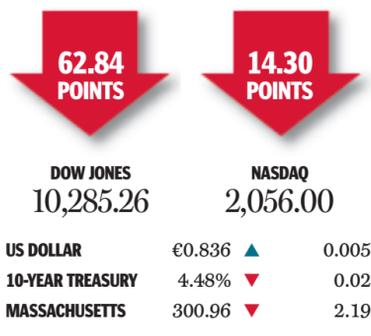


## Markets

For updates: [www.boston.com/business](http://www.boston.com/business)



**STEVE BAILEY**  
**Downtown**

## Pizza pie in your eye

Simon says: Why can't Boston be more like Indianapolis? With the exception of television, of course, nothing so symbolizes the great leveling of America — our right to think alike and look alike — as the mall. And from its perch in Indianapolis, known for auto racing and the Kiwanis, no one has done more to celebrate our sameness — at premium prices — than the Simon family, the nation's largest mall operator. In all, Simon Property Group has a stake in nearly 300 properties nationwide, meaning all those Simons — Melvin and Herbert and David — can travel America and always feel right at home, which is as it should be.

It is guys like George Chapdelaine and what he represents, however, who don't fit Simon's World. To Simon, with a market value of about \$40 billion, Chapdelaine's tiny Boston Restaurant Group is just a name on a lease somewhere until a bigger opportunity comes along. To those who know Boston, however, Chapdelaine's Pizzeria Regina remains something distinctive. There is plenty of good pizza in this town, but Regina's wafer-thin slices say "pizza" in Boston the same way "Legal" says seafood.

No matter. Pizzeria Regina is about to get the heave-ho from two of its most profitable locations, the Burlington and South Shore malls, because Simon is replacing them with Villa Pizza, a fast-growing New Jersey chain of 300 stores already in dozens of Simon malls. Simon is dumping Regina not because it doesn't like its pizza, but because Simon can put Villa in food courts across the country.

Little guys get run over by big guys all the time. It happens in football, and it happens in business. But we don't have to admire it — not when it happens this way. Chapdelaine has been Regina's chief executive for 25 years. And for more than three years, he thought he was talking with two Simon executives he had known for years, Allen Kaplan and Carolyn Preston, about renewing his leases. Only last year did they break the news to him that they had leased his Braintree and Burlington stores to Villa Pizza three years earlier. Repeat: three years earlier!

"I was flabbergasted," Chapdelaine says. The executives then proposed he take an alternative spot in the Burlington mall, he says, only to pull that back when they found Indianapolis had given Villa an exclusive. Chapdelaine says Simon never told him why they kept the Villa leases a secret. As it turns out, everyone knew the game was over before it started — everyone but Pizzeria Regina. Here, for instance, is an exchange of e-mails between Preston, Simon's assistant vice president for leasing, and Jackie Reynolds, who then worked at the Burlington Mall. They were unearthed as part of Regina's lawsuit, filed in Middlesex Superior Court, accusing Simon of making "fraudulent representations." The e-mails are from 2002 — two years before they let Regina in on the joke.

"Carolyn, I was printing out some leases for our files and was wondering what the above lease is?" wrote Reynolds. "Is this replacing Pizzeria Regina or is it part of it?" "This is a new tenant for Regina when the lease expires," responded Preston. "But Regina has no idea. This still needs to be kept VERY CONFIDENTIAL."

"Allen [Kaplan] wants to re-iterate the highly confidential nature of this lease," Preston said in another e-mail. "Put it away for your eyes only and ask questions later. We do not want this to become public knowledge." This is no way to treat a longtime partner. A Simon spokesman and its lawyer declined to comment. In court papers Simon denies any wrongdoing, but acknowledges its affiliate signed a lease with Villa "before 2002." Tomorrow, Pizzeria Regina will be in court, trying to block its eviction from Burlington Mall, where it has done business for a quarter-century. Exhibit A should be a slice of Regina's pizza. In this complicated world, good pizza should still matter.

