

# WACHTELL, LIPTON, ROSEN & KATZ

MARTIN LIPTON  
HERBERT M. WACHTELL  
BERNARD W. NUSSBAUM  
LAWRENCE B. PEDOWITZ  
PAUL VIZCARRONDO, JR.  
PETER C. HEIN  
HAROLD S. NOVIKOFF  
KENNETH B. FORREST  
MEYER G. KOPLOW  
THEODORE N. MIRVIS  
EDWARD D. HERLIHY  
DANIEL A. NEFF  
ERIC M. ROTH  
ANDREW R. BROWNSTEIN  
MICHAEL H. BYOWITZ  
PAUL K. ROWE  
MARC WOLINSKY  
DAVID GRUENSTEIN  
STEPHEN G. GELLMAN  
STEVEN A. ROSENBLUM

STEPHANIE J. SELIGMAN  
JOHN F. SAVARESE  
SCOTT K. CHARLES  
DAVID S. NEILL  
JODI J. SCHWARTZ  
ADAM O. EMMERICH  
RALPH M. LEVENE  
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DOUGLAS K. MAYER  
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ILENE KNABLE GOTTS  
DAVID M. MURPHY  
JEFFREY M. WINTNER  
TREVOR S. NORWITZ  
BEN M. GERMANA  
ANDREW J. NUSSBAUM

51 WEST 52ND STREET  
NEW YORK, N.Y. 10019-6150  
TELEPHONE: (212) 403 - 1000  
FACSIMILE: (212) 403 - 2000

GEORGE A. KATZ (1965-1989)  
JAMES H. FOGELSON (1967-1991)

## OF COUNSEL

WILLIAM T. ALLEN  
PETER C. CANELLOS  
DAVID M. EINHORN  
THEODORE GEWERTZ  
RICHARD D. KATCHER  
THEODORE A. LEVINE  
ROBERT B. MAZUR  
PHILIP MINDLIN  
ROBERT M. MORGENTHAU  
ERIC S. ROBINSON  
PATRICIA A. ROBINSON\*  
LEONARD M. ROSEN  
MICHAEL W. SCHWARTZ  
ELLIOTT V. STEIN  
WARREN R. STERN  
PATRICIA A. VLAHAKIS  
J. BRYAN WHITWORTH  
AMY R. WOLF

\* ADMITTED IN THE DISTRICT OF COLUMBIA

## COUNSEL

MICHELE J. ALEXANDER  
LOUIS J. BARASH  
DIANNA CHEN  
ANDREW J.H. CHEUNG  
PAMELA EHRENKRANZ  
ELAINE P. GOLIN  
PAULA N. GORDON  
NANCY B. GREENBAUM  
MAURA R. GROSSMAN  
J. AUSTIN LYONS  
AMANDA N. PERSAUD  
JEFFREY A. WATIKER

RACHELLE SILVERBERG  
DAVID C. BRYAN  
STEVEN A. COHEN  
GAVIN D. SOLOTAR  
DEBORAH L. PAUL  
DAVID C. KARP  
RICHARD K. KIM  
JOSHUA R. CAMMAKER  
MARK GORDON  
JOSEPH D. LARSON  
LAWRENCE S. MAKOW  
JEANNEMARIE O'BRIEN  
WAYNE M. CARLIN  
JAMES COLE, JR.  
STEPHEN R. DIPRIMA  
NICHOLAS G. DEMMO  
IGOR KIRMAN  
JONATHAN M. MOSES  
T. EIKO STANGE  
DAVID A. SCHWARTZ

JOHN F. LYNCH  
WILLIAM SAVITT  
ERIC M. ROSOF  
MARTIN J.E. ARMS  
GREGORY E. OSTLING  
DAVID B. ANDERS  
ADAM J. SHAPIRO  
NELSON O. FITTS  
JEREMY L. GOLDSTEIN  
JOSHUA M. HOLMES  
DAVID E. SHAPIRO  
DAMIAN G. DIDDEN  
ANTE VUCIC  
IAN BOCKO  
MATTHEW M. GUEST  
DAVID E. KAHAN  
DAVID K. LAM  
BENJAMIN M. ROTH  
JOSHUA A. FELTMAN

July 15, 2011

## BY E-APPS AND OVERNIGHT COURIER

Mr. Adam M. Drimer  
Assistant Vice President  
Federal Reserve Bank of Richmond  
FRBR Warehouse  
2050 Magnolia Street  
Richmond, VA 23223

RE: Notification Pursuant to Section 4 of the Bank Holding Company Act  
by Capital One Financial Corporation to Acquire ING Bank, fsb,  
Sharebuilder Advisors, LLC and ING Direct Investing, Inc.

Dear Mr. Drimer:

Enclosed is the notification by Capital One Financial Corporation, McLean, Virginia ("Capital One"), pursuant to sections 4(c)(8) and 4(j) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. §§ 1843(c)(8) and 1843(j)) to the Board of Governors of the Federal Reserve System (the "Board") relating to the proposed acquisition of ING Bank, fsb, Wilmington, Delaware ("ING Bank"), Sharebuilder Advisors, LLC, Seattle, Washington, and ING Direct Investing, Inc., Seattle, Washington. Attached is the form of newspaper notice to be published.

Mr. Adam M. Drimer  
July 15, 2011  
Page 2

Capital One and ING Bank request confidential treatment for the Confidential Exhibits accompanying the Application because they contain information regarding the companies that is derived from sensitive and proprietary confidential business information. This information could provide competitors of Capital One and ING Bank with nonpublic information regarding the companies. In addition, potential investors could be influenced or misled by such information, which is not reported in any documents filed or to be filed in accordance with the disclosure requirements of applicable securities laws, as a result of which Capital One and ING Bank could be exposed to potential inadvertent violations of law or exposure to legal claims. This information is not the type of information that would be made available to the public under any circumstances. All such information, if made public, could result in substantial and irreparable harm to Capital One and ING Bank. Accordingly, this information is exempt from disclosure under the Freedom of Information Act, 5 U.S.C. § 552(b)(4).

If you have any questions or require any additional information, please feel free to Andres L. Navarrete, Senior Vice President & Chief Counsel - Regulatory at Capital One (703-720-2266) or the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard K. Kim". The signature is fluid and cursive, with a prominent initial "R" and "K".

Richard K. Kim

**Notice of Application for Acquisition of a Federal Savings Association  
by a Bank Holding Company**

Capital One Financial Corporation, McLean, Virginia (“Capital One”), has filed a notice with the Federal Reserve Bank of Richmond for permission to acquire a federal savings association, ING Bank, fsb, Wilmington, Delaware, pursuant to section 4(c)(8) and(j) of the federal Bank Holding Company Act, 12 U.S.C. §1843(c)(8) and (j). The Federal Reserve considers a number of factors in deciding whether not to object to the notice, including whether the proposal can reasonably be expected to produce benefits to the public that outweigh possible adverse effects, and the record of performance of Capital One’s subsidiary banks, Capital One, National Association and Capital One Bank (USA), National Association, in helping to meet local credit needs.

You are invited to submit comments in writing, via mail or facsimile, on this notice to the Federal Reserve Bank of Richmond, P.O. Box 27622, Richmond, VA 23261; Fax: (804)697-4021. The comment period will not end before August \_\_, 2011, and may be somewhat longer. The procedures of the Federal Reserve Board for processing notices and applications may be found at 12 C.F.R. Part 262. Procedures for processing protested notices or applications may be found at 12 C.F.R. 262.25. To obtain a copy of the Federal Reserve Board’s procedures, or if you need more information about how to submit your comments on the notice, contact Adam M. Drimer, Assistant Vice President, at the Federal Reserve Bank at (804) 697-8980. The Federal Reserve will consider your comments and any request for a public meeting or hearing on the application if they are received in writing by the Federal Reserve Bank on or before the last day of the comment period.

**NOTIFICATION**

**to the**

**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

**by**

**CAPITAL ONE FINANCIAL CORPORATION**

**in connection with the acquisition of**

**ING BANK, FSB**

**SHAREBUILDER ADVISORS, LLC**

**and**

**ING DIRECT INVESTING, INC.**

**Pursuant to Sections 4(c)(8) and 4(j)  
of the Bank Holding Company Act of 1956, as amended  
and Section 225.24 of Regulation Y**

**July 15, 2011**

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# Board of Governors of the Federal Reserve System

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## Notification by a Bank Holding Company to Acquire a Nonbank Company and/or Engage in Nonbanking Activities

Capital One Financial Corporation  
Corporate Title of Notificant

---

1680 Capital One Drive  
Street

---

McLean  
City

Virginia  
State

22102  
Zip Code

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Hereby provides the Board with a notice pursuant to:

- (1) Section 4(c)(8) and 4(j) of the Bank Holding Company Act of 1956, as amended ("BHC Act"— 12 U.S.C. 1843), under the "Expedited action for certain nonbanking proposals by well-run bank holding companies" as described in section 225.23 of Regulation Y; or
- (2) Section 4(c)(8) and 4(j) of the BHC Act, under the "Procedures for other nonbanking proposals" as described in section 225.24 of Regulation Y;

for prior approval to engage directly or indirectly in certain nonbanking activities, *de novo*, through acquisition of the assets of a going concern, or through direct or indirect ownership, control, or power to vote at least 100% of the voting shares of:

ING Bank, fsb

---

Corporate Title of Company to be Acquired and/or Description of Nonbanking Activity (refer to section 225.28 of Regulation Y, as applicable)

1 South Orange Street  
Street

---

Wilmington  
City

Delaware  
State

19801  
Zip Code

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Sharebuilder Advisors, LLC

Corporate Title of Company to be Acquired and/or Description of Nonbanking Activity (refer to section 225.28 of Regulation Y, as applicable)

83 South King Street

Street

Seattle

City

Washington

State

98104

Zip Code

ING Direct Investing, Inc.

Corporate Title of Company to be Acquired and/or Description of Nonbanking Activity (refer to section 225.28 of Regulation Y, as applicable)

83 South King Street

Street

Seattle

City

Washington

State

98104

Zip Code

**Does Notificant request confidential treatment for any portion of this submission?**

Yes

As required by the General Instructions, a letter justifying the request for confidential treatment is included.

The information for which confidential treatment is being sought is separately bound and labeled "CONFIDENTIAL."

No

Public Reporting Burden for this collection of information is estimated to average 0.5 hours for a post-consummation notification, 5 hours for an expedited notification, and 12 hours for a complete notification, including the time to gather and maintain data in the required form, to review instructions, and to complete the information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Secretary, Board of

Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0121), Washington, D.C. 20503. The Federal Reserve may not conduct or sponsor, and an organization or a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Name, title, address, telephone number and facsimile number of person(s) to whom inquiries concerning this notification may be directed:

Andres L. Navarrete, Esq., Senior Vice President & Chief Counsel - Regulatory  
Capital One Financial Corporation, 1680 Capital One Drive, McLean, VA 22120  
(703) 720-2266, (703) 720-2221 (fax)  
andy.navarrete@capitalone.com

with a copy to:

Richard K. Kim, Esq.  
Wachtell, Lipton, Rosen & Katz, 51 W. 52<sup>nd</sup> Street, New York, NY 10019  
(212) 403-1354, (212) 403-2354 (fax)  
rkim@wlrk.com

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## Certification

I certify that the information contained in this notification has been examined carefully by me and is true, correct, and complete, and is current as of the date of this submission to the best of my knowledge and belief. I acknowledge that any misrepresentation or omission of a material fact constitutes fraud in the inducement and may subject me to legal sanctions provided by 18 USC 1001 and 1007.

I also certify, with respect to any information pertaining to an individual and submitted to the Board in (or in connection with) this notification, that the notificant has the authority, on behalf of the individual, to provide such information to the Board and to consent or to object to public release of such information. I certify that the notificant and the involved individual consent to public release of any such information, except to the extent set forth in a written request by the notificant or the individual, submitted in accordance with the Instructions to this form and the Board's Rules Regarding Availability of Instructions to this form

and the Board's Rules Regarding Availability of Information (12 CFR Part 261), requesting confidential treatment for the information.

