# Inner City Press / Community on the Move
# & Fair Finance Watch

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Written Testimony to the House of Representatives Committee on Financial Services

Submitted December 10, 2004 in advance of the December 14, 2004 field hearing

On behalf of the non-profit organization Inner City Press / Community on the Move and the Fair Finance Watch (ICP), this submission addresses the impact on communities and consumers of two completed mergers and one merger proposal that has not been approved, and on which the Committee can and should still have an effect: the proposal by Toronto Dominion to acquire a controlling 51% stake in Banknorth, for over three billion dollars. On November 15, ICP submitted to the Federal Reserve a 15-page comment opposing Toronto Dominion's application, based on lending disparities, on managerial issues at Toronto Dominion including enabling of Enron and lack of environmental standards, and on Banknorth's funding of high-cost pawnshops, check cashers and other predatory fringe finance. *See, e.g.*, <www.boston.com/business/articles/2004/11/15/group_challenges_banknorth_td_bank_merger>, and Toronto Star of Nov. 21, 2004, Pg. C1, "Merger Snags," by Stuart Laidlaw:

> "'The impact on the consumer is at least as important as the price paid to shareholders,' [the] executive director of Inner City Press, said in an interview from his office in the Bronx. In a filing with the Federal Reserve Bank of New York, which must approve the deal, Lee looks at the bank's lending rates in several markets. In Hartford, Conn., for instance, only 2 per cent of its loans were to blacks and Hispanics, while the average among all banks was 6.8 per cent. He called the problem 'systemic.' Under the U.S. Community Reinvestment Act, banks are expected to fully serve disadvantaged neighborhoods. Lee's group uses the act to get banks to make commitments to boost their loans to the poor and racial minorities whenever those banks are hoping to get a deal approved by the Fed. 'Pretty well the only way it is enforced is through the denial of deals,' he said."

As relates to this hearing's meta-merger policy question, if the only enforcement mechanism of the CRA is regulatory agencies' denial or conditioning of banks' expansion applications, then the CRA is not being (sufficiently) enforced. For example, during the JP Morgan Chase - Bank One proceeding, ICP submitted to the Federal

Reserve a series of Uniform Commercial Code filings showing the two banks financing payday lenders such as First Cash Financial Services, a top-ten pawnshop chain with 130 storefronts in 11 states; Illinois Payday Loans, Inc., Discount Payday Loans of Colorado; Mister Payday of Kentucky, Inc., and First American Cash Advance, a top-ten payday lender with 330 storefronts in 11 states -- a company which has been extensively criticized for its high-cost lending, particularly to members of the military. For that, see the Washington Post of December 29, 2003, "Military Says Payday Loans Promote Fiscal Irresponsibility, Hurt Troop Morale."

While the FRB asked JP Morgan Chase and Bank One questions about their funding of payday lenders, car title lenders and other questionable bottom-tier financiers, the FRB did not impose any prohibition on such standardless practices. The Federal Reserve leaves the onus on the community and consumers groups themselves. This can bear some results -- simply as to ICP this year, consider that SunTrust Banks, in response to ICP's comments, committed to cease funding payday and car title lenders. See, e.g., "NCF, SunTrust Ditch Payday Lenders: Answer Activists' Challenge Ahead of Bank Merger," Memphis Commercial Appeal, July 28, 2004; "Bank Shuns Payday Lenders: SunTrust Halts Loans to Fast-Cash Industry," Orlando Sentinel, July 28, 2004, Pg. C1, and "Saying No to Exploitation -- Our Position: SunTrust Was Right to End Business with Payday and Car-Title Lenders," Orlando Sentinel, July 30, 2004, Pg. A18.

But other large banks, not only JP Morgan Chase but also Bank of America, Wachovia and Wells Fargo (and pertinently also Banknorth, and certain other banks with pending merger applications, such as Laredo National Bank and Fifth Third Bank) continue such funding. *See, e.g.*, Bloomberg News of Nov. 23, 2004, "JPMorgan, Banks Back Lenders Luring Poor With 780 Percent Rates," at http://quote.bloomberg.com/apps/news?pid=nifea&&sid=ayYDo5tpjTY8, and see <www.tennessean.com/business/archives/04/11/62129411.shtml?Element_ID=62129411>.

