

09/30/2005 14:55

Division of Corporations

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DIVISION OF CORPORATIONS

MERGER OR SHARE EXCHANGE

Boston Private Financial Holdings, Inc.

|                       |         |
|-----------------------|---------|
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✓ Merger  
10/03/05  
Dc

## **ARTICLES OF MERGER** (Profit Corporations)

The following articles of merger are submitted in accordance with the Florida Business Corporation Act, pursuant to section 607.1105, F.S.

First: The name and jurisdiction of the surviving corporation:

| <u>Name</u>                             | <u>Jurisdiction</u>  | <u>Document Number</u><br>(If known/ applicable) |
|---|----------------------|--|
| Boston Private Financial Holdings, Inc. | <u>Massachusetts</u> |  |

10-1-05

Second: The name and jurisdiction of each merging corporation:

| <u>Name</u>                     | <u>Jurisdiction</u> | <u>Document Number</u><br>(If known/ applicable) |
|---------------------------------|---------------------|--|
| Gibraltar Financial Corporation | <u>Florida</u>      | <u>P93000073448</u>                              |
|                                 |                     |  |
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Third: The Plan of Merger is attached.

Fourth: The merger shall become effective on the date the Articles of Merger are filed with the Florida Department of State.

OR 10 / 01 / 05 (Enter a specific date. NOTE: An effective date cannot be prior to the date of filing or more than 90 days in the future.)

Fifth: Adoption of Merger by surviving corporation - (COMPLETE ONLY ONE STATEMENT)

The Plan of Merger was adopted by the shareholders of the surviving corporation on \_\_\_\_\_.

The Plan of Merger was adopted by the board of directors of the surviving corporation on April 18, 2005 and shareholder approval was not required.

Sixth: Adoption of Merger by merging corporation(s) (COMPLETE ONLY ONE STATEMENT)

The Plan of Merger was adopted by the shareholders of the merging corporation(s) on August 16, 2005.

The Plan of Merger was adopted by the board of directors of the merging corporation(s) on \_\_\_\_\_ and shareholder approval was not required.

(Attach additional sheets if necessary)

Seventh: **SIGNATURES FOR EACH CORPORATION**

| <u>Name of Corporation</u>              | <u>Signature</u>  | <u>Typed or Printed Name of Individual &amp; Title</u> |
|---|-------------------|--|
| Boston Private Financial Holdings, Inc. |                   |  |
| Gibraltar Financial Corporation         | <i>Tony Caren</i> | Tony CAREN/CEO   |
|   |                   |  |
|   |                   |  |
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**Seventh: SIGNATURES FOR EACH CORPORATION**

Typed or Printed Name of Individual & Title

Walter M. Pressley, President.

**Gibraltar Financial Corporation**

**PLAN OF MERGER**  
**(Non Subsidiaries)**

The following plan of merger is submitted in compliance with section 607.1101, F.S. and in accordance with the laws of any other applicable jurisdiction of incorporation.

**First:** The name and jurisdiction of the surviving corporation:

| <u>Name</u>                             | <u>Jurisdiction</u> |
|---|---------------------|
| Boston Private Financial Holdings, Inc. | Massachusetts       |
| _____                                   | _____               |

**Second:** The name and jurisdiction of each merging corporation:

| <u>Name</u>                     | <u>Jurisdiction</u> |
|---------------------------------|---------------------|
| Gibraltar Financial Corporation | Florida             |
| _____                           | _____               |
| _____                           | _____               |
| _____                           | _____               |
| _____                           | _____               |
| _____                           | _____               |

**Third:** The terms and conditions of the merger are as follows:

Please see attachment.

**Fourth:** The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving corporation or any other corporation or, in whole or in part, into cash or other property and the manner and basis of converting rights to acquire shares of each corporation into rights to acquire shares, obligations, or other securities of the surviving or any other corporation or, in whole or in part, into cash or other property are as follows:

Please see attachment.

*(Attach additional sheets if necessary)*

**THE FOLLOWING MAY BE SET FORTH IF APPLICABLE:**

Amendments to the articles of incorporation of the surviving corporation are indicated below or attached as an exhibit:

**OR**

Restated articles are attached:

Other provisions relating to the merger are as follows:

Please see attachment.

## PLAN OF MERGER

**AGREEMENT AND PLAN OF MERGER**, dated as of April 18, 2005 (this "**Agreement**"), by and between **BOSTON PRIVATE FINANCIAL HOLDINGS, INC.**, a Massachusetts corporation (the "**Buyer**"), and **GIBRALTAR FINANCIAL CORPORATION** a savings and loan holding company registered under the Home Owner's Loan Act of 1933 and incorporated in Florida (the "**Seller**").