I acknowledge that approval of this notification is in the discretion of the Board of Governors of the Federal Reserve System (the "Federal Reserve"). Actions or communications, whether oral, written, or electronic, by the Federal Reserve or its employees in connection with this filing, including approval if granted, do not constitute a contract, either express or implied, or any other obligation binding upon the agency, the United States or any other entity of the United States, or any officer or employee of the United States. Such actions or communications will not affect the ability of the Federal Reserve to exercise its supervisory, regulatory, or examination powers under applicable laws and regulations. I further acknowledge that the foregoing may not be waived or modified by any employee or agency of the Federal Reserve or of the United States.

Signed this 14th day of July, 2011.



Signature of Chief Executive Officer or Designee

Andres L. Navarrete Senior Vice President & Chief Counsel - Regulatory  
Typed Name and Title

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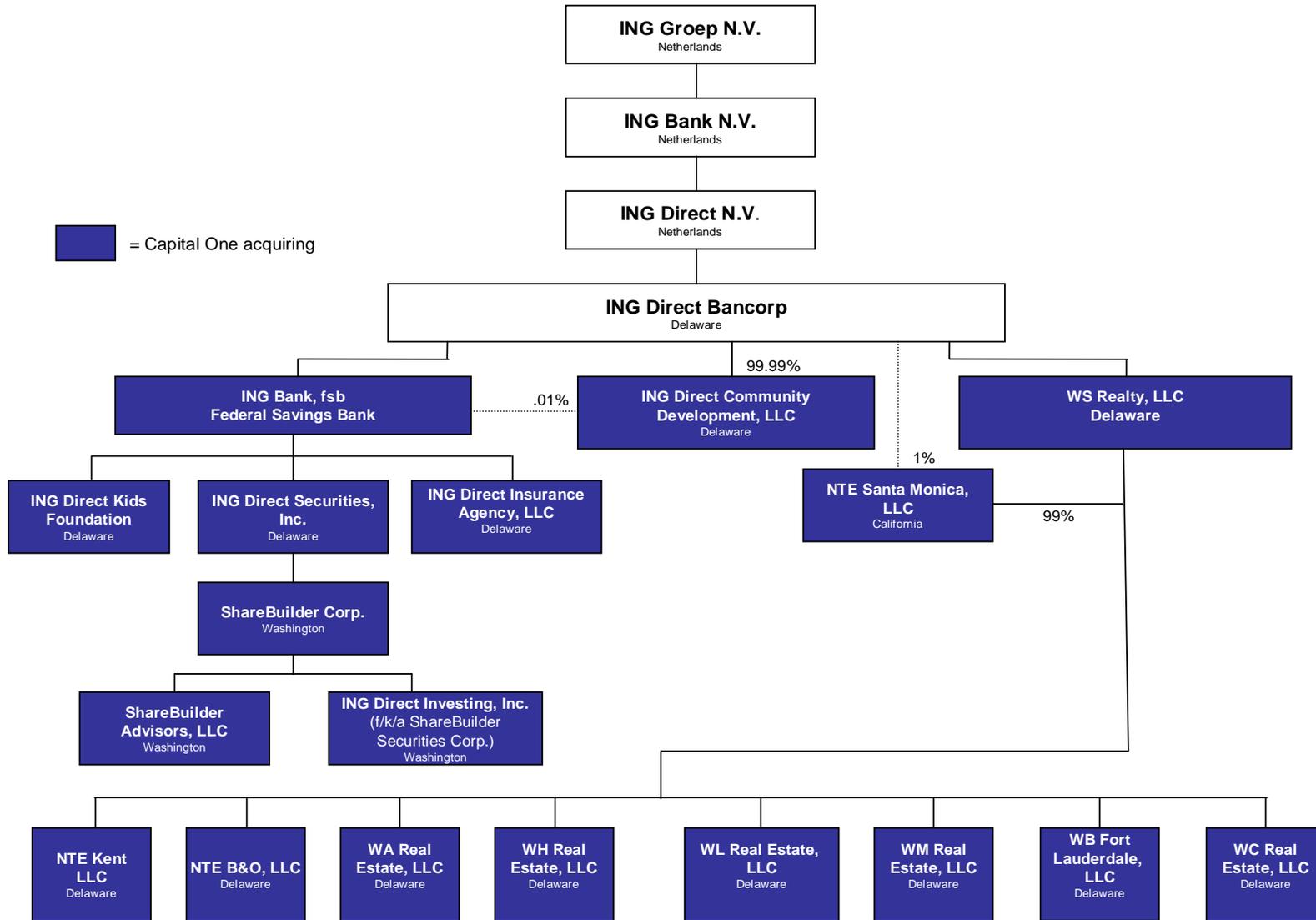
## **Introductory Statement**

This Notification to the Board of Governors of the Federal Reserve System (the “Board”), pursuant to Section 4(c)(8) and 4(j) of the Bank Holding Company Act of 1956, as amended<sup>1</sup> (the “BHC Act”), relates to the acquisition by Capital One Financial Corporation, McLean, Virginia (“Capital One” or “Notificant”), of all of the outstanding shares of common stock of ING Bank, fsb, Wilmington, Delaware (“ING Bank”), and its subsidiaries, Sharebuilder Advisors, LLC, Seattle, Washington (“Sharebuilder”) and ING Direct Investing, Inc., Seattle, Washington (“IDII”).

The organizational chart on the following page illustrates which entities Capital One is proposing to acquire. (The entities that Capital One is proposing to acquire are collectively referred to as “ING Direct”.) As detailed below, most of the ING Direct entities are either inactive or engage in permissible servicing functions within the limitations of Section 4(c)(1)(C) of the BHC Act and Section 225.22(d) of Regulation Y. Hence, Capital One may acquire them without prior Board approval. Capital One is requesting prior Board approval under Section 4(c)(8) of the BHC Act to acquire all of the other ING Direct companies that engage in activities beyond permissible servicing functions. Capital One is not relying on Section 4(k) of the BHC Act as a basis to acquire any of the ING Direct entities.

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<sup>1</sup> 12 U.S.C. § 1843(c)(8)



On June 16, 2011, Capital One entered into a definitive agreement (the “Purchase Agreement”) under which Capital One will acquire ING Direct from ING Groep N.V., Amsterdam, the Netherlands (“ING Groep”), in a stock and cash transaction valued at \$9.0 billion at announcement (the “Acquisition”). The Acquisition combines ING Direct’s national direct deposit franchise with Capital One’s online banking operations as well as its advantaged access to assets and local scale branch banking. The combination strengthens Capital One’s customer franchise and brand and provides significant financial and strategic upside with low execution risk.

Under the agreement, Capital One will purchase ING Direct from ING Groep for \$6.2 billion in cash and approximately 55.9 million Capital One common shares, valued at approximately \$2.8 billion, based on a Capital One share price of \$50.07, the 10-day average of Capital One closing prices for the period ending June 15, 2011. In support of the Acquisition, Capital One announced on July 13, 2011, a public equity raise of approximately 40 million shares priced at \$50 per share.<sup>2</sup> In connection with the public equity raise, Capital One entered into forward sale agreements with Barclays Capital and Morgan Stanley. The forward sale agreements permit Capital One to lock in a stock price now while maintaining the option not to issue the shares in the unlikely event that the Acquisition is not completed. On July 14, 2011, Capital One announced the issuance of \$3.0 billion in senior unsecured notes.<sup>3</sup>

In connection with the transaction, Capital One expects to realize approximately \$90 million in cost savings from consolidating systems, platforms and corporate staff functions. In addition to these cost synergies, Capital One expects to achieve funding savings of approximately \$200 million annually from optimizing management of the combined deposit portfolio. Beyond those amounts, there are potential additional synergies from cross-selling and from balance sheet repositioning opportunities. Capital One expects to incur approximately \$210 million of transaction and integration costs in connection with the Acquisition.

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<sup>2</sup> A link to the prospectus supplement for the equity raise is at <http://www.sec.gov/Archives/edgar/data/927628/000119312511188008/d424b2.htm>.

<sup>3</sup> A link to the prospectus supplement for the senior notes is at: <http://www.sec.gov/Archives/edgar/data/927628/000119312511188097/d424b5.htm>.

As noted above, ING Groep will receive approximately 55.9 million shares of Capital One common stock. ING Groep will in the aggregate hold up to 9.9% of Capital One's outstanding common stock. ING Groep will also have the right, exercisable after the closing, to name one member to Capital One's Board of Directors until the earlier of one year following the closing date or the date on which ING Groep sells more than 33% of Capital One common stock received in connection with the Acquisition. ING Groep has agreed to a customary lock-up on its shares. In connection with its investment in Capital One stock, ING Groep intends to seek a determination from the Board that ING Groep will not be deemed to "control" Capital One within the meaning of the BHC Act.

As discussed in this Notification, Capital One respectfully submits that the Acquisition satisfies all of the financial, managerial, competitive, public benefits and other factors that the Board must review under the BHC Act. In this regard, Capital One is strongly capitalized and will remain so following the Acquisition. Capital One's management has a proven track record in successfully acquiring and integrating banks. Capital One and ING Bank do not overlap in any banking markets and the Acquisition does not raise competitive concerns. Lastly, Section 604(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") requires, after July 21, 2011, that the Board consider whether the Acquisition would result in greater or more concentrated risks to the stability of the U.S. banking or financial system.<sup>4</sup> For the reasons set forth below, Capital One submits that this factor is also consistent with approval.

Moreover, Capital One has a proven record of meeting the needs of the communities it serves, including as measured by performance evaluations under the Community Reinvestment Act of 1977 (the "CRA"). Capital One Bank (USA), National Association was rated "Outstanding," and Capital One, National Association was rated "Satisfactory" at their most recent CRA performance evaluations by the Office of the Comptroller of the Currency ("OCC"). Capital One is a leader in community development finance, corporate citizenship and

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<sup>4</sup> The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, H.R. 4173, § 604(e) (to be codified at 12 U.S.C. 1843).

philanthropy. ING Bank has an established community investment and philanthropy program and has a CRA rating of “Outstanding.”

For the reasons discussed in this Notification, Capital One respectfully submits that the Acquisition fully satisfies the statutory factors that the Board is required to consider under the BHC Act and that the Acquisition merits the Board’s approval.

### **The Companies**

***Capital One Financial Corporation.*** Capital One is a Delaware corporation and the top-tier holding company for the Capital One organization, a leading financial services provider headquartered in McLean, Virginia. Capital One is registered as a bank holding company under the BHC Act and, effective May 27, 2005, a financial holding company under the Gramm-Leach-Bliley Act amendments to the BHC Act.

Capital One operates through two principal subsidiaries, both of which are national banks: Capital One, National Association (“CONA”) and Capital One Bank (USA), National Association (“COBNA”). Capital One’s international activities are performed primarily through Capital One (Europe) plc, a subsidiary of COBNA that provides consumer lending products in the United Kingdom, and Capital One Bank—Canada Branch, a foreign branch office of COBNA that provides consumer lending products in Canada.

At March 31, 2011, Capital One’s total assets on a consolidated basis were approximately \$199.8 billion; its consolidated total deposits were approximately \$130.3 billion; and its consolidated total shareholders’ equity was approximately \$31.3 billion. Capital One is “well capitalized” under the Board’s regulations for bank holding companies.<sup>5</sup> As of March 31, 2011, Capital One had, on a consolidated basis, a Tier 1 risk-based capital ratio of 11.32 percent, a total risk-based capital ratio of 13.79 percent and a leverage ratio of 8.69 percent.

Capital One’s common stock trades on the New York Stock Exchange under the symbol “COF” and is included in the S&P 500 Index. Capital One’s 2010 Annual Report to

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<sup>5</sup> See 12 C.F.R. § 225.2(r)(1).

Shareholders and its Quarterly Report on Form 10-Q for the quarter ended March 31, 2011, are attached hereto as Exhibit 2.

(a) Capital One, National Association

CONA's main office is in McLean, Virginia. CONA offers a broad spectrum of financial products and services directly and through its subsidiaries, including deposit products; consumer, commercial, small-business, international, mortgage and private banking; leasing; treasury management; trust and investment management; brokerage; and insurance. CONA operates branches in Connecticut, Delaware, the District of Columbia, Louisiana, Maryland, New Jersey, New York, Texas and Virginia.