The FRB has also fallen into a pattern of granting banks' requests for confidential treatment under the FOIA for their lists of payday lenders and others fringe financiers they partner with, even though these relationships are “already public” in UCC filings. This has required a tangent from consumer protection into FOIA litigation, such as ICP is conducting in the wake of the FRB’s Wachovia-SouthTrust approval. *See, e.g.*, "Community Group: Fed Must Reconsider Wachovia-SouthTrust," Dow Jones, October 25, 2004.

As the Committee can see from the FRB’s Orders, while the FRB recites and gives weight to banks’ unilateral lending pledges, the FRB subsequently refuses to enforce or even monitor such pledges. As a meta-merger policy recommendation, ICP suggests that the BHC Act be amended, at 12 USC 1848, to explicitly provide for judicial review of FRB approval orders on consumer and community lending issues. In the interim, most practically, inquiry should be made into the FRB’s anti-consumer processing of the pending TD-Banknorth application, as well as other pending mergers including BBVA-Laredo National and applications by Wells Fargo and Citigroup in Texas, and Fifth Third in Florida.

Regarding the first of these (which was named at the time this hearing was scheduled, see CBS MarketWatch of October 7, 2004, Home Mortgage Disclosure Act (HMDA) data reported for 2003 show that Banknorth disproportionately excludes and denies African Americans and, particularly, Latinos. In the Albany, New York MSA for refinance loans in 2003, Banknorth denied Latinos 4.31 times more frequently than whites, and denied the conventional home purchase loan applications of Latinos 4.83 times more frequently then whites. For refinance loans here in the Boston MSA in 2003, Banknorth denied Latinos 3.17 times more frequently than whites, while using the methodology above, only 1.3% of Banknorth’s refinance loans were to Latinos, lower than the aggregate’s 2.2%. In the Boston MSA, Banknorth denied the conventional home purchase loan applications of African Americans 11.8 times more frequently then whites. In the Lowell, Massachusetts MSA, Banknorth denied the conventional home purchase loan applications of African Americans 8.92 times more frequently then whites, and denied Latinos’ applications 10.8 times more frequently than whites.

In the New Haven, Connecticut MSA for refinance loans in 2003, Banknorth denied Latinos 6.25 times more frequently than whites, while using the methodology above, only 1.3% of Banknorth's refinance loans were to Latinos, lower than the aggregate's 3.2%. In New Haven, Banknorth denied the conventional home purchase loan applications of African Americans 3.76 times more frequently then whites. Banknorth's disparities are income- (and geography-) based as well. In the Portland, Maine MSA in 2003, Banknorth denied conventional home purchase loan applications from low-income census tracts 3.5 times more frequently than those from upper income census tracts (higher than the aggregates' disparity of 2.09); Banknorth denied applications from moderate income census tracts 6.54 times more frequently than those from upper income census tracts (higher than the aggregates' disparity of 2.83). In the Glen Falls, New York MSA in 2003, Banknorth denied applications from moderate income census tracts 3.73 times more frequently than those from middle income census tracts (much higher than the aggregates' disparity of 1.23).

There are other adverse issues at Toronto Dominion, including managerial issues: there's Toronto Dominion's enabling of Enron's fraud (*see, e.g.*, the Houston Chronicle of December 03, 2003, "THE FALL OF ENRON: Banks added to shareholder suit;" note that evidence submitted to the Senate Permanent Subcommittee on Investigations' hearings identified Toronto Dominion as actively engaged in illegitimate trades with Enron to disguise loans received by the company, allowing Enron to hide this debt from credit rating agencies and investors, inflating profits substantially.

In this proposed transaction, it is widely predicted that TD will subsequently seek full 100% control. When it did this in connection with Waterhouse, it squeezed the remaining shareholders, *see, e.g.*, Toronto Star of March 12, 2003, regarding

> "shareholder lawsuits challenging the buyout of the bank's TD Waterhouse Group Inc. brokerage unit. TD Bank, Canada's second-biggest by assets, agreed in October, 2001, to add $22.5 million to its $409 million offer for the 12 per cent of the online brokerage that it didn't already own. Investors sued in Delaware Chancery Court to block the initial $9-per-share bid, contending it undervalued the stock. The bank, which sold the public stake in TD Waterhouse for $1.01 billion in 1999 when online brokerage shares were soaring, boosted its offer by 50 cents per share to resolve the

> suits. The company has said it's prepared to sell or close discount brokerage units in Europe, Asia and Australia if losses continue through this year."

In fact, ICP's comments note, there's been unusual trading in connection with this Toronto Dominion - Banknorth proposal. *See, e.g.*, Financial Times of September 28, 2004, regarding "10 anomalies in Banknorth's trading on August 16, 10 days before the deal with Toronto-Dominion became public. Four stemmed from high volumes and six from an unusually large number of transactions."

