institution's capitalization and the transaction's compliance with state age laws, if applicable; and (7)

[30] See, e.g., Federal Reserve System, Order Approving the Acquisition of a Bank Holding Company, North Fork Bancorporation, Jul. 20, 2004, p. 7, n.15. (at www.federalreserve.gov/boarddocs/press/orders/2004/20040720/attachment.pdf).

the institution's performance under the Community Reinvestment Act.[31] I believe that Federal law should require that the decision on whether or not to approve a bank merger consider the short-term and long-term impact on employment in the affected communities. I know that Congressman Frank has proposed that the Bank Holding Company Act consider the effect of a merger on local employment. It is one of the reasons we are here today.

I would, in particular, urge the Committee to adopt a meaningful measuring stick that will allow the Committee, or regulators at the Federal Reserve, to assess a bank's compliance with the promises it makes when it seeks to have the merger approved. I believe one of the problems arising out of the merger between Fleet and Bank of America was the vague numbers and promises provided by those entities. When they promised to maintain levels of employment in New England, were they talking 21,000, or was it "closer to 20,000," or did they really mean what they say now: 17,900. Banks should provide regulatory authorities with specific and detailed employment, hiring and layoff figures so that regulators can determine whether or not the banks are living up to their commitments. I also would urge the Committee to amend Federal law to ensure that an institution's non-compliance with its promises would, at the very least, prevent future mergers proposed by the same institution.

Thank you again for the opportunity to testify. I stand ready to assist you in any way.

[31] 12 U.S.C. §1842.