CONA is "well capitalized" under the regulations of the OCC.<sup>6</sup> As of March 31, 2011, CONA had a Tier 1 risk-based capital ratio of 11.81 percent, a total risk-based capital ratio of 13.03 percent and a leverage ratio of 8.38 percent.

(b) Capital One Bank (USA), National Association

COBNA's main office is in Glen Allen, Virginia. COBNA currently offers credit and debit card products as well as deposit products. COBNA is "well capitalized" under the OCC's regulations.<sup>7</sup> As of March 31, 2011, COBNA had a Tier 1 risk-based capital ratio of 10.68 percent, a total risk-based capital ratio of 14.78 percent and a leverage ratio of 9.18 percent.

***ING Direct.***

(a) ING Bank, fsb

ING Bank is a federally chartered stock savings bank. Its sole office is located at 1 South Orange Street, Wilmington, Delaware. ING Bank is a wholly-owned subsidiary of ING Direct Bancorp, Wilmington, Delaware, which is ultimately owned by ING Groep. ING Bank offers an array of deposit and loan products, including regular savings, certificates of deposit,

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<sup>6</sup> See 12 C.F.R. § 6.4(b)(1).

<sup>7</sup> See 12 C.F.R. § 6.4(b)(1).

demand deposit accounts, residential first mortgage loans and home equity lines of credit. As of March 31, 2011, ING Bank's total assets were approximately \$92 billion, its total deposits were approximately \$82 billion and its total equity capital was approximately \$9 billion. On that date, ING Bank had a Tier 1 risk-based capital ratio of 26.45 percent, a total risk-based capital ratio of 27.70 percent and a leverage ratio of 9.50 percent.

ING Bank operates seven "cafes" in Chicago, Honolulu, Los Angeles, New York City, Philadelphia, Wilmington and St. Cloud, Minnesota. The cafes are marketing offices, rather than branches, that contain computers and telephones through which ING Bank customers can access their accounts. Some of the cafes have licenses to operate as satellite brokerage offices of IDII. Information about brokerage services and assistance in completing account applications is provided, but no trading activities occur at the cafes. Branded merchandise developed for marketing purposes is made available at a price set to cover ING Bank's costs without a profit. Coffee and pastries are also made available to customers. The cafes are staffed by ING Bank employees who are available to assist customers with their accounts. However, the employees do not accept deposits or provide receipts. Instead, customers who wish to make deposits must do so by mail. In light of their limited functions, the Office of Thrift Supervision (the "OTS") has treated the cafes as agency offices, pursuant to 12 CFR § 545.96 of the OTS' regulations. OTS regulations permit federal savings associations to "establish or maintain an agency office to engage in one or more of the following activities: (1) servicing, originating, or approving loans and contracts; (2) managing or selling real estate owned by the Federal savings association; and (3) conducting fiduciary activities or activities ancillary to the association's fiduciary business". 12 CFR 545.96(a). Agency offices are expressly excluded from the definition of branch under the OTS' regulations. 12 CFR § 545.92. Attached as Exhibit 3 is a copy of an approval letter issued by the OTS for the establishment of a cafe as well as the request for approval submitted by ING Bank. After consummation of the Acquisition, Capital One will confirm the activities of the cafes and conform the activities to the requirements of the applicable regulations to the extent required.

In January 2009, ING Groep and the Dutch State agreed on an Illiquid Asset Back-Up Facility ("IABF"). Under the terms of the IABF, a full risk transfer was effected from ING Groep to the Dutch State on 80 percent of ING Groep's portfolio of Alt-A RMBS, including

those held by ING Bank. ING Groep pays to the Dutch State 80 percent of all cash flows, interest and principal payments for the covered portfolio. In exchange, the Dutch State makes guaranteed payments to ING Groep. As described in the summary of the Purchase Agreement, to the extent that the IABF covers assets held by ING Bank, ING Groep will replace the IABF with cash prior to the closing of the Acquisition. As a result, none of ING Bank's assets, or those of any other company being acquired by Capital One, will be covered by the IABF post-Acquisition.

(b) Sharebuilder Advisors, LLC

Sharebuilder is a registered investment advisor that provides investment advice to retail customers in connection with building portfolios of exchange traded funds.

(c) ING Direct Investing, Inc.

IDII is a registered broker-dealer that provides online retail brokerage services. Aside from its free, self-directed PortfolioBuilder tool, IDII makes no recommendations of individual securities and does not have discretionary authority over customer accounts. ING Bank has confirmed that IDII does not engage in underwriting, dealing as principal or trading activities, except as incidental to managing its business.<sup>8</sup>

### **Terms of the Proposed Transaction**

A summary of the principal terms of the Purchase Agreement is set forth below. A copy of the Purchase Agreement is attached as Exhibit 1. Disclosure schedules to the Purchase Agreement are attached as Confidential Exhibit A.

**Structure** Capital One will acquire from ING Groep and certain of its subsidiaries (the "Sellers") substantially all of the ING Direct

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<sup>8</sup> From, time to time, IDII acquires a small amount of voting shares of companies (e.g., in connection with customer purchases or sales involving fractional shares). As discussed in the section entitled "Permissibility of the Acquisition under the Bank Holding Company Act," IDII does not ever hold five percent or more of the shares of any company. IDII's limited holding of voting shares would therefore be permissible under Section 4(c)(6) or 4(c)(7) of the BHC Act, provided that its holdings are aggregated with those of Capital One in determining compliance with those provisions.

business in the United States, which primarily consists of (i) the equity interests in ING Bank, WS Realty, LLC, NTE Santa Monica, LLC and ING Direct Community Development LLC (the “Direct Sale Entities”) and (ii) certain related assets and liabilities of ING Direct Bancorp (the Direct Sale Entities, their respective subsidiaries and, solely with respect to the purchased assets and liabilities, ING Direct Bancorp, collectively, the “Purchased Entities”).

### **Purchase Price**

At closing, Capital One will pay consideration consisting of \$6.2 billion in cash and 55,921,710 shares of Capital One common stock. If the number of shares exceeds 9.9% of the outstanding shares of Capital One common stock (the “Voting Stock Cap”) on the closing date, the number of shares will be reduced to the Voting Stock Cap, and the cash consideration will be increased by the value of the excess shares based on the average closing price of Capital One common stock for the five trading days immediately preceding the closing date.

### **IABF Restructuring Transactions**

The Sellers will replace the IABF arrangements to which certain assets of the Purchased Entities are currently subject with cash, without any additional cost to Capital One or any continuing obligations or covenants on the part of Capital One or any of its affiliates (including the Purchased Entities).

If the IABF restructuring transactions cannot be consummated due to a failure to receive any required regulatory approvals, at Capital One’s election, the parties may cooperate to consummate an alternative restructuring of the IABF, in which case the Sellers will pay to Capital One a fee of \$270 million.

### **Closing Conditions**

The obligations of Capital One and the Sellers to complete the transaction are subject to the following conditions:

- receipt of all required regulatory approvals;
- accuracy of the other party’s representations and warranties, generally measured on a “material adverse effect” level (with limited exceptions, primarily the organization, capitalization, subsidiaries and authority representations and certain representations relating to the IABF);
- material compliance by the other party with its obligations under the purchase agreement;
- absence of any injunction prohibiting the completion of the transaction;

- completion of the IABF restructuring transactions;
- execution of ancillary agreements; and
- receipt of a written determination from the Federal Reserve that the Sellers will not “control” Capital One for purposes of the BHC Act.

The obligation of Capital One to complete the transaction is further subject to the condition that the regulatory approvals do not require any action or impose any condition that would reasonably be expected to have a material adverse effect on Capital One and the business of the Purchased Entities (taken as a whole) after giving effect to the transaction, or that involves any material change adverse to Capital One or the Purchased Entities in the terms of the IABF restructuring transactions or that would reasonably be expected to cause the Sellers’ representations concerning the IABF restructuring transactions to not be true and correct in all material respects at the closing (any such action, condition or change, a “Materially Burdensome Regulatory Condition”).

## **Termination**

The Purchase Agreement may be terminated at any time prior to the closing by mutual consent, and by either party in the following limited circumstances:

- if there is a breach by the other party (unless the terminating party is then in material breach) of any of the covenants or representations that is not capable of being cured or is not cured within 45 days and that would result in the failure of a closing condition;
- if there is any final, non-appealable injunction prohibiting the closing or if a required regulatory approval has been denied on a final and non-appealable basis (unless the terminating party is then in material breach); or
- if the closing has not occurred within 12 months of the signing of the purchase agreement (unless the breach of the terminating party is responsible for the delay).

**Non-Competition/  
Non-Solicitation**

The non-compete will prohibit the Sellers, for a period of five years following the closing, from:

- owning, managing or operating any business engaged in accepting retail deposits, online securities brokerage or mortgage or consumer lending in the United States (with limited exceptions, including acquiring up to 4.9 percent ownership of companies involved in such businesses and operating any businesses currently conducted and certain specified extensions thereof by the Sellers or their affiliates other than the Purchased Entities); and
- soliciting customers of the Purchased Entities in respect of competing services or products or to withdraw from the types of services and products historically offered by the Purchased Entities (with exceptions for general solicitation not specifically directed toward the customers of the Purchased Entities and for unsolicited inquiries).

The non-compete also will prohibit Capital One, for a period of five years following the closing, from owning, managing or operating any business engaged in accepting retail deposits over the internet outside of the United States and the United Kingdom (with limited exceptions, including acquiring up to 4.9 percent ownership of companies involved in such businesses).

The Sellers are subject to an employee non-solicit prohibiting them, for a period of two years following the closing, from soliciting or employing the employees of the Purchased Entities (with exceptions for general solicitation and for the solicitation or hiring of employees who have not been employed by the Purchased Entities for at least six months).

## **Indemnification**

After the closing, the Sellers will indemnify Capital One for losses arising from breaches of its representations or covenants, from changes to the material terms of and certain regulatory determinations relating to the IABF restructuring transactions, from the assets and liabilities excluded from the transaction and from the indemnification claims by any directors and officers of the Direct Sale Entities primarily employed or retained by the Sellers and not primarily employed or retained by Capital One.

Capital One will indemnify the Sellers for losses arising from breaches of its representations and covenants, and from the purchased assets or liabilities to the extent arising from and after the closing (unless Capital One has indemnification rights with respect to such losses).

Indemnity liability for the Sellers and Capital One for breaches of non-fundamental representations is subject to a deductible of \$45 million. Indemnity liability for the Sellers for breaches of its non-fundamental representations is capped at \$500 million, which is the cap for all of Capital One's indemnification obligations relating to representations, except for breaches of fundamental representations.

## **Employee Benefits**

Until December 31, 2012, Purchased Entity employees who continue to be employed following the closing (the "Continuing Employees") will be entitled to wages and salaries at least equal to, and annual cash bonus opportunities no less favorable than, the wages, salaries and annual cash bonus opportunities provided to such Continuing Employees immediately prior to the closing. Until December 31, 2012, Capital One will provide health and welfare benefits to Continuing Employees that are the same in all material respects as the health and welfare benefits provided to such Continuing Employees immediately prior to the closing. Certain ING benefit plans applicable to Continuing Employees will be assigned to Capital One (including the employment agreement for the Chief Executive Officer of the Direct Sale Entities). Upon eligibility for participation in Capital One benefit plans, Capital One will generally provide credit under its benefit plans to Continuing Employees for past service with the Purchased Entities.

For a period of one year following the closing, Capital One will provide the same severance compensation and benefits to Continuing Employees as such employees would be eligible to receive under the terms of the applicable existing severance plan for Continuing Employees (taking into account service with the Sellers prior to the closing and service with Capital One after the closing).

**Covenants Between Signing and Closing**

The Purchase Agreement contains customary covenants of the parties, including customary restrictions on the Purchased Entities' business between the signing of the Purchase Agreement and the closing, as well as Capital One's access to information regarding the Purchased Entities and cooperation on regulatory approvals.

The Sellers will be primarily responsible for the following regulatory approvals:

- the approval of the Dutch Central Bank and notices to the European Commission, the Dutch Ministry of Finance and the Netherlands Authority for the Financial Markets; and
- any consents, filings, exemptions or waivers required under U.S. federal banking laws in connection with the IABF restructuring transactions.

