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FLEETBOSTON FINANCIAL CORP

Form S-8 POS

February 02, 2004

As filed with the Securities and Exchange Commission on February 2, 2004

Registration No. 333-109379

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

POST-EFFECTIVE AMENDMENT NO. 1

TO FORM S-4

ON FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

FLEETBOSTON FINANCIAL CORPORATION

(Exact name of registrant as specified in its charter)

RHODE ISLAND 05-0341324

(State or other jurisdiction of (I.R.S. Employer
incorporation or organization) Identification No.)

100 FEDERAL STREET

BOSTON, MASSACHUSETTS 02110

(617) 434-2200

(Address, including zip code, and telephone number,
including area code, of registrant's
principal executive offices)

PROGRESS FINANCIAL CORPORATION 2000 INCENTIVE STOCK OPTION PLAN
PROGRESS FINANCIAL CORPORATION AMENDED AND RESTATED 1993 STOCK INCENTIVE PLAN
AMENDED AND RESTATED 1993 DIRECTORS' STOCK OPTION PLAN

(Full titles of the plans)

GARY A. SPIESS, ESQ.

Executive Vice President, General Counsel and Secretary

FLEETBOSTON FINANCIAL CORPORATION

100 FEDERAL STREET

BOSTON, MASSACHUSETTS 02110

617-434-9587

(Names, addresses, including zip codes, and telephone numbers, including
area codes, of agents for service)

Copy to:

JANICE B. LIVA, ESQ.

Deputy General Counsel and Assistant Secretary

FLEETBOSTON FINANCIAL CORPORATION

100 FEDERAL STREET

BOSTON, MASSACHUSETTS 02110

617-434-8630

EXPLANATORY NOTE

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This Post-Effective Amendment No. 1 on Form S-8 amends the Registration Statement on Form S-4 (File No. 333-109379) (the "Original Registration Statement") which was previously filed by FleetBoston Financial Corporation, a Rhode Island Corporation (the "Registrant") in connection with the merger (the "Merger") of Progress Financial Corporation, a Delaware corporation ("Progress") with and into the Registrant, with the Registrant as the surviving corporation in the Merger. The Original Registration Statement, as amended by this Post-Effective Amendment No. 1, is referred to herein as the "Registration Statement." In connection with the filing of the Original Registration Statement, \$241,360,482 maximum aggregate offering price for shares of the common stock, par value \$0.01 per share, of the Registrant ("FleetBoston Common Stock") were registered with the Securities and Exchange Commission (the "Commission") and the applicable fee was paid. The number of shares so registered pursuant to the Original Registration Statement were those shares which were expected to be distributed to the holders of the common stock, par value \$1.00 per share, of Progress ("Progress Common Stock") and those shares which are necessary to be distributed, or reserved for issuance, to Progress employees in connection with certain employee benefit plans of Progress in effect at the time of the Merger, as listed on the cover of this Post-Effective Amendment No. 1. Pursuant to the terms of the Merger, all outstanding Progress stock options exercisable for Progress Common Stock were converted into stock options exercisable for FleetBoston Common Stock after the effective time of the Merger based on a formula which was described in the Original Registration Statement and will be described in the offering materials sent to the holders of such Progress stock options.

PART II INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Certain Documents by Reference.

The following documents heretofore filed by the Registrant with the Commission pursuant to the Securities Exchange Act of 1934 (the "Exchange Act") are incorporated by reference in this Registration Statement:

(a) The Registrant's Annual Report filed on Form 10-K for the fiscal year ended December 31, 2002;

(b) The Registrant's Quarterly Reports filed on Form 10-Q for the fiscal quarters ended March 31, 2003, June 30, 2003 and September 30, 2003;

(c) The Registrant's current reports on Form 8-K filed on January 10, 2003, January 16, 2003, February 18, 2003, April 16, 2003, July 16, 2003, July 31, 2003, October 16, 2003, October 28, 2003, December 8, 2003 and January 15, 2004;

(d) The description of the Registrant's common stock contained in a Registration Statement filed by Industrial National Corporation (predecessor to the Registrant) on Form 8-B dated May 29, 1970, and any amendment or report filed for the purpose of updating such description; and

(d) The description of the Preferred Share Purchase Rights

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contained in the Registration Statement on Form 8-A dated November 7, 2000, and any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Registrant pursuant to Section 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment to this Registration Statement which indicates that all of the shares of common stock offered have been sold or which deregisters all such shares then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents. Any statement contained in a document incorporated or deemed incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement. This incorporation by reference shall not be deemed to incorporate by reference any information furnished pursuant to Item 9 or Item 12 of any current report on Form 8-K, unless specifically provided in such report.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable

Item 6. Indemnification of Directors and Officers.

