

TESTIMONY OF

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before the

COMMITTEE ON FINANCIAL SERVICES

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Good morning, Chairman Oxley, Congressman Frank, members of the Committee and staff. My name is Steven L. Antonakes and I serve as the Commissioner of Banks for the Commonwealth of Massachusetts. In this capacity, I also serve on the Legislative, Regulatory, and Strategic Planning Committees of the Conference of State Bank Supervisors. Thank you for the invitation to testify today.

The Division of Banks is the primary regulator of nearly 300 Massachusetts state-chartered banks and credit unions holding total combined assets in excess of \$225 billion. The Division is also charged with licensing and examining over 5,000 non-bank financial entities, including, but not limited to, mortgage lenders and brokers, check cashers and sellers, foreign transmittal agencies, and collection agencies.

This morning, I intend to describe the bank holding company acquisition and bank merger review process in Massachusetts; relate the impact of bank consolidation in Massachusetts; and discuss why I believe it is necessary to better position community banks to compete if we want to ensure the continuation of a vibrant, competitive banking industry which will maximize choice for our consumers and benefit our communities.

The Committee's invitation requested that my testimony comment on three specific issues. I am happy to do so given Massachusetts' longer history than most in experiencing interstate acquisitions. My testimony comments on the status of jobs within the banking sector and the Commonwealth's ability to determine whether prior agreements and commitments have been met. Massachusetts has its own bank holding company statute (G.L. c. 167A) and Community Reinvestment Act (CRA) (G.L. c. 167, s. 14). I will address any differences between these laws and federal acts and comment

on how I believe their existing scope has allowed the Commonwealth to have a meaningful role in these acquisitions and mergers.

By way of background, Massachusetts passed the first regional interstate banking act in 1982. This law provided for a regional compact among the New England states for holding company transactions on a reciprocal basis. It was used as a model for laws enacted in several other states for interstate holding company acquisitions within specified geographic regions. Upon challenge, the Massachusetts Act was held constitutional by the United States Supreme Court. As is often the case under the dual banking system, such laws allowed the states to experiment with interstate banking. The results could then serve as a basis for any broadening or expansion to nationwide banking. Additionally, regional compacts would allow for the growth of regional multi-state bank holding companies to be more able to compete with money center holding companies.

After a number of regional transactions, Massachusetts eliminated the regional restriction and passed a nationwide interstate holding company law in 1990. Four years after Massachusetts passed its nationwide interstate law, Congress passed the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 providing for nationwide banking. Massachusetts adjusted its law in 1996. This brief history of the development of the Massachusetts interstate banking laws established that the rules for nationwide holding company acquisitions have essentially been well settled since 1990.

The Massachusetts state bank holding company act requires bank holding company transactions to be approved by the Commonwealth's Board of Bank

Incorporation. I chair the three-member Board which also includes the Commissioner of Revenue and the State Treasurer.

Of significant importance is the fact that the state's bank holding company law applies to all acquisitions of Massachusetts holding companies as well as banks, regardless of whether the bank is state or federally chartered. This provides the significant benefit of local review of certain transactions that would in many other jurisdictions only require the approval of the federal government. The existence of this law is why Massachusetts has had a role in reviewing and approving some significant transactions in the past few years even though state-chartered banks were not involved. Under existing procedures, an application addressing twenty areas of interest and statutory criteria is required to be submitted. The holding company law requires the Board to hold a public hearing. The Board often holds the hearing in the area most impacted by the proposed merger. A public comment period is provided as well.

Massachusetts statutory approval requirements closely parallel the existing federal rules governing bank holding company transactions. Specifically, the Board is required to determine whether or not competition among banking institutions will be unreasonably affected and whether or not public convenience and advantage will be promoted. In making such a determination, the Board considers a showing of net new benefits. The Massachusetts statute defines net new benefits as including: initial capital investments; job creation plans; consumer and business services; commitments to maintain and open branch offices; and other matters as the Board may deem necessary.

Other factors are also considered by the Board, including the Community Reinvestment Act rating of each bank or subsidiary bank of a bank holding company

involved in a transaction. In addition, the law requires that a bank holding company pledge ninety hundredths of one percent of the assets located in the Commonwealth to be made available for low cost loans through the Massachusetts Housing Partnership Fund (Fund). The law also requires that the Board receive notice from the Fund that satisfactory arrangements have been made on that requirement before it approves a transaction. The activities of that Fund were recognized and preserved in a provision included in the Riegle-Neal Act.

The Board also considers loan, investment, and other commitments made during the application process. As a means towards reviewing these future-looking commitments, the Board relies heavily upon the past performance of banks in meeting similar prior commitments. These issues are a specific area of inquiry by the Board when the holding company again comes before the Board for a subsequent acquisition. Nevertheless, the Board has held that future planned CRA-related activities do not substitute for the past record of performance of applicant banks. Accordingly, it is the past record and available performance ratings from regulatory agencies that receive the greatest weight in consideration of a proposed transaction.