Capital One will not be required to take any action or agree to any condition or restriction in connection with obtaining regulatory approvals that would impose a Materially Burdensome Regulatory Condition.

**Reverse Termination Fee**

Capital One will pay a reverse termination fee of \$270 million if the Purchase Agreement is terminated as a result of the following reasons:

- a failure to obtain a required regulatory approval or the receipt of a final, non-appealable injunction prohibiting the closing of the transaction;
- a failure to close within 12 months of the signing of the Purchase Agreement; or
- a breach by Capital One of its representations or covenants relating to regulatory matters.

Capital One will have no obligation to pay a reverse termination fee, however, if a Materially Burdensome Regulatory Condition occurs, if the Sellers materially breach their representations or covenants relating to regulatory matters or if any failure to obtain a required regulatory approval is caused by a regulatory issue related to the Sellers or the Purchased Entities or the IABF restructuring transactions.

**Shareholder Agreement**

*Governance Rights.* The Sellers will have the right for 14 days following the closing to require Capital One to expand the size of its Board of Directors by one member and appoint a representative designated by the Sellers who is reasonably acceptable to Capital

One. From the closing until the earlier of the one-year anniversary of the closing or the date on which the Sellers sell more than 33 percent of their shares of Capital One common stock received in the transaction (subject to limited exceptions), Capital One will nominate the Sellers' representative for election to its Board of Directors.

*Registration Rights.* Following expiration of the limited lock-up period (described below), Capital One will make available an automatically effective shelf registration statement to enable the Sellers to sell their shares of Capital One common stock received in the transaction and provide other customary registration rights.

*Lock-up Period.* The Sellers will not transfer their shares of Capital One common stock received in the transaction (subject to limited exceptions) until the later of (a) 180 days following a capital raise by Capital One (which will occur between signing and the closing) and (b) 90 days following the closing.<sup>9</sup>

## **IP Agreements**

At the closing Capital One will enter into a Co-Existence Agreement with certain of the Sellers that provides for:

- the assignment to Capital One of the Sellers' interest in the United States in certain trademarks, service marks and other intellectual property (e.g., the "orange ball" logo, the word "orange" and the color "orange") for use in the business of accepting retail deposits or the mortgage or consumer lending business involving customers with a residence in the United States, subject to certain limitations; and
- a license back to the Sellers of the right to continue the Sellers' or their affiliates' current use of the color "orange" and, in limited circumstances, the word "orange" in other existing U.S. businesses.

Capital One also will be permitted to use the "ING Direct" brand for a transitional period of 12 to 16 months.

## **Representations and Warranties/Material Adverse Effect Standard**

Customary representations and warranties from the Sellers regarding the Sellers' and the Purchased Entities' organization, capitalization, authority, subsidiaries, regulatory matters, no violation of certain agreements, broker fees, financial statements, absence of certain changes, litigation, compliance with law, internal controls, tax matters, intellectual property, environmental matters, employee

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<sup>9</sup> As noted above, Capital One announced a public equity raise on July 13, 2011 and a senior notes issuance on July 14, 2011.

benefits matters, real property, material contracts, insurance, loan and mortgage matters and broker-dealer matters. The Purchase Agreement also contains customary and similar representations from Capital One.

Most of the representations and warranties in the Purchase Agreement are subject, for purposes of the closing conditions, to an overall material adverse effect qualification. As a result, other than for purposes of indemnification, breaches of these representations and warranties are deemed to have occurred under the purchase agreement only if all breaches by a party in the aggregate have had a material adverse effect on that party.

“Material adverse effect” is defined as an effect that (1) is materially adverse to the business, properties, financial condition, assets, liabilities or results of operations of the applicable party and its subsidiaries, taken as a whole, or (2) prevents, materially delays or materially impairs the applicable party’s ability to complete the material transactions under the Purchase Agreement and ancillary agreements, but excludes, for purposes of clause (1) above:

- changes in laws or accounting principles, to the extent the changes do not disproportionately affect the applicable party and its subsidiaries, taken as a whole;
- changes in economic, business or financial conditions generally affecting the banking industry, to the extent the changes do not disproportionately affect the applicable party and its subsidiaries, taken as a whole;
- changes in national or international political conditions including the engagement by the United States in hostilities or a military or terrorist attack, to the extent the changes do not disproportionately affect the applicable party and its subsidiaries, taken as a whole; and
- the announcement of the Purchase Agreement, and actions or omissions taken with the other party’s consent or required under the Purchase Agreement.

## **Required Approvals**

The boards of directors of Capital One and ING Direct Bancorp have approved the Acquisition and the Purchase Agreement. No approval is required by the shareholders of Capital One or ING Groep.

### **Permissibility of the Acquisition Under the Bank Holding Company Act**

Section 4(c)(8) of the BHC Act permits a bank holding company to acquire “shares of any company the activities of which had been determined by the Board by regulation or order under this paragraph as of the day before November 12, 1999, to be so closely related to banking as to be a proper incident thereto (subject to such terms and conditions contained in such regulation or order, unless modified by the Board).”<sup>10</sup> Section 4(i) of the BHC Act further provides that the Board “may approve an application under subsection (c)(8) of this section to acquire any savings association in accordance with the requirements and limitations of this section.”<sup>11</sup> Section 225.28(b) of the Board’s Regulation Y sets forth a list of activities that the Board has previously determined to be permissible under Section 4(c)(8). Among the permissible activities are those engaged in by ING Bank, Sharebuilder and IDII, namely:

- “owning, controlling, or operating a savings association, if the savings association engages only in deposit-taking activities, lending, and other activities that are permissible for bank holding companies under this subpart C;”
- “acting as investment or financial advisor to any person;” and
- “providing securities brokerage services (including securities clearing and/or securities execution services on an exchange), whether alone or in combination with investment advisory services . . . if the securities brokerage services are restricted to buying and selling securities solely as

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<sup>10</sup> 12 U.S.C. § 1843(c)(8).

<sup>11</sup> 12 U.S.C. § 1843(i).

agent for the customers and do not include securities underwriting or dealing.”<sup>12</sup>

Based on the diligence it has conducted to date, Capital One believes that all of ING Bank’s activities and investments are permissible for bank holding companies. Moreover, following the Acquisition, Capital One hereby commits that ING Bank’s direct and indirect activities, including those conducted by Sharebuilder and IDII will be limited to those activities that are permissible for bank holding companies under Section 4(c)(8). To the extent that Capital One determines that any activities and investments are not permissible under Section 4(c)(8), they will be conformed, including by divestiture if necessary, within two years of Capital One’s acquisition of ING Bank as required by the BHC Act.

The acquisition of the other companies that comprise ING Direct is also permissible under the BHC Act. Below is a description of the activities performed by each company that Capital One is proposing to acquire, as well as the statutory authority on which Capital One is relying to acquire it.

<b><u>Entity</u></b>	<b><u>Date Formed</u></b>	<b><u>Description of Activity</u></b>	<b><u>Statutory Authority</u></b>
ING Bank, fsb	August 4, 2000	Federal savings bank chartered by the OTS.	Section 4(c)(8) and 12 CFR 225.28(b) 4(ii)
ING Direct Community Development, LLC	January 5, 2007	Originally formed as an IRS-defined qualified community development entity, but has conducted no business and does not hold any assets.	N/A

<sup>12</sup> 12 C.F.R. § 225.28(b)(4)(ii). Capital One understands that IDII, from time to time, acquires a small amount of voting shares of companies (e.g., in connection with customer purchases or sales involving fractional shares). However, IDII does not ever hold five percent or more of the shares of any company. IDII’s limited holding of voting shares would therefore be permissible under Section 4(c)(6) or 4(c)(7) of the BHC Act, provided that its holdings are aggregated with those of Capital One in determining compliance with those provisions.

<u>Entity</u>	<u>Date Formed</u>	<u>Description of Activity</u>	<u>Statutory Authority</u>
ING Direct Insurance Agency, LLC	July 2, 2008	Inactive company originally formed to engage in the sale, as agent, of ING Groep affiliated company insurance policies to ING Bank customers. Nominal marketing and sales activity in 2008 and 2009 solely to test business proposition and activate sales license. No sales activity in 2010 or 2011.	N/A
ING DIRECT Investing, Inc. (formerly ShareBuilder Securities Corporation)	July 1, 1998	FINRA regulated registered broker-dealer that provides online retail brokerage service. Aside from its free, self-directed PortfolioBuilder tool, the firm makes no recommendations of individual securities and does not have discretionary authority over customer accounts. ING Bank has confirmed that the firm does not engage in underwriting, dealing or trading activities.	Section 4(c)(8) and 12 CFR 225.28(b)(7)(i)
ING Direct Kids Foundation	May 1, 2001	Not-for-profit charitable foundation with an independent board. Engages in charitable giving on behalf of ING Bank.	Section 4(c)(1)(C) and 12 CFR 225.22(b)(2)

<u>Entity</u>	<u>Date Formed</u>	<u>Description of Activity</u>	<u>Statutory Authority</u>
ING Direct Securities, Inc.	December 22, 2000	Inactive company originally formed to sell investment products to ING Bank customers. On November 15, 2007, ING Direct Securities, Inc. (“IDSI”) became holding company for ShareBuilder Corporation, parent corporation of ING Direct Investing, Inc. All of IDSI’s assets and brokerage operations were contributed to ING Direct Investing, Inc., including its mutual fund business. IDSI no longer engages in any activities directly.	N/A
NTE B&O, LLC	December 30, 2003	Real estate holding company formed in Delaware to hold the building in which ING Bank conducts various business activities (primarily administrative operations).	Section 4(c)(1)(C) and 12 CFR 225.22(b)(2)
NTE Kent, LLC	March 27, 2003	Real estate holding company formed in Delaware to hold the building in which ING Bank conducts various business activities (primarily sales and administrative operations).	Section 4(c)(1)(C) and 12 CFR 225.22(b)(2)
NTE Santa Monica, LLC	December 31, 2003	Real estate holding company formed in California to hold the building in which ING Bank conducts various business activities (primarily mortgage operations).	Section 4(c)(1)(C) and 12 CFR 225.22(b)(2)

<u>Entity</u>	<u>Date Formed</u>	<u>Description of Activity</u>	<u>Statutory Authority</u>
ShareBuilder Advisors, LLC	July 29, 2005	Registered investment advisor. Provides investment advice to retail customers in connection with designing and managing portfolios of exchange traded funds.	Section 4(c)(8) and 12 CFR 225.28(b)(6)
ShareBuilder Corporation	December 19, 1995	Parent company of ING DIRECT Investing, Inc. and ShareBuilder Advisors, LLC. It does not engage in any activities directly. Its assets include certain intercompany loans to its two subsidiaries, intellectual property and goodwill.	N/A
WA Real Estate, LLC	May 12, 2008	Established for holding and processing real estate related to foreclosed mortgages.	Section 4(c)(1)(C) and 12 CFR 225.22(d)(1)
WB Fort Lauderdale, LLC	November 13, 2008	Established for holding and processing real estate related to foreclosed mortgages.	Section 4(c)(1)(C) and 12 CFR 225.22(d)(1)
WC Real Estate, LLC	January 14, 2009	Established for holding and processing real estate related to foreclosed mortgages.	Section 4(c)(1)(C) and 12 CFR 225.22(d)(1)
WH Real Estate, LLC	April 28, 2008	Established for holding and processing real estate related to foreclosed mortgages.	Section 4(c)(1)(C) and 12 CFR 225.22(d)(1)
WL Real Estate, LLC	April 28, 2008	Established for holding and processing real estate related to foreclosed mortgages.	Section 4(c)(1)(C) and 12 CFR 225.22(d)(1)
WM Real Estate, LLC	April 28, 2008	Established for holding and processing real estate related to foreclosed mortgages.	Section 4(c)(1)(C) and 12 CFR 225.22(d)(1)
WS Realty, LLC	December 30, 2003	Established for holding and processing real estate related to foreclosed mortgages.	Section 4(c)(1)(C) and 12 CFR 225.22(d)(1)

In considering a proposal by a bank holding company to acquire a nonbank company, the Board is required under Section 4(j)(2)(A) of the BHC Act to consider whether the proposal “can reasonably be expected to produce benefits to the public that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, unsound banking practices or risk to the stability of the United States banking or financial system.”<sup>13</sup> As part of its consideration of these factors, the Board also reviews the financial and managerial resources of the companies involved, the effect of the proposal on competition in the relevant markets and the public benefits of the proposal, and, in notices to acquire insured depository institutions, the applicant’s anti-money laundering compliance program.<sup>14</sup> The Board also reviews the records of the relevant insured depository institutions under the CRA. As discussed below, Capital One submits that the proposed acquisition by Capital One of ING Direct satisfies all of the factors that the Board is required to consider under the BHC Act.