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## Bank of America's market share slips

### Company disputes FDIC deposit figures

By **Sasha Talcott**  
GLOBE STAFF

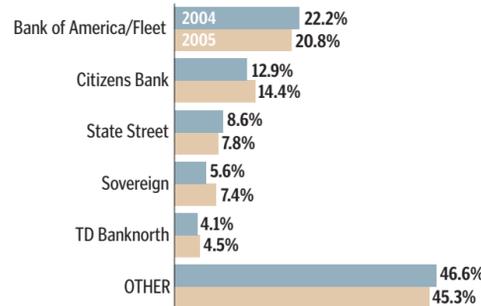
Bank of America Corp.'s market share in Massachusetts and New England has fallen since acquiring FleetBoston Financial Corp., according to data released yesterday by the Federal Deposit Insurance Corp. Bank of America's market share in New England fell to 18.4 percent in 2005, down from 19.6 percent in 2004. Its market share in Massachusetts tumbled to 20.8 percent from 22.2 percent in 2004. The drop, measured in total amount of

dollar deposits, contrasts sharply with executives' public statements, in which they said the bank has gained thousands of checking accounts here since buying New England's largest bank in April 2004. The overall total of deposits in Massachusetts has remained stable at approximately \$172 billion.

The FDIC data are a widely used barometer of banks' market share, but many bankers say that their usefulness is limited because they includes some types of deposits banks do not typically consider in their internal calculations, such as some corporate deposits. Also, when banks are acquired, they sometimes change the way they report the data to the FDIC, which can throw off results.

**BANK OF AMERICA, Page D6**

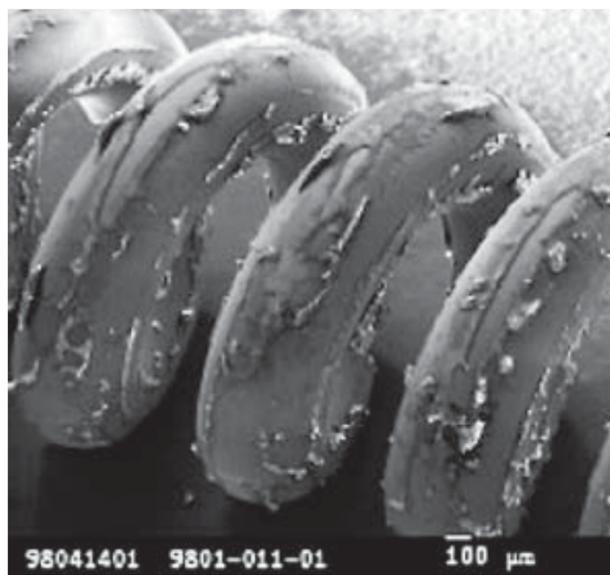
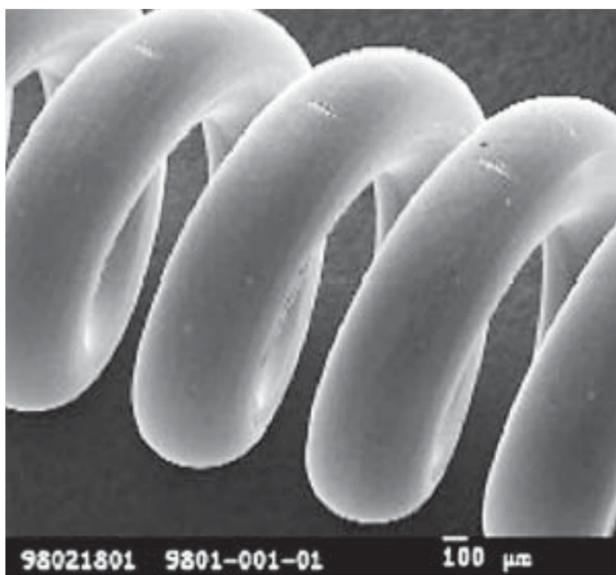
### How they stack up in the state



SOURCE: FDIC

GLOBE STAFF

## Device makers fight reuse of surgical tools



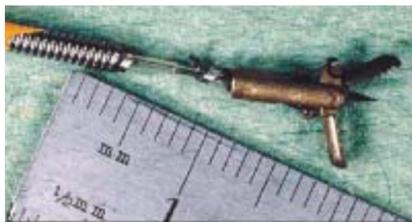
Above, close-ups of a new forceps (left) and dried blood on a reprocessed forceps (right). Boston Scientific says the forceps (shown below) was going to be used to obtain a gastrointestinal tract tissue sample until doctors noticed the stains.

### Mass. hospital group says instruments safe and less pricey, but manufacturers want a patient consent law

By **Ross Kerber**  
GLOBE STAFF

Medical-device companies say an increasing number of doctors are treating patients with improperly sterilized surgical tools, catheters, and other instruments that are contaminated with blood or bacteria.