As to Wells Fargo, ICP's ongoing review of Uniform Commercial Code (UCC) filings from Texas, Nevada, Illinois, California and elsewhere has found Wells funding and enabling for example

> TITLE LOANS EXPRESS, INC. of 4295 SAN FELIPE, HOUSTON, TEXAS 77027, financed by WELLS FARGO BANK TEXAS, NATIONAL ASSOCIATION
>
> HOUSTON AREA PAWN SYSTEMS, INC., financed by WELLS FARGO BANK TEXAS, NATIONAL ASSOCIATION
>
> EZ PAWN HOLDINGS, INC., of 1901 CAPITAL PARKWAY, AUSTIN, TX 78746 (financed by Wells Fargo Bank, N.A., as recently as April 13, 2004, according to Uniform Commercial Code filings);
>
> PAYDAY LOAN MANAGEMENT, INC. of 1901 CAPITAL PARKWAY, AUSTIN, TX 78746, financed by WELLS FARGO BANK TEXAS, NATIONAL ASSOCIATION
>
> EXPRESS TITLE & PAYDAY LOANS, INC. of 1131 WARREN LANE, VERNON HILLS, ILLINOIS 60061, financed by WELLS FARGO BANK, N.A., according to an Illinois Uniform Commercial Code filing
>
> ADVANCE AMERICA CASH ADVANCE CENTERS, headquartered as 135 NORTH CHURCH STREET, SPARTANBURG, SC 29306, multiply financed by Wells Fargo, including in 2004;
>
> PAYDAY INC of 5021 INDIAN SCHOOL RD NE, ALBUQUERQUE, NM 87110
>
> PAYDAY PLUS of 425 HILL AVENUE, GRAFTON, ND 58237, financed by WELLS FARGO BANK NORTH DAKOTA, NATIONAL ASSOC
>
> AUTO PAWN, INC. of 7534 HICKMAN RD, DES MOINES, IA 50322, financed by WELLS FARGO BANK IOWA, N.A., according to Iowa UCC records;

PAYDAY LOANS III, L.L.C. in Idado, financed by WELLS FARGO BANK, N.A.

PAYDAY EXPRESS, of 4302 SOUTH 24TH STREET, OMAHA, NE 68107, financed by WELLS FARGO BANK NEBRASKA, NATIONAL ASSOCIATION

1 STOP CHECK CASHING $ PAYDAY & TITLE LOANS, LLC of 10555 E FIRESTONE BLVD, NORWALK, CA 90650, financed by WELLS FARGO BANK, NATIONAL ASSOCIATION, according to a May 6, 2004, Arizona UCC filing

MAC DIANE'S PAWN CENTER in Michigan;

and, ARMED FORCES LOANS INC. of 3824 S JONES STE G, LAS VEGAS, NV 89103, regarding which, see " Lending Scams Target Military," at http://usmilitary.about.com/cs/generalpay/a/loanscam.htm

In response, Wells Fargo has told the FRB, in its last expansion commented-on by ICP, that its subprime subsidiary on Puerto Rico

> "Island Finance does not have a specialized customer service department or a toll-free telephone number for complaints. Customers who have complaints contact the store handling their account. If the store is unable to resolve the complaint the complaint if referred to the district manager. If the district manager is unable to resolve the complaint it is referred [to] the district manager's supervisor." (Wells Fargo's submission to the FRB dated August 11, 2003, at 11).

That Wells' Puerto Rico-based Island Finance has even less consumer protection safeguards that Wells Fargo Financial's overall operations is significant -- and, ICP contends, is violative of the Fair Housing Act and Equal Credit Opportunity Act, given the demographics of Island Finance's headquarters and its lending operations. But the FRB has done nothing, including in connection with Wells' currently pending application to acquire yet another bank, in Texas.

To endeavor to address the meta-merger issues, here is a review of service-cuts and branch closures by Bank of America and its predecessor(s), particularly in connection with NationsBank's acquisitions of Boatmen's Bancshares, Barnett Banks, and then (then San Francisco-based) Bank of America itself.

In August 1996, NationsBank announced a plan to acquire Boatmen's Bancshares and its subsidiaries, including Sunwest Banks, the largest bank franchise in New Mexico.