### **Financial Information**

As demonstrated in the accompanying financial exhibits, both Capital One and ING Bank currently satisfy the requirements to be deemed “well capitalized.” Following the Acquisition, Capital One will remain “well capitalized.”

### **Managerial Resources**

After the closing, ING Groep will have the right to appoint one representative to Capital One’s Board of Directors, which will otherwise remain unchanged. In addition, it is likely that key members of ING Bank’s management group will become Capital One executives. ING Bank will become a subsidiary of Capital One and will be integrated into Capital One’s management, corporate governance and compliance policies and procedures. Capital One management has deep experience and expertise in managing deposit operations, including online deposit businesses, as well as mortgage operations and portfolios. As an example, Capital One’s

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<sup>13</sup> 12 U.S.C. § 1843(j)(2)(A) (as amended by Section 604(e) of the Dodd Franke Act, effective July 21, 2011).

<sup>14</sup> 12 C.F.R. § 225.26.

has offered online banking since 2000. Capital One's online banking business has grown to \$22 billion in deposits, making it among the largest in the industry. In addition, as a consequence of successfully completing the acquisition of three large banking organizations since 2005, Capital One management also has deep experience and expertise in bank acquisitions and successfully managing transition and integration of businesses following a purchase. An overview of Capital One's plans to operate and integrate ING Direct is included as Confidential Exhibit B. A summary of Capital One's risk and compliance management assessments is included as Confidential Exhibit C. A risk assessment of ING Bank's mortgage portfolio is set forth in Confidential Exhibit J and an overview of Capital One's liquidity management plan is set forth as Confidential Exhibit L.

### **Capital One's AML Program**

Capital One has in place a comprehensive compliance management program (the "CMP"). This CMP provides structure for adherence to regulatory requirements through a comprehensive system of internal controls. These controls include:

- Definition and allocation of specific compliance requirements to individual business units;
- Risk Assessment;
- Monitoring;
- Oversight of new products and business initiatives;
- Training;
- Reporting and governance, including policies and standards; and
- Issue resolution and internal audit.

Within the CMP, Capital One executes the corporate Anti-Money Laundering and Bank Secrecy Act ("AML") program. The AML program incorporates all relevant sections of the Bank Secrecy Act, Office of Foreign Assets Control regulations, and additional supervisory

guidance, memoranda and examination procedures issued by federal regulatory agencies that have jurisdiction over Capital One's businesses, including the OCC and the Federal Reserve.

The AML program covers the following elements:

- A well defined organizational structure supported by an independent, qualified staff; and
- A written AML program that fulfills all applicable regulatory requirements. Led by experienced compliance professionals, AML compliance is a component of Capital One's CMP, covering compliance monitoring, management reporting, governance, associate training and analysis of new business initiatives. The AML program also has centralized processes for key AML functions, including Suspicious Activity Reporting ("SAR") and economic sanctions list screening; business-specific processes for currency transaction reporting, high-risk customer-enhanced due diligence and day-to-day business consultation; professional project management for major AML project execution; and enterprise-wide independent testing of the AML program conducted by Capital One's Internal Audit Department.

Independent Testing. Capital One's Internal Audit Department conducts comprehensive AML audits of Capital One businesses and centralized AML functions. Please refer to Confidential Exhibit M for a summary of Capital One's key AML personnel and procedures.

### **Impact on Competition**

Capital One's subsidiary banks operate almost 1000 bank branches in Delaware, Virginia, New York, Louisiana, Maryland, Texas, New Jersey, the District of Columbia and Connecticut and also offer online banking. Capital One also engages in activities such as mortgage origination and servicing, brokerage services and insurance services for retail and commercial clients.

ING Bank is a branchless online bank with its head office located in Delaware holding \$81.6 billion in deposits as of March 31, 2011. ING Bank also engages in mortgage origination and servicing and, through a subsidiary, provides brokerage services to retail investors. It no longer engages in insurance agency activities.

The respective banking operations of Capital One and ING Bank do not overlap in any local banking market in the United States, as those markets are defined by the Federal Reserve Banks. As an online bank, ING Bank receives deposits nationally, but its sole deposit-taking office is in the Wilmington, Delaware Federal Reserve Banking Market (as defined by the Federal Reserve Bank of Philadelphia) where Capital One has no branches. Capital One's only Delaware branch is in Rehoboth Beach, in the Sussex County, Delaware Federal Reserve Banking Market.

In view of ING Bank's national online banking business model, the only relevant geographic market in which to analyze banking competition for the proposed transaction is nationwide. In this context, Capital One and ING Bank respectively account for only 1.5% and 1.0% of deposits nationally as of June 30, 2010, and the Herfindahl-Hirschman Index ("HHI") for national deposits would increase by only 3 points as a result of the proposed transaction.<sup>15</sup>

Capital One and ING Bank both engage in other activities but the proposed transaction will not lessen competition in any relevant market. Specifically, both Capital One and ING Bank engage in mortgage servicing and origination. The Board has previously determined that the geographic markets for both mortgage servicing and origination are national in scope and that the markets for both mortgage servicing and origination are unconcentrated with numerous competitors.<sup>16</sup> Neither Capital One nor ING Bank ranked among the top 20 residential servicers in 2009 in terms of dollar volume such that each party must hold a share of

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<sup>15</sup> ING Bank has \$445.1 million in commercial and industrial ("C&I") loans and \$137.9 million in consumer loans as of March 31, 2011. Almost all of the C&I loans, or \$423.4 million, are export-import loans, fully guaranteed by the Export-Import Bank of the United States. Of the remaining C&I loans, \$19.8 million are secured small business loans and \$1.9 million are non-mortgage unsecured term loans. Concerning the \$137.9 million of ING Bank's consumer loans, a large portion of the loans, or \$89.7 million, are margin lending relating to IDII. Of the remaining \$48.2 million in consumer loans, \$41.1 million are personal lines of credit held for investment and \$7 million are eOrange Overdraft lines of credit for ING Bank checking account holders.

<sup>16</sup> Bank of America Corporation, 94 Fed. Res. Bull. C81 (2008).

less than 0.5 percent of total mortgage serving in the United States, based on available data. See Top 20 Residential Servicers in 2009, Exhibit 4. Moreover, data collected pursuant to the Home Mortgage Disclosure Act (“HMDA”) in 2009 show that Capital One and ING Bank account for 0.15 percent and 0.48 percent, respectively, of total mortgage originations in the United States. See Mortgage Origination Market Share Summary, Exhibit 4. The HHIs for mortgage servicing and origination would both increase by less than 1 point as a result of the proposed transaction. Given the *de minimis* market shares of both parties, the proposed transaction will have *de minimis* effects in the unconcentrated markets for mortgage servicing and origination.

Both parties also provide brokerage services through subsidiaries that are registered broker-dealers regulated by the Securities and Exchange Commission and the Financial Industry Regulatory Authority. The Board has previously determined that the market for brokerage services and related financial services is unconcentrated with numerous competitors and that the geographic market is regional or national in scope.<sup>17</sup> Capital One has two registered broker-dealers—Capital One Southcoast, Inc. is a full-service investment banking firm that provides corporate finance, equity research, institutional equity sales and trading services, and Capital One Investment Services LLC offers broker-dealer services to retail investors. ING Bank’s subsidiary, IDII, is an internet-based broker-dealer that provides brokerage services to self-directed investors and employer-sponsored 401(k) plans. In view of IDII’s national online brokerage business model, the only relevant geographic market in which to analyze competition in brokerage services in the context of the proposed transaction is nationwide. Neither party ranks among the top 50 independent broker-dealers in terms of total account assets as of 2009. See Top Independent 50 Brokers-Dealers by 2009 Total Assets, Exhibit 4. In light of the parties’ small presence in an unconcentrated market, the proposed transaction will not have any negative impact on competition in the market for retail brokerage services.

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<sup>17</sup> Bank of America Corporation, 94 Fed. Res. Bull. C81 (2008); Allied Irish Banks, p.l.c. & M&T Bank Corporation, 94 Fed. Res. Bull. C11 (2007); Wachovia Corporation, 94 Fed. Res. Bull. C183 (2006); Marshall & Ilsley Corporation, 92 Fed. Res. Bull. C121 (2006); Wells Fargo & Company, 88 Fed. Res. Bull. 103 (2001); NationsBank Corporation, 84 Fed. Res. Bull. 858 (1998).

Both parties also provide insurance services but ING Bank's insurance subsidiary, ING Direct Insurance Agency, LLC, with \$8,000 in assets, is inactive and did not engage in any sales activity in 2010 or 2011. Thus, in light of ING Direct's *de minimis* presence in the insurance services industry, the transaction will not lessen competition in any market for insurance services.

For all of the foregoing reasons, the parties believe that the Acquisition will not lessen competition in any product or geographical market in the United States.

### **Impact of the Proposed Transaction on Systemic Risk**

Pursuant to the requirements under section 604(e) of the Dodd Frank Act, after July 21, 2011, the Board must consider, as part of the "balancing test" in Section 4(j)(2), the extent to which the Acquisition would result in risk to the stability of the U.S. banking or financial system (hereinafter "Systemic Risk"). The bank regulatory agencies have not yet issued or proposed regulations further defining the elements of the Systemic Risk factors under the Dodd-Frank Act. However, the Board's recent order approving the acquisition by Mitsubishi UFJ Financial Group, Inc, of up to 24.9% of Morgan Stanley.<sup>18</sup> analyzed a similar systemic risk factor set forth in Section 163(b)(4) of the Dodd-Frank Act, which applies to certain nonbanking acquisitions by financial holding companies<sup>19</sup> (the "MUFG Order"). The MUFG Order highlighted three components of Systemic Risk: (1) whether the proposed transaction would "result in a material increase in risks to financial stability, due to an increase in the size of the acquirer;" (2) whether it would materially increase the "extent of the interconnectedness of the financial system;" or (3) whether it would result "in a significant decrease in the availability of substitute providers of critical financial services." None of the foregoing factors will be impacted by the proposed transaction.<sup>20</sup> Indeed, the acquisition of ING Bank, with its stable base of low-cost FDIC-insured deposits, by Capital One will not increase liquidity risk or funding

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<sup>18</sup> Mitsubishi UFJ Financial Group, Inc., 97 Fed. Res. Bull. 31 (2011), available at <http://www.federalreserve.gov/newsevents/press/orders/20110614a.htm>.

<sup>19</sup> Pub L 111-203, H.R. 4173, § 163(b). (In a Notice under Section 163 of the Dodd-Frank Act, the Board must consider, in addition to the standards in Section 4(j)(2) of the BHC Act, "the extent to which the proposed acquisition would result in greater or more concentrated risks to global or the United States economy.")

<sup>20</sup> Id.

costs to Capital One, and it will not cause a material increase in the interconnectedness of the U.S. financial system.

## **1. Size and Availability of Substitutes**

In this case, factors (1) and (3) of the MUFG Order—size and availability of substitute providers of critical products—bear on the same set of evidence. Accordingly, those factors will be discussed together. Those factors may be informed by other aspects of the Bank Merger Act’s requirements, namely compliance with antitrust standards,<sup>21</sup> with the 10% national deposit cap<sup>22</sup> and the 10% national liabilities cap.<sup>23</sup> Inasmuch as the Acquisition does not come close to exceeding antitrust safe harbor thresholds in any relevant geographic market and does not approach either the national deposit cap or national liabilities cap, it would seem, as a threshold matter, that the Acquisition is not likely to pose a separate discernible risk to U.S. financial stability.