The Registrant's By-laws provide for indemnification to the extent permitted by Section 7-1.1-4.1 of the Rhode Island Business Corporation Law. Such section, as adopted by the By-laws, requires the Registrant to indemnify directors, officers, employees or agents against judgments, fines, reasonable costs, expenses and counsel fees paid or incurred in connection with any proceeding to which such director, officer, employee or agent or his legal representative may be a party (or for testifying when not a party) by reason of his being a director, officer, employee or agent, provided that such director, officer, employee or agent shall have acted in good faith and shall have reasonably believed (a) if he was acting in his official capacity that his conduct was in the Registrant's best interest, (b) in all other cases that his conduct was at least not opposed to its best interests, and (c) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful. The Registrant's By-laws provide that such rights to indemnification are contract rights and that the expenses incurred by an indemnified person shall be paid in advance of a final disposition of any proceeding, provided however, that if required under applicable law, such person must deliver a written affirmation that he has met the standards of care required under such provisions to be entitled to indemnification and provides an undertaking by or on behalf of such

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person to repay all amounts advanced if it is ultimately determined that such person is not entitled to indemnification. With respect to possible indemnification of directors, officers and controlling persons of the Registrant for liabilities arising under the Securities Act of 1933 (the "Act") pursuant to such provisions, the Registrant is aware that the Securities and Exchange Commission has publicly taken the position that such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

A list of the exhibits included as part of this Registration Statement is set forth in the Exhibit Index which immediately precedes such exhibits and is hereby incorporated by reference herein.

Item 9. Undertakings.

The Corporation hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

i. To include any prospectus required by Section 10(a)(3) of the Act;

ii. To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement (or the most recent post-effective amendment thereto); and

iii. To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs i. and ii. shall not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

The Registrant hereby undertakes that, for purposes of determining any liability under the Act, each filing of the Corporation's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference in the registration statement shall be deemed to be a new registration

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statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnification for liabilities arising under the Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the provisions described in Item 6, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe it meets all the requirements for filing on Form S-8 and has duly caused this Post-Effective Amendment No. 1 on Form S-8 to Form S-4 to be signed on its behalf by the undersigned, thereunto duly authorized in the City of Boston, and the Commonwealth of Massachusetts, on January 30, 2004.

FLEETBOSTON FINANCIAL CORPORATION

By: /s/Robert C. Lamb, Jr.

Robert C. Lamb, Jr.
Executive Vice President and
Chief Financial Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities indicated and on the 30th day of January, 2004.

Signature Title

* Chairman of the Board, Chief Executive Officer
----- and Director
Charles K. Gifford

/s/ Robert C. Lamb, Jr. Executive Vice President and Chief Financial
----- Officer

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Robert C. Lamb, Jr.

| | |
|--------------------------------------|--------------------------|
| * ----- Ernest L. Puschaver | Chief Accounting Officer |
| * ----- Joel B. Alvord | Director |
| * ----- William Barnet, III | Director |
| * ----- Daniel P. Burnham | Director |
| * ----- Kim B. Clark | Director |
| * ----- Paul J. Choquette, Jr. | Director |
| * ----- John T. Collins | Director |
| * ----- Gary L. Countryman | Director |
| * ----- Marian L. Heard | Director |
| * ----- Robert M. Kavner | Director |
| * ----- Thomas J. May | Director |
| * ----- Terrence Murray | Director |
| * ----- Donald F. McHenry | Director |
| * ----- Michael B. Picotte | Director |

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* Director

Francene S. Rodgers

* Director

Thomas M. Ryan

* Director

T. Joseph Semrod

----- Director
Paul R. Tregurtha

*By: Robert C. Lamb, Jr.

/s/ Robert C. Lamb, Jr.

Attorney-in-fact

EXHIBIT INDEX

| Exhibit Number | Exhibit |
|-------------------|--|
| 5 | Opinion of Edwards & Angell, LLP as to legality* |
| 23(a) | Consent of Edwards & Angell, LLP (included in Exhibit 5)* |
| 23(b) | Consent of PricewaterhouseCoopers LLP |
| 24 | Powers of Attorney (included on page II-4 of the Original Registration Statement) |

* Previously filed