WHEREAS, the Buyer and the Seller have entered into an Agreement and Plan of Merger, dated as of April 18, 2005 (as such agreement may be subsequently amended or modified, the "**Agreement and Plan of Merger**"), providing for the Seller to merge with and into the Buyer; and

NOW, THEREFORE, the Buyer and the Seller hereby agree as follows:

### ARTICLE I THE MERGER

#### 1.1 THE MERGER.

The constituent entities to the Merger shall be the Buyer and the Seller. Subject to the terms and conditions of this Agreement and the Agreement and Plan of Merger, in accordance with the provisions of the Massachusetts Business Corporation Act (the "**MBCA**") and Chapter 607 of the 2004 Florida Statutes (the "**Florida Statutes**"), at the Effective Time (as defined in Section 1.2 hereof), the Seller shall merge with and into the Buyer. The Buyer shall be the surviving entity of the Merger (sometimes referred to herein as the "**Surviving Corporation**") and, following consummation of the Merger, shall continue its corporate existence under the laws of the Commonwealth of Massachusetts. Upon consummation of the Merger, the separate corporate existence of the Seller shall cease by operation of law.

#### 1.2 EFFECTIVE TIME.

The Merger shall become effective at the time and on the date set forth in the articles of merger (the "**Articles of Merger**") after the Articles of Merger are received for filing and subsequently endorsed by the Secretary of State of the Commonwealth of Massachusetts. The term "**Effective Time**" shall be the date and time when the Merger becomes effective as set forth in the Articles of Merger.

#### 1.3 EFFECTS OF THE MERGER.

At and after the Effective Time, the Merger shall have the effects provided herein and in the applicable provisions of the MBCA and the Florida Statutes. At and after the Effective Time, all rights, privileges, powers and franchises and all property and assets of every kind and description of the Seller shall be vested in and be held and enjoyed by the Surviving Corporation, without further act or deed, and all the estates and interests of every kind of the Seller, including all debts due to it, shall be as effectively the property of the Surviving Corporation as they were of the Seller, and the title to any real estate vested by deed or otherwise in the Seller shall not revert or be in any way impaired by reason of the Merger; and all rights of creditors and liens

upon any property of the Seller shall be preserved unimpaired and all debts, liabilities and duties of the Seller shall be debts, liabilities and duties of the Surviving Corporation and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

#### **1.4 ADDITIONAL REGULATORY REQUIREMENTS**

The merger shall not be effective unless and until all regulatory approvals required to consummate the Merger shall have been obtained and all statutory waiting periods in respect thereof shall have expired.

### **ARTICLE II CONVERSION OF SHARES AND RIGHTS TO ACQUIRE SHARES**

#### **2.1 CONVERSION OF THE SELLER'S COMMON STOCK**

At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, each share of the Seller's common stock issued and outstanding immediately prior to the Effective Time, other than certain shares of the Seller's common stock (i) owned or held by the Buyer or the Seller, owned or held in a bona fide fiduciary or agency capacity or in satisfaction of a previously contracted debt, (ii) held by a stockholder who has properly exercised his appraisal rights under Section 607.1303 of the Florida Statutes, and (iii) issued pursuant to the Seller's employee stock purchase plan after the date of the Agreement and Plan of Merger, shall be converted into the right to receive approximately \$201.81 in value in the form of cash, common stock of the Buyer, or a combination thereof, subject to the election and allocation procedures and other provisions of the Agreement and Plan of Merger.

#### **2.2 CONVERSION OF RIGHTS TO ACQUIRE THE SELLER'S COMMON STOCK**

At the Effective Time, the Buyer shall assume any options, warrants or other rights to acquire the Seller's common stock (the "Seller Options") outstanding immediately prior to the Effective Time. Such assumed Seller Options shall be exercisable for a proportionate number of shares of the Buyer's common stock at an exercise price proportionate to the price of the Seller's common stock in relation to the Buyer's common stock as set forth in the Agreement and Plan of Merger.

### **ARTICLE III SURVIVING CORPORATION**

#### **3.1 ARTICLES OF ORGANIZATION AND BYLAWS.**

The Articles of Organization of the Buyer, as in effect immediately prior to the Effective Time, shall be the Articles of Organization of the Surviving Corporation, until thereafter amended as provided therein in accordance with applicable law. The Bylaws of the Buyer, as in effect immediately prior to the Effective Time, shall be the Bylaws of the Surviving Corporation, until thereafter amended as provided therein and in accordance with applicable law.



### **3.2 NAME.**

At the Effective Time, the name of Surviving Corporation shall be "Boston Private Financial Holdings, Inc.", until thereafter changed or amended in accordance with applicable law and the Articles of Organization of Surviving Corporation.

### **ARTICLE IV REPRESENTATIONS**

Each of the Buyer and the Seller represents that this Agreement has been duly authorized, executed and delivered by such party and constitutes a legal, valid and binding obligation of such party, enforceable against it in accordance with the terms hereof.

### **ARTICLE V TERMINATION**

Consummation of the Merger contemplated hereunder is conditioned upon the satisfaction of all conditions set forth in Article VII of the Agreement and Plan of Merger and the consummation of the Merger. This Agreement shall terminate and forthwith become void automatically and without any action on the part of the Buyer or the Seller immediately upon the termination of the Agreement and Plan of Merger in accordance with Article VIII thereof or if the Merger is not consummated, and there shall be no further liability on the part of the Buyer or the Seller upon such termination.

### **ARTICLE VII MISCELLANEOUS**

This Agreement may be executed in counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties and delivered to the other parties; it being understood that all parties need not sign the same counterpart.