Increase in Size. With respect to Capital One’s increase in size, Capital One and ING Bank respectively account for only 1.49 percent and 0.69 percent of total assets of all insured banks and thrifts in the United States.<sup>24</sup> Capital One and ING Bank combined hold approximately 1 percent of total U.S. liabilities.<sup>25</sup> By way of comparison, Bank of America’s total assets (\$2.3 trillion) will be 7.8 times larger than the combined assets of Capital One and ING Bank and JPMorgan Chase’s total assets (\$2.2 trillion) will be 7.5 times larger. Mitsubishi’s total assets (\$2.5 trillion) are 8.6 times larger than the parties’ combined assets. Using deposits as a proxy, Capital One’s subsidiary banks hold 1.52 percent of U.S. nationwide

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<sup>21</sup> See 12 U.S.C. § 1842(c) & 1828(c)(5).

<sup>22</sup> See 12 U.S.C. § 1842 (d)(2)(A).

<sup>23</sup> The Dodd-Frank Act, Pub. L. 111-203, H.R. 4173, §622 (to be codified at 12 U.S.C. § 1841).

<sup>24</sup> All asset figures are as of March 31, 2011 and only ING Bank’s assets of \$92.2 billion as of March 31, 2011 are used. ING Direct held total assets of \$88.15 billion, only \$362 million larger than ING Bank, fsb, as of December 31, 2010.

<sup>25</sup> The Board has not yet issued regulations delineating what financial institutions will be included in the denominator for calculating the national liabilities cap. The 2009 estimated risk-based capital liability measures for the United States are \$12.5 trillion as provided in the Study & Recommendations Regarding Concentration Limits on Large Financial Companies, Financial Stability Oversight Council, January 2011. Using either risk-weighted assets less risk-based capital for 2009 or 2010 for the two parties results in a total share of approximately 1.0 percent.

deposits and ING Bank holds 1.01 percent. By way of comparison, Bank of America will have more than 4.5 times the combined deposits of Capital One and ING Bank, and JPMorgan Chase will have almost 3.5 times their post-acquisition total.

Available Substitute Providers of Critical Products. ING Direct offers simple, consumer-friendly retail products exclusively through an online format. These products include savings accounts, CDs, checking accounts, mortgages and brokerage services.<sup>26</sup> None of ING Direct's offerings can be regarded as highly specialized or "critical" financial products available from only a small number of providers. Indeed, in the context of the national market in which ING Direct operates, there are literally hundreds, or thousands, of alternative providers for each of ING Direct's products.<sup>27</sup>

With respect to alternative providers of deposit accounts, there are at least 6,803 competing depository institutions in the United States offering retail savings accounts, checking accounts and CDs. See table attached as Exhibit 5. With respect to mortgages, HMDA data indicate that there are more than 1,000 competing providers of residential mortgages in the United States. Finally, the RIA Database reports that there are more than 6,000 registered broker-dealer firms in the United States, employing more than 700,000 advisors, competing with the parties' broker-dealer businesses.

Using market concentration measures, such as the HHI, confirms that the Acquisition would have no material impact on the availability of any of these retail banking products. As previously noted, the HHI for deposits nationwide would increase by only three points as a result of the acquisition. For mortgage originations, the HHI would increase by 0.14

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<sup>26</sup> ING Direct has a *de minimis* amount, \$445.1 million, in Commercial & Industrial loans and \$137.9 million in consumer loans as of March 31, 2011. It reported \$8,000 in revenues from insurance operations in 2011, and operates a subsidiary, WS Realty—a company that holds foreclosed real estate. ING Direct Community Development, LLC had no financial activities from 2008 to 2010.

<sup>27</sup> As noted in the "Impact on Competition" section, the parties do not overlap in any relevant geographic market as defined by the Federal Reserve Board. ING Bank, as an online bank, receives deposits nationally, but all are booked at its one deposit-taking office in Wilmington, Delaware. Capital One has branch operations in Connecticut, Delaware, Louisiana, Maryland, New Jersey, New York, Texas, Virginia and the District of Columbia and also offers online banking. Capital One has one Delaware branch in Rehoboth Beach in the Sussex County, Delaware, banking market reporting \$40.4 million in deposits as of June 30, 2010. In this context, the only relevant risk calculation would be based on the foregoing national statistics since no particular local, state or regional concentration of deposits will result from the Acquisition.

points.<sup>28</sup> Although, the HHI increase in brokerage services is unavailable, neither Capital One nor ING Direct ranks among the top 50 independent broker-dealers in terms of total account assets as of 2009.<sup>29</sup> See table in Exhibit 5.

In view of the foregoing, the parties do not believe that the Acquisition would threaten U.S. financial stability based on either an increase in Capital One's size or a reduction in the availability of substitute providers of the parties' financial products, as those criteria are set forth in the Board's MUFG Order.

## **2. Interconnectedness**

Federal Reserve Board Governor Daniel K. Tarullo has suggested in speeches that the concern regarding "interconnectedness" and its role in Systemic Risk is (a) whether certain financial institutions have the potential to transmit their financial troubles to their counterparties, and (b) whether, as counterparties who rely significantly on other financial institutions for funding, those same financial institutions are likely recipients of financial contagion transmitted to them from other financial institutions. The mechanism by which the financial contagion is transmitted is the "interconnectedness" on both sides of the institution's balance sheet with other financial firms. Among the "more readily observed factors [are] intra-financial firm assets and liabilities, cross-border activity, and the use of various complex financial instruments."<sup>30</sup> Of special concern are complex contingent exposures that are likely to be correlated with financial market stress (e.g., trading in credit default swaps, financial guarantees, structured products and other complex derivatives), since increases in these exposures in times of stress can cause "accelerating losses as troubled firms sell their assets into a declining market" caused by simultaneous asset fire sales by other troubled firms.<sup>31</sup> The problems facing a firm with such

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<sup>28</sup> Based on 2009 Home Mortgage Disclosure Act data, ING Direct accounts for 0.48 percent of mortgage originations nationally, and Capital One accounts for 0.15 percent.

<sup>29</sup> ING Financial Partners Inc., ranked 22nd on the top 50 independent broker-dealer list, is not part of ING Direct and is not being acquired by Capital One as part of this proposed transaction. ING Direct's brokerage services are provided through IDII, a direct-based broker-dealer, which does not appear among the top 50 independent broker-dealer list. Both ING Direct's and Capital One's businesses fall below the top 300 money managers for institutional investors. See table attached as Exhibit 5.

<sup>30</sup> Daniel K. Tarullo, Regulating Systemically Important Financial Firms, June 3, 2011, available at <http://www.federalreserve.gov/newsevents/speech/tarullo20110603a.htm>.

<sup>31</sup> Id.

exposures will be exacerbated by a high degree of interconnectedness on the funding side of its balance sheet. For instance, a firm that relies excessively on borrowing uncommitted short-term funds from institutional or wholesale sources might see those sources evaporate quickly, just as the firm's contingent exposures begin to rise.

As should be clear from the prior description of ING Direct's business, none of the foregoing interconnectedness concerns are present here. ING Direct's primary operating company, ING Bank, is a federal savings bank offering simple banking products to retail consumers. It is not engaged in trading derivatives, writing credit default swaps or issuing financial guarantees to other financial institutions.<sup>32</sup> Nor will it have, after separating from its Dutch parent, any cross-border activity that would complicate FDIC resolution authority. Moreover, ING Direct is not dependent on uncommitted short-term or wholesale funding from other financial institutions. It holds \$77.7 billion in low-cost FDIC-insured retail deposits. In this regard, ING Bank's deposits are lower cost and much more stable than other internet banks — and indeed lower cost and more stable than some brick and mortar banks.<sup>33</sup> Thus, the Acquisition will not impair Capital One's liquidity or funding costs and will not add any significant interconnectedness to the combined institution.

In view of the foregoing, Capital One does not believe the Acquisition will result in greater or more concentrated risks to the stability of the U.S. banking or financial system based on the factors set forth in the MUFG Order.

### **Commitment to the CRA**

**Capital One.** Capital One has a proven record of meeting the needs of the communities it serves, including as measured by performance evaluations under the CRA. COBNA is currently rated "Outstanding," and CONA is rated "Satisfactory" (CRA examinations

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<sup>32</sup> According to the OCC's "Quarterly Report on Bank Trading and Derivatives Activities, First Quarter 2011," ING Direct was not listed among the top 25 financial institutions trading derivatives. Capital One variously appears as the 24<sup>th</sup> or 25<sup>th</sup> largest trader accounting for about one-thousandth of one percent of total market value.

<sup>33</sup> See Capital One Investor Presentation, June 16, 2011, available at <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9NDMwNzMxfENoaWxkSUQ9NDQ5OTQzffR5cGU9MQ==&t=1> (noting that ING Direct's non-interest expense for liquid deposits is at 0.51 percent, significantly smaller than the typical large bank average of 2.45 percent).

of both entities are currently in progress). Capital One is a leader in community development finance, corporate citizenship and philanthropy.

### **CRA Programs**

Capital One and ING Bank have comprehensive CRA programs in place, and Capital One intends to integrate and maintain elements of both of these programs at ING Bank after the acquisition. Longer term, ING Bank will be fully integrated into Capital One's CRA program.

Capital One's commitment to the CRA and meeting the needs of its communities is evidenced by the level of support and oversight provided by its board of directors and senior management, and by the level of resources allocated to CRA compliance, community development and related activities. Capital One has approximately 100 full-time equivalent associates who manage and staff the CRA compliance, community development, corporate philanthropy and community relations functions. Capital One's Community Development Finance group itself grew from a staff of 10 in 2007 to 35 in 2010. In addition, senior managers who are responsible for lines of business that impact CRA performance have been charged with CRA-related accountabilities. Capital One's CRA officer reports annually to the board of directors. Further, regular CRA compliance reports are provided to and discussed with senior management, including the presidents and executive committees of Capital One's banks.

Capital One intends to continue this level of support and oversight following the consummation of the Acquisition. In addition, Capital One intends to review the level of resources dedicated to community development to ensure that it is well positioned to continue its strong commitment to this area following the Acquisition.

### **Performance Record – Capital One**

Both CONA and COBNA have served the needs of their communities extremely well despite a very challenging environment.

### **CONA**

CONA's most recent CRA performance evaluation was conducted in 2007 and covered only a small part of its current footprint. The examination report stated that:

- CONA's lending volume is good given competition in its primary markets.
- The distribution of loans to borrowers of different income levels is good.
- CONA has a good level of qualified community development investments given its resources and capacity.
- Community development services are good and support CONA's community development efforts and address identified needs in the community.

Since the 2007 evaluation, CONA has demonstrated very strong CRA performance and significant positive impacts on its communities. Results include (but are not limited to) the following :

- Originated \$3.9 billion in community development loans and investments. This amount included, but was not limited to:
  - \$2 billion in the New York – New Jersey – Connecticut region following CONA's merger with North Fork Bank (August 1, 2007);
  - \$380 million in the Mid-Atlantic region following CONA's merger with Chevy Chase Bank (July 30, 2009); and
  - \$870 million to help rebuild the Gulf Coast, post-Katrina. Capital One's leadership role in post-Katrina rebuilding efforts were featured in the Fall 2008 edition of the OCC's "Community Developments" newsletter.
- Despite challenges in the industry, met the needs of businesses in LMI areas and of the smallest businesses. Of its small loans to businesses, 28% were made in LMI census tracts (typically meeting or exceeding demographic and market share benchmarks); 83% were made to businesses with annual revenue of \$1 million or less (for loans where revenue data was available); and 95% were for \$100,000 or less.