Not unlike the rest of the country, Massachusetts has seen substantial consolidation within the banking market during the past 20 years. However, while the number of banks in Massachusetts has decreased by over 30 percent since 1980, the total combined assets of Massachusetts state-chartered banks have increased fourfold during this period. Moreover, despite this significant consolidation, employment studies indicate that the number of jobs tied to the Massachusetts banking industry has increased dramatically in the past 20 years. This demonstrates that consolidation has allowed banks

to grow and gain financial strength thereby allowing banks to be more competitive, add branch offices and additional lines of business. This in turn has allowed banks to increase their employment bases over time despite cases in which layoffs have occurred at the consummation of many mergers.

Moreover, the rate of consolidation has not been as great in Massachusetts as it has been nationally. As a result, a significant degree of banking choice remains in the Commonwealth which greatly benefits Massachusetts consumers. I believe that the reason Massachusetts has been somewhat insulated from a greater degree of consolidation is the number of banks that have maintained their mutual form of ownership and their community focus. Certainly mutual banks are more immune to takeover efforts. Moreover, during uncertain times, mutual banks are insulated from the pressure of greater risk taking in an effort to deliver higher rates of return to investors.

Over the last several years, there has been a healthy growth in bank assets. However, as a result of nearly 20 years of consolidation, a bifurcated system has emerged both locally and nationally which generally includes a small number of very large banks operating on a nationwide basis and a large number of small community banks generally operating in a small number of communities within a state or perhaps a few states. The existence of very large banks operating on a nationwide basis has been authorized by federal and state law, and reviewed and approved by federal and/or state regulatory agencies subject to the various criteria established under those laws. As with the intended purpose of the New England Banking Compact, all of us – legislators and regulators – recognized there could be benefits if, like other financial service entities, the banking system operated on a nationwide basis. I appreciate and recognize the Committee on

Financial Services' decision to take some time to review and understand the impact of these laws, regulatory approvals, and consummated mergers on all interested parties. I also encourage the Committee to use this review as an opportunity to consider what may need to be done at the federal and state level to foster a banking system that remains receptive to both banks operating throughout the nation or on a regional basis as well as smaller community banks.

There is a significant benefit to maintaining the level of banking choice that exists in today's banking market. The threat that persists is the ultimate nationalization of the United States banking system resulting in a few large banking organizations accountable only to the federal government with little or no local accountability. Such a reduction in competition would undoubtedly impact both pricing and service. Moreover, the incentive for a large national company to be in tune with local community needs on a continuous basis is also unclear.

Accordingly, we must confront the issue before us as to how to best position our community banks to be able to effectively compete against larger nationwide bank competitors to ensure that consumers continue to enjoy the advantage that the multiple banking options currently available provide. Allow me to briefly share with you some of my thoughts on this matter.

First, regulators and state legislators need to work to ensure a competitive environment exists for our state-chartered banks. This can be accomplished by ensuring the state banking code is regularly updated and does not place state-chartered banks at a competitive disadvantage with their federally chartered counterparts. This requires the balancing of supervisory and consumer protection objectives while also best positioning

our state-chartered banks to effectively compete in an increasingly competitive marketplace.

As part of this process, state banking departments need to strive to ensure that they complete their supervisory duties while minimizing, as best as possible, examination-related regulatory burden, increase agency efficiency, and maintain a qualified, professional examination staff capable of supervising an increasingly complex financial services industry.

Second, regulators, state legislatures, and Congress need to recognize the overwhelming and growing compliance burden the banking industry is facing and its disproportionate effect on smaller institutions. The Community Reinvestment Act, the Home Mortgage Disclosure Act, Truth-in-Lending, Truth-in-Savings, the Bank Secrecy Act, the Patriot Act, and numerous other laws are sound and were passed for good reasons. Many of these laws, in fact, have their roots in Massachusetts. However, the growing cumulative weight of these and other laws and regulations is crushing small banks. For community banks, the costs to comply with the litany of federal and state laws and regulations threaten not only their ability to compete with their larger counterparts and serve customer and community needs, but also their own viability. I am sure you will agree that there is something wrong when a 15 employee bank has 6 employees dedicated solely to regulatory compliance.

Accordingly, there needs to be a means of regularly reviewing laws and regulations for their continued relevance. Moreover, the ability of smaller banks to comply with mandates more appropriate for larger financial institutions needs to be taken into account. When drafting new laws, consideration must also be given as to whether or

not smaller banks are engaging in the very practices these laws and regulations are designed to address.

Third, thought should be given to requiring that community banks receive preference in the process to purchase or lease branches closed or divested as a result of a bank merger. Assuming competitive bids are provided, this will allow community banks to expand their branch networks, increase competition, maximize banking choice, and perhaps provide continuing employment opportunities for existing branch personnel at locations slated to be closed.

And finally, Congress needs to continue to be vigilant relative to efforts of federal bank regulatory agencies to preempt state consumer protection laws. Too often lately, certain federal bank regulatory agencies have taken action to shield national banks, federal thrifts, and their subsidiaries from state consumer protection laws without the benefit of Congressional hearings or consideration. We should question what public policy goals such actions further. Should federal preemption efforts continue, not only will consumer protection efforts be weakened, but federally chartered banks will certainly gain an even greater advantage over their smaller state bank counterparts resulting most likely in the end of the community banking system and our nation's centuries' old dual banking system.

I would be happy to answer any questions the Committee may have.