Among with New Mexico and Texas groups, ICP commented to the FRB, *see, e.g.*, Wall St. J., October 10, 1996, at A8: Inner City Press Challenges Merger of Banking Concerns. NationsBank responded that its acquisition of Boatmen's would result in few, if any, branch closings, and opposed ICP's hearing request, emphasizing that it was an "out-of-market" merger -- just as Bank of America's application in this Fleet case states.

The FRB conditionally approved that merger, requiring NationsBank *inter alia* to divest a mere two branches in the El Paso-Dona Ana County TX-NM market, and to report on its branch closings quarterly to the Federal Reserve Bank of Richmond (the "FRBR"). ICP and NMA sought judicial review of the FRB's approval (New Mexico Alliance and Inner City Press/Community on the Move v. Board of Governors of the Fed. Reserve Sys. and NationsBank Corporation, No. 98-1049); and *see, e.g.*, Albuquerque Tribune of January 2, 1997, Groups Fight Bank Merger.

Significantly, after acquiring Boatmen's and Sunwest, NationsBank closed more than eight branches in New Mexico. Note that **none** of those branch closings were even arguably attributable to any overlap between NationsBank and Sunwest. *See, e.g.,* Sunwest to Close Eight Locations, Albuquerque Journal, May 21, 1998, at D4: "Sunwest Bank will close four branch office in Albuquerque and four others throughout the state -- changes brought about because of the bank's merger with NationsBank of Charlotte, N.C.... NationsBank bought out Sunwest's parent company, Boatmen's Bancshares of St. Louis, in July. Shortly after that, a team of analysts was sent to Albuquerque to review Sunwest's operations, [NationsBank spokeswoman Betsy] Hall said. The review was conducted to see if any of Sunwest's operations here could be streamlined, she said."

*See also*, Albuquerque Journal of May 2, 1997, at A1: "Since arriving in New Mexico in January, NationsBank, headquartered in Charlotte, N.C., has -- Closed branch drive-up teller windows to non-Sunwest customers trying to cash checks drawn on Sunwest accounts [and --] Assigned values to callers on the company's customer service telephone bank, whereby customers with bigger accounts are handled more quickly than those with smaller accounts."

While NationsBank downplayed the effects of it branch closings, the manager of the Espanola (N.M.) Main Street Program stated that downtown Espanola "lost some of its bustle when NationsBank, which purchased Sunwest Bank, closed the Sunwest Bank branch in the Main Street area." L. Pugh, Espanola Wants to Restore Main Street, Albuquerque Journal, February 23, 1998, at 1.

After New Mexico State Senator Roman Maes in late July 1997 publicly asked the state government to stop doing business with, and to withdraw deposits from, NationsBank, after NationsBank moved to lay off fully 25% of Sunwest's employees, NationsBank's response was essentially that such a governmental decision would be counter-productive -- NationsBank would just lay off more people. *See*, Anti-Bank Movement Picks Up Steam, Albuquerque Journal, July 29, 1997, at 1: NationsBank spokeswoman Betsy Hall stating that the State Senate "is exacerbating the problem, because if we have customers leave, we will have fewer associates."

This arrogance in New Mexico is predictive for lower income communities and states, and of one of the dangers posed by this unprecedented mega-bank. The problem? "[T]he state [New Mexico] doesn't have much business to take away from NationsBank. And NationsBank's New Mexico operation represents a drop in the bucket for a company that earned $2.5 billion last year." Customers Leave After Job Cuts, Tulsa World, August 15, 1997, at E2.

The New Mexico experience makes clear that Bank of America respects neither consumers nor elected officials in more far-flung states. As Bank of America gets larger, particular communities and even states cannot get any accountability from it -- the impact on the mega-bank's bottom line of even a withdraw of all state business from it would be minimal. Significantly, even after NationsBank's August 7, 1997, "Day One" announcement in New Mexico, elected officials such as the Mayor of Albuquerque continued to press for withdrawal of state and city funds from NationsBank. *See, e.g.*, D. Vukelich, City to Pull Cash From NationsBank, Albuquerque Tribune, August 18, 1997, at A1: “The mayor’s announcement came minutes after he had returned from a celebration at the bank to mark its changeover from the Sunwest Bank name to the NationsBank name... The financial impact on NationsBank will be small. NationsBank operates in sixteen states and the District of Columbia and has assets of $240 billion.” Seeking NationsBank’s response to these local protests, a reported “called NationsBank in Albuquerque and received a call back... from Dallas in the person of Pam McQuitty, head of Southwest public relations. She said she wasn’t in a position to comment...”. Albuquerque Journal, August 21, 1997. *See also* Albuquerque Journal of August 28, 1997, at D4, Local NationsBank Chief Quits, and Albuquerque Tribune of December 29, 1997: “‘When you call them, you’re not dealing with someone in NationsBank in Albuquerque, but someone in Pennsylvania or Buffalo or somewhere else...’ [T]he NationsBank takeover was different. The loss of local branches and jobs around New Mexico loomed large enough that state legislators condemned NationsBank...”.