- Provided specialized mortgage loans to LMI borrowers. Delivered through a dedicated team, these are high-touch, labor-intensive loans that involve homebuyer counseling and leveraging of down payment assistance programs.
- Provided financial support to national and local community development financial institutions (“CDFI”) that lend and provide technical assistance to micro- and other small businesses. In addition, through its “Second Look” program, CONA referred to its CDFI partners more than 1,100 not-yet-bankable small businesses for technical assistance and possible financing.
- Provided \$36 million in community development grants, including \$1.8 million to aid Gulf Coast recovery.
- Added 33 new branches in LMI census tracts across its footprint. Nineteen of these branches are in Louisiana and Texas, where Capital One inherited (from Hibernia National Bank) a weak CRA branch distribution. CONA added LMI branches at a faster rate than what occurred nationally, and made a very large investment in its communities at a time when capital was constrained across the industry.
- Employed innovative branching strategies to address the needs of LMI communities. For example, CONA opened three “student-run” branches that provide financial education and workforce training to students in primarily LMI high schools. One substantive impact is that the student bankers graduate from high school and attend college, whereas a very large portion of their class does not complete high school.
- Delivered 42,000 hours of community development services to 650 community organizations.

## COBNA

COBNA is a limited-purpose bank for CRA purposes and is evaluated under the Community Development Test. COBNA's most recent CRA report in 2005 stated that:

- COBNA demonstrates a keen awareness of and excellent responsiveness to area community needs.
- COBNA is a leader in providing community development services to various organizations engaged in community development by serving in leadership roles and offering financial expertise and technical assistance.

Since its evaluation, COBNA has continued to be highly responsive to community development needs. Results through 2010 include (but are not limited to) the following:

- Originated \$345 million in community development investments. Most are complex, low-income housing tax credit transactions that support the creation or rehabilitation of housing units in affordable housing developments.
- Originated \$260 million in complex, customized community development loans to borrowers such as nonprofit developers, developers of affordable housing in the Gulf Coast region and entities involved in New Markets Tax Credit transactions.
- Provided \$27 million in community development grants.
- Led the industry in funding national financial literacy activities, including Junior Achievement Finance Park, Money Wi\$e (Consumer Action) and Bank It (Search Institute).
- Delivered 4,600 hours of community development services to 50 local and national organizations.

Capital One is a leader in community development finance, corporate citizenship and philanthropy. Capital One's commitment to meeting the banking and credit needs of the

communities it serves is reflected in its many community reinvestment programs and in its exemplary records of achievement under these programs.

### **Capital One Philanthropy**

Capital One believes it has a unique responsibility to contribute to the economic well-being of the communities in which it does business. It invests in its communities by providing resources that support economic opportunity for residents and local businesses. By focusing philanthropic grants, specialized community development services and associate volunteerism on education, financial literacy, affordable housing and small business/workforce development, Capital One helps make communities dynamic places where families can live, work, grow and realize their dreams.

Since January 2009, Capital One has distributed more than 4,200 grants to nonprofit organizations totaling more than \$60 million. Most of these funds have been CRA qualified, serving primarily LMI populations. Capital One also shared the professional expertise of its associates with these same community partners. Through Capital One's Community Corps, associates delivered more than 200,000 hours of volunteer service in 2009-2010 to further community impact. In addition, 50 percent of Capital One's senior executives (Senior Vice President and above) serve on the boards of nonprofit partner organizations. Investing time, money and intellectual capital into each community partnership demonstrates Capital One's commitment to sustainable change. Following are a few examples of the company's philanthropic programs, focus areas and grants:

Capital One - Junior Achievement Finance Park. Financial education is an unmet need in all communities, particularly in LMI communities. Many states, including Virginia and New Jersey, now require financial education components to be included in their core curricula as a requirement for high school graduation. Capital One has partnered with Junior Achievement Worldwide (JA) to bring financial education to students across the country. Capital One Junior Achievement Finance Park is an innovative, mobile financial education program that teaches the tenets of money management to middle and high school students. More than 50,000 students participated in the program during 2009-2010.

Finance Park involves four weeks of in-class lessons provided by teachers and aligns with state math and civics requirements. Once completed, students visit a “mock city” where they become “adults for a day,” developing and managing budgets and making financial decisions as they encounter real-life situations. Capital One provides philanthropic support to create the mobile classrooms and manage the program in five states and supplies associate volunteers to staff mock cities and serve as mentors to the students as they complete the experience.

In 2010, a permanent Finance Park facility opened in Fairfax County, Virginia. The grand opening featured a keynote address by Federal Reserve Chairman Ben Bernanke. The Finance Park program is part of the curriculum for Fairfax County Public Schools. Capital One contributed grant funds to finance the facility, and provides ongoing support through associate volunteerism.

Enterprise Community Partners. Enterprise Community Partners serves LMI communities and vulnerable populations by providing affordable housing financing. Capital One has supported Enterprise since 2006 through grants, training, technical assistance and policy advocacy services on the federal, state and local levels. In 2010, Capital One provided Enterprise with a grant in support of five local offices (Baltimore, Dallas, New Orleans, New York City and Washington, DC), its senior housing initiatives and its policy work.

New York City Police Athletic League. In 2010, Capital One partnered with the Police Athletic League (“PAL”) and the New York City Summer Youth Employment Program to present financial education seminars for local students. Specifically, 36 Capital One volunteers presented workshops for over 1,500 primarily LMI students in PAL and the Summer Youth Employment Program. Capital One’s partnership with PAL also includes grant support, as Capital One funded various PAL programs in 2009 and 2010. In addition, a Capital One Senior Vice President serves on PAL’s board of directors.

Better Housing Coalition (Richmond). The Better Housing Coalition (“BHC”) changes lives and transforms communities through high-quality affordable housing and ongoing support services. Capital One has partnered with BHC since 2003, providing grants and participating in numerous volunteer activities. In 2010, Capital One and BHC began working

together on a redevelopment program called the Church Hill Initiative, a comprehensive strategy to weave successful revitalization projects already completed by BHC with a mix of new affordable residential and neighborhood retail infill development.

Latin American Youth Center (Washington, DC and Maryland). The Latin American Youth Center (“LAYC”) operates a regional network of community-based youth centers, school-based sites and public charter schools that provide educational enhancement, workforce investment, social services, residential placement, art and media, recreation and advocacy. All LAYC programs help LMI youth in the Washington, DC region make a successful transition to young adulthood with the skills they need to succeed educationally, professionally and personally. In fiscal year 2010, LAYC served over 4,200 individuals. A partner since 2005, Capital One has provided grants to support capacity building, workforce investment, charter school development and most recently expansion of programming to Prince George’s County, Maryland.

Neighborhood Housing Services of New Orleans. Neighborhood Housing Services (“NHS”) revitalizes communities by increasing the number of homeowners and transforming vacant or substandard properties into sustainable homes. It also provides homeowners with pre-purchase, post-purchase and foreclosure prevention counseling. Capital One has supported NHS with grants since 2006.

Girls Inc. (Dallas). Girls Inc. of Metropolitan Dallas provides enrichment programs for girls and young women. A partner since 2003, Capital One has provided grant funding to support financial literacy, career counseling and reading in four Girls Clubs in Dallas. In 2010, Capital One’s funding focused on financial and reading literacy skills for 800 girls, ages six to 18, enrolled at four campus locations in low-income neighborhoods. A Capital One Managing Vice President serves on the organization’s board of directors.

### **ING Bank**

ING Bank currently has a CRA rating of “Outstanding” from the OTS. In its most recent performance evaluation in 2008, the OTS noted that the following aspects of ING Bank’s CRA program supported its rating:

Lending Test. ING Bank's performance under the various criteria comprising the lending test at least meets the standards for satisfactory performance. Management of ING Bank established a goal to originate and purchase at least 50 percent of total residential mortgages in its assessment area and other specifically selected MSAs with the intent of meeting the levels of aggregate HMDA reporters' lending to LMI borrowers and geographies. Residential mortgage loans are purchased, in part, to enhance the distribution to LMI borrowers and geographies and allow ING Bank to better meet its CRA obligations.

Investment Test. ING Bank had a significant level of qualified community development investments and grants. Such investments showed a good responsiveness to credit and community economic development needs, particularly the needs of small businesses. In addition to the aforementioned investments, ING Bank made significant charitable contributions for community development purposes.

- Six contributions in the amount totaling \$1.048 million were made to three non-profit organizations that provide affordable housing for LMI individuals
- ING Bank made 33 contributions aggregating \$2.0 million to nonprofit organizations that provided community services to LMI individuals.
- Four organizations were given grants in the aggregate amount of \$53 thousand for activities that revitalize or stabilize LMI geographies.

Service Test. The evaluation of performance under the Service test showed that ING Bank is a leader in providing community development services in the assessment area. While ING Bank has no branches, services are accessible through the internet, telephone or ATMs.

### **Public Benefits of the Acquisition**

The Acquisition will allow Capital One to offer ING Direct's customers greater convenience through access to a broader range of financial products and services. These customers will benefit from gaining access to a larger network of branches and ATMs in the

United States as well as innovative deposit, lending and investment products and services. Further, Capital One has a strong record of supporting communities. The combined company will also be a more effective competitor than ING Bank alone in deposit-taking, lending and investment advisory and securities brokerage activities because of its larger capital and asset base.

### **Conclusion**

The Acquisition will result in a stronger and more competitive financial institution, which will better serve the interests of its customers and communities. The managerial and financial resources, as well as the capital and earnings power, of the combined organization will enable it to provide more products and services even more efficiently through an enhanced distribution system. The consolidation of resources will enable the combined company to realize economies of scale and provide a wider and improved array of financial products and services to customers. These combination benefits, especially the greater amount and diversification of earnings and financial resources, are particularly salient given the current financial market and economic conditions, which are posing challenges to less diversified and less well capitalized institutions, both large and small. In addition, the combined company's continuation and enhancement of Capital One's already proven CRA record support approval of this Notification. Finally, the acquisition of ING Bank by Capital One will not adversely impact competition, either nationally or in any banking market, or result in other adverse effects, such as undue concentration of resources, conflicts of interest, unsound banking practices or risk to the stability of the United States banking or financial systems, that would outweigh the various benefits noted above. Accordingly, the balance of public benefits under Section 4(j)(2) of the BHC Act are consistent with approval of the Notification.

For the reasons stated above, the Acquisition should be approved.

**Information Required by Section 225.24 of Regulation Y**

**1. Description of the proposal. (§ 225.24(a)(2)(i))**

Please refer to the Introductory Statement for a summary of the terms of the Acquisition.

**2. Description of each proposed activity. (§ 225.24(a)(2)(i))**

Please refer to the Introductory Statement for a description of each proposed activity.

**3. Effect of the proposal on competition among entities engaging in each proposed activity in each relevant market with relevant market indexes. (§ 225.24(a)(2)(i))**

A discussion of the competition-related considerations and effect of the Acquisition is contained in the Introductory Statement.

**4. Identity of any entity involved in the proposal, and, if the Notificant proposes to conduct the activity through an existing subsidiary, a description of the existing activities of the subsidiary. (§ 225.24(a)(2)(ii))**

Please refer to the Introductory Statement for a description of the parties involved in the Acquisition.

**5. Statement of the public benefits that can reasonably be expected to result from the Acquisition. (§ 225.24(a)(2)(iii))**

Please refer to the Introductory Statement.

**6. If the bank holding company has consolidated assets of \$150 million or more:**

- a. Parent company and consolidated pro forma balance sheets for the acquiring bank holding company as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction. (§ 225.24(a)(2)(iv)(A))*

Please see Confidential Exhibits D and E.

- b. Consolidated pro forma risk-based capital and leverage ratio calculations for the acquiring bank holding company as of the most recent quarter. (§ 225.24(a)(2)(iv)(B))*

Please see Confidential Exhibit G.

- c. A description of the purchase price and the terms and sources of funding for the transaction. (§ 225.24(a)(2)(iv)(C))*

Please refer to the Introductory Statement for a description of the purchase price and the terms and sources of funding for the Acquisition.

**7. If the bank holding company has consolidated assets of less than \$150 million:**

- a. A pro forma parent-only balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction. (§ 225.24(a)(2)(v)(A))*

Not applicable.

- b. A description of the purchase price and the terms and sources of funding for the transaction and, if the transaction is debt-funded, one-year income statement and cash flow projections for the parent company, and the sources and schedule for retiring any debt incurred in the transaction. (§ 225.24(a)(2)(v)(B))*

Not applicable.

**8. For each insured depository institution whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, Tier 1 capital and total capital of the institution on a pro forma basis. (§ 225.24(a)(2)(vi))**

There will be no changes to Tier 1 capital, total capital, total assets or risk-weighted assets for Capital One's existing depository institutions subsidiaries, COBNA and CONA. ING Bank's balance sheet and capital position will change because certain assets are not being sold to Capital One and certain purchase accounting adjustments will be made at the time of the Acquisition. For pro forma Tier 1 capital, total capital, total assets and risk-weighted asset figures for ING Bank, please refer to Confidential Exhibit H.

**9. A description of the management expertise, internal controls and risk management systems that will be utilized in the conduct of the proposed activities. (§ 225.24(a)(2)(vii))**

Upon consummation of the Acquisition, the management expertise of Capital One and ING Bank will be combined, and the internal controls and risk management systems of Capital One will be adopted by ING Bank and its subsidiaries. Please refer to the Introductory Statement, Confidential Exhibit B and Confidential Exhibit C. A risk assessment of ING Bank's mortgage portfolio is set forth in Confidential Exhibit J. An overview of the enhancements that Capital One has made to its interest risk management is set for in Confidential Exhibit O.

**10. A copy of the purchase agreements, and balance sheet and income statements for the most recent quarter and year-end for any company to be acquired. (§ 225.24(a)(2)(viii))**

A copy of the Purchase Agreement is included as Exhibit 1. Copies of the Thrift Financial Reports of ING Bank for the quarter ended March 31, 2011 and the year ended December 31, 2010 have been included as Exhibit 6.

**SUPPLEMENTAL INFORMATION**<sup>34</sup>

**Responses to the Questions from Form FR Y-3**

**Proposed Transaction**

**1. Provide the following with respect to the Bank/Bank Holding Company to be acquired:**

**a. Total number of shares of each class of stock outstanding;**

The authorized capital stock of ING Bank consists of 1000 shares of common stock, par value \$1.00, of which 1000 shares are issued and outstanding.

**b. Number of shares of each class now owned or under option by Applicant, by subsidiaries of Applicant, by principals of Applicant, by trustees for the benefit of Applicant, its subsidiaries, shareholders, and employees as a class, or by an escrow arrangement instituted by Applicant;**

Capital One does not currently own any shares of ING Bank.

**c. Number of shares of each class to be acquired by cash purchase, the amount to be paid, per share and in total, and the source of funds to be applied to the purchase;**

Please refer to the Introductory Statement for a response to this item.

**d. Number of shares of each class to be acquired by exchange of stock, the exchange ratio, and the number and description of each class of Applicant's shares to be exchanged; and**

Please refer to Introductory Statement for a response to this item.

**e. A brief description of any unusual contractual terms, especially those terms not disclosed elsewhere in the application. Also, provide the expiration dates of any contractual arrangement between the parties involved in this application. As an alternative to developing the foregoing information, provide a copy of the purchase, operating, or other agreements associated with the proposed transaction.**

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<sup>34</sup> The instructions for preparation of the FR Y-4 Notification indicate that proposals involving the acquisition of an insured depository institution that require approval under Section 4 of the BHC Act should modify the filing to satisfy the same information and publication requirements that would apply if the savings association or other nonbank insured depository institution to be acquired were a bank. Notificant may use Form FR Y-3 as a guide for information that should be included.

Except for the provisions relating to restructuring the IABF, which are summarized in the Introductory Statement, Capital One does not believe that the Purchase Agreement contains any unusual contractual terms.

Either party may terminate the Purchase Agreement if the Acquisition is not consummated by June 16, 2012.

2. **If the proposed transaction is an acquisition of assets and assumption of liabilities, indicate the total price and the source of funds that Applicant intends to use for the proposed purchase, and discuss the effect of the transaction on the operations of Applicant.**

Not applicable.

3. **If the proposed transaction involves the acquisition of an unaffiliated banking operation or otherwise represents a change in ownership of established banking operations, describe briefly the due diligence review conducted on the target operations by Applicant. Indicate the scope of and resources committed to the review, explain any significant adverse findings, and describe the corrective actions(s) to be taken to address those weaknesses.**

Please refer to Confidential Exhibit K for a response to this item.

4. **For applications filed pursuant to section 3(a)(1) of the BHC Act, if the proposed transaction would result in an organization other than a shell one-bank holding company, submit a pro forma organization chart showing Applicant's percentage of ownership of all banks and companies, both domestic and foreign, in which it directly or indirectly will own or control more than 5 percent of the outstanding voting shares.**

Not applicable. This Notification is not being filed pursuant to section 3(a)(1) of the BHC Act.

### **Financial and Managerial Information**

5. a. **For Applicant that is not or would not be subject to consolidated capital standards following consummation of the proposed transaction, provide a parent company balance sheet as of the end of the most recent fiscal quarter, showing separately each principal group of assets, liabilities, and capital accounts; debit and credit adjustments (explained by footnotes) reflecting the proposed acquisition; and the resulting pro forma balance sheets;**

Not applicable. Capital One is subject to consolidated capital standards and would continue to be after consummation.

- b. **For an applicant that is or would be subject to consolidated capital standards following consummation of the proposed transaction, provide parent company and consolidated balance sheets as of the end of the most recent**

**fiscal quarter, showing separately each principal group of assets, liabilities, and capital accounts; debit and credit adjustments (explained by footnotes) reflecting the proposed transaction; and the resulting pro forma balance sheets; and**

The balance sheets provided in response to a and b should be in sufficient detail to reflect any:

- Common equity and preferred stock;
- Trust preferred securities and other qualifying capital;
- Long and short-term debt;
- Goodwill and all other types of intangible assets, as well as any relevant amortization period(s);
- Material changes between the date of the balance sheet and the date of the application (explained by footnotes).

Please refer to Confidential Exhibit D for the parent company balance sheet and Confidential Exhibit E for the consolidated balance sheet.

- c. For an Applicant that is or would be subject to consolidated capital standards following consummation of the proposed transaction, provide a breakdown of the organization's existing and pro forma risk-adjusted assets as of the end of the most recent fiscal quarter, showing each principal group of on- and off-balance sheet assets and the relevant risk-weight. Also, identify the existing and pro forma components of tier 1, tier 2, and tier 3 (if any) capital pursuant to the risk-based capital guidelines as of the end of the most recent fiscal quarter, and provide calculations of Applicant's existing and pro forma tier 1 and total capital ratios pursuant to the risk-based guidelines and the related leverage ratios.**

Please refer to Confidential Exhibits F and G for a response to this item.

- 6. Provide for Applicant and any other Bank(s)/Bank Holding Company(ies) that would result from the proposal:**
- a. A description of any plans (in connection with the proposed transaction or otherwise) to issue, incur, or assume additional common equity, preferred stock, trust preferred securities, other qualifying capital, and/or debt. As relevant, specify the amount, purpose, name and location of the issuer and/or lender; provide a copy of any loan agreement, loan commitment letter from the lender, or other underlying agreement which provides the interest rate,**

**maturity, collateral, and proposed amortization schedule; and discuss what resources would be used to service any debt or capital instruments arising from the proposed transaction; and**

Under the Purchase Agreement, Capital One will purchase ING Direct from ING Groep for \$6.2 billion in cash and approximately 55.9 million Capital One common shares, valued at approximately \$2.8 billion, based on a Capital One share price of \$50.07, the 10-day average of Capital One closing prices for the period ending June 15, 2011. In support of the Acquisition, Capital One announced on July 13, 2011, a public equity raise of approximately 40 million shares priced at \$50 per share. In connection with the public equity raise, Capital One entered into forward sale agreements with Barclays Capital and Morgan Stanley. The forward sale agreements permit Capital One to lock in a stock price now while maintaining the option not to issue the shares in the unlikely event that the Acquisition is not completed. On July 14, 2011, Capital One announced the issuance of \$3.0 billion in senior unsecured notes. The proceeds from these transactions along with additional cash consideration (currently expected to be approximately \$1.2 billion) will be sourced from cash on hand at Capital One (the amount of which currently exceeds \$5.1 billion) or through proceeds received from additional debt offerings. Servicing of the \$3.0 billion of senior debt will be supported through excess cash at the parent company level and the consolidated earnings generation of Capital One.

As of March 31, 2011, ING Direct had approximately \$750 million of borrowings in the form of repurchase transactions. That amount was subsequently reduced to approximately \$500 million by April 30, 2011 and ING Direct expects to eliminate it entirely prior to the close of the Acquisition. No other debt will be assumed in connection with the Acquisition.

- b. Cash flow projections under the following limited circumstances;**
- i. For an Applicant that is or would be subject to consolidated capital standards following consummation of the proposed transaction and that would incur or assume any debt or trust preferred securities in the proposal such that parent company long-term debt would exceed 30 percent of parent company equity capital, provide cash flow projections for the parent company for each of the next three years, along with supporting schedules for each material cash receipt and disbursement. If Applicant projects that dividends or other payments from subsidiary banks will be used to service parent company debt and/or trust preferred securities, provide projections of subsidiary bank(s) assets, tier 1 and total capital ratios pursuant to the risk-based capital guidelines, leverage ratio, earnings, and dividends. (If the combined assets of the subsidiary banks exceed \$500 million, subsidiary bank data may be shown on an aggregate basis.)**

Please refer to Confidential Exhibit O.

- ii. **For an Applicant that is not or would not be subject to consolidated capital standards following consummation of the proposed transaction and that would incur or assume any debt or trust preferred securities in the proposal such that parent company long-term debt would exceed 30 percent of parent company equity capital, provide cash-flow projections for the parent company for each of the next twelve years, along with supporting schedules for each material cash receipt and disbursement. These projections must clearly demonstrate the ability of the parent company to reduce the long-term debt to equity ratio to 30 percent or less within twelve years of consummation and must take into account the schedule of principal reduction required by the parent company's creditor(s). Include projections of subsidiary bank(s) assets, tier 1 and total capital ratio pursuant to the risk-based capital guidelines, leverage ratio, earnings, dividends, and other payments to affiliates. Explain the methods and assumptions utilized in the projections, and support all assumptions which deviate from historical performance.**

Not applicable. Capital One is subject to consolidated capital standards and would continue to be after consummation.

- iii. **For an Applicant that is not or would not be subject to consolidated capital standards following consummation of the proposed transaction and that would incur or assume any debt or trust preferred securities in the proposal such that parent company long-term debt would be equal to or less than 30 percent of parent company equity capital and combined parent company long-term debt and trust preferred securities would exceed 30 percent of parent company equity capital, provide cash flow projections for the parent company for each of the next three years, along with supporting schedules for each material cash receipt and disbursement. As indicated above, relevant bank subsidiary projections should be provided if the parent company projects relying on dividends and other payments from bank subsidiaries to service its debt and trust preferred securities.**

Not applicable. Capital One is subject to consolidated capital standards and would continue to be after consummation.

- 7. **For applications filed pursuant to section 3(a)(1) of the BHC Act, provide for Applicant and Bank a list of principals (including changes or additions to this list to reflect consummation of the transaction), providing information with respect to each as follows:**
  - a. **Name, address (City and State/Country). If the principal's country of citizenship is different from his or her country of residence, then state the country of citizenship;**

- b. Title or positions with Applicant and Bank;**
- c. Number and percentage of each class of shares of Applicant and Bank owned, controlled, or held with power to vote by this individual;**
- d. Principal occupation if other than with Applicant or Bank; and**
- e. Percentage of direct or indirect ownership, if such ownership represents 10 percent or more of any class of shares, or positions held in any other depository institution or depository institution holding company. Give the name and location of such other depository institution or depository institution holding company. (Information that has been collected or updated within the past 12 months may be submitted, unless Applicant has reason to believe that such information is incorrect.)**

Not applicable. This Notification is not being filed pursuant to section 3(a)(1) of the BHC Act.

- f. For any principal that would own 10 percent or more of the equity of Applicant, provide an Interagency Biographical and Financial Report. If the principal is a corporation or a partnership, provide financial statements (balance sheets and income statements) for the two most recent fiscal years and the most recent quarter end. Discuss any negative trends in the financial statements.**
- 8. For applications filed pursuant to sections 3(a)(3) or 3(a)(5) of the BHC Act, list any changes in management or other principal relationships for Applicant and any other Bank(s)/Bank Holding Company(ies) that would result from