The companies are pushing for a state law that would require patients to consent before being treated with reprocessed instruments. A State House hearing on the bill, sponsored by State Senator Susan C. Tucker, Democrat of Andover, is scheduled for today.



To bolster their case, manufacturers have distributed to legislators photos of fouled or damaged instruments they say were shipped for reuse by reproprocessors.

For example, a photo provided by Boston Scientific Corp. shows dried blood on a forceps it manufactured, the Natick company said. Boston Scientific said the forceps was going to be used to obtain a gastrointestinal tract tissue sample until doctors noticed the stains.

Another photo, from Smith & Nephew PLC's endoscopy unit in Andover, shows unidentified mat-

ter on a supposedly sterilized blade that was going to be used to trim torn tissue during knee surgery.

"It's medicine's dirty little secret," said Nigel Wilkinson, vice president of quality assurance for Smith & Nephew, which makes surgical instruments. In addition to the increased risk of infection, the instruments aren't designed for the stress of reuse, he said.

Tucker said Smith & Nephew proposed the idea of legislation. "To me it's a consumer protection issue, and it deserves to be brought to attention," she said. Though the proposal is likely to boost sales of the manufacturers' single-use devices, Wilkinson and other executives say they're mainly motivated by health concerns.

The devices were designed to be thrown away after single use, but sterilizing them for resale to hospitals at discount prices has become a \$125 million business in the United States. Some organizations, including the Massachusetts Hospital Association and the American College of Cardiology, say reuse is safe, and manufacturers can only document

**MEDICAL DEVICES, Page D7**

## Pharmacies that sold AIDS drug by Serono may face US inquiry

### Policies of stores could have violated pricing regulations

By **Ross Kerber**  
GLOBE STAFF

Pharmacies that sold Serono SA's drug to treat AIDS may be next on prosecutors' target list, court filings suggest.

The pharmacies' practices are questioned in private lawsuits filed against Serono, Europe's largest biotechnology company, that led to a \$704 million legal settlement that prosecutors disclosed on Monday.

One of the private suits contends Serono provided Serostim to some un-

named parties, apparently pharmacies, at discounts of up to about 4 percent. The company then let these parties pocket the difference from the regular sales price, which could violate federal drug pricing rules.

The Justice Department would say only that it is continuing to investigate the marketing of Serostim. Assistant US Attorney Mary Beth Carmody added that "the allegations against Serono are resolved by the global settlement," meaning the company wouldn't face further action.

On Monday prosecutors said a company unit, Serono Labs of Rockland, has agreed to plead guilty to two criminal charges related to the illegal promotion of Serostim and pledged to abide by

oversight of its operations. The deal won't affect its ability to supply the drug, the firm said, and it didn't acknowledge other contentions by the government, such as that it tried to market Serostim for unapproved uses or made improper arrangements with pharmacies.

Serostim is a growth hormone to treat the life-endangering weight loss that can accompany AIDS. Demand for the drug fell off shortly after it was approved in 1996 as the success of drug cocktails of protease inhibitors made Serostim less important in treatments. Prosecutors said that Serono offered doctors kickbacks and used unapproved diagnostic methods to boost demand.

**SERONO, Page D8**

## Suburban papers may prove key to Herald deal

By **Robert Gavin**  
GLOBE STAFF

As Patrick J. Purcell looks for new investors or buyers for his Herald Media Inc., he may find the biggest draw to be the company's suburban newspapers, rather than the flagship Boston Herald, media analysts said.

Another possible attraction to a buyer: the headquarters site of the Boston Herald, which is well-located between spreading development downtown and the South End.

Purcell, publisher of the Herald and chief executive of Herald Media, which owns about 100 daily and weekly papers in Boston's suburbs, said this week that three of his equity investors want to cash out, and he needs money to pay them off. Purcell, who holds the majority stake in Herald Media, said he would

**HERALD, Page D8**

### Inflation pressures felt

Wholesale prices jumped by the largest amount in 15 years amid signs that soaring energy prices are beginning to spill over to the rest of the economy. **D2**

### Flu-drug plant set

Roche AG it will build a US plant to make more of its antiviral flu drug, but global pressure builds for the firm to ease its monopoly grip. **D4**

### Intel misses forecast

The technology bellwether's third-quarter profit rises by 5 percent thanks to notebook computer sales, but it misses analysts' expectations by a penny. **D5**