In late 1997, NationsBank acquired Barnett Banks in Florida. ICP and a Florida-based civil rights group commented to the FRB on both antitrust and fair lending / CRA (including branch closing) concerns, and stated that public meetings should be held in Florida. *See, e.g.*, Activists Protest Barnett Deal, Business Journal-Jacksonville, October 31, 1997. NationsBank opposed ICP’s hearing request, emphasizing that “only” 200 comments opposing the proposal had been received by the FRB. The FRB denied the public meeting requests, and approved the merger, without even attaching the branch closing report condition it had imposed on NationsBank’s “out of market” acquisition of Boatmen’s and Sunwest. *See generally,* Barnett-Florida Deal Gives Idea of What Louisiana Can Expect in Bank Merger, Gannett News Service, January 30, 1998. Thereafter, NationsBank announced the closing of fully 205 bank branches in Florida. NationsBank had downplayed this aspect of its takeover of Barnett (*see, e.g.*, Area Branches Won’t Close, Port St. Lucie (FL) News, December 10, 1997, at B6, *and see* Bank Rebuts Merger Concerns, Sun-Sentinel, November 26, 1997), but, during a February 18, 1998, visit to Florida, NationsBank's CEO disclosed to a reporter that “a little more than 200” branches faced the prospect of being eliminated.

The adverse effects of NationsBank's acquisitions have by no means been limited to New Mexico. *See, e.g.*, Kansas City Star, July 3, 1997, at B2: "NationsBank is in the midst of selling, closing or moving 18 banking locations in Kansas and Missouri... NationsBank explained that it is pulling out of some small towns in Kansas...". St. Louis Post-Dispatch, April 12, 1997: "Losers will include people who get free checking by keeping $1,500 in a Boatmen's savings account. The required amount will rise to $5,000... [NationsBank is] closing six stand-alone offices... NationsBank charges $7 a month for a personal checking account, up from $6 for Boatmen's." And see, "Redlined: L.A.'s big banks promised millions to help abate the city's slums," New Times Los Angeles, November 25, 1999; "Bank lending questioned: El Paso bankers contend they seek out businesses for loans," El Paso Times, October 31, 1999; and Virginia Business of September 1, 2001, "Do Banks Mergers Mean Worse Service?" which starts: "Bert Dodson Jr. watched helplessly as the fees he pays to the new Bank of America increased 10 percent after its $57.7 billion merger with Nations Bank Corp. three years ago. The Lynchburg-based exterminator could have saved $20,000 of the $45,000 he was charged by BoA for deposits, a credit line and employee paycheck cashing if he took his business to another bank."

Soon after the New Mexico branch closing announcement (see above, and note again that none of those branch closings were even arguably attributable to any overlap between NationsBank and Sunwest), other adverse effects of acquisition by NationsBank became clear. *See, e.g.*, <u>NationsBank to Raise Bank Service Fees,</u> Albuquerque Tribune, June 24, 1997, at B5: "NationsBank will raise fees on several former Sunwest accounts once the banks' merger is complete... Also Monday, the bank said its decision not to continue the old Sunwest policy of having policy-making boards in New Mexico community where it has banks should ultimately mean better service for customers." Fort Lauderdale Sun-Sentinel, February 19, 1998, at 1D. Even after its CEO's disclosure, NationsBank sought to keep information about the massive closures away from the affected public ("it won't yet tell the public which offices will be shut, spokesman Jerri Franz said Tuesday." Orlando Sentinel Tribune, April 1, 1998).

Bank of America's layoffs, following its acquisition of Fleet, are already of record -- but they are part of the historical pattern sketched above. In final programmatic conclusion, considering the disposition of the above-referenced New Mexico Alliance and Inner City Press/Community on the Move v. Board of Governors of the Fed. Reserve Sys. and NationsBank Corporation, No. 98-1049 -- dismissed for lack of standing under 12 USC 1848 -- it is imperative that this section of the BHC Act (and equivalent sections of the Bank Merger Act, etc.) be amended to explicitly provide for judicial review of FRB orders, on consumer and community lending grounds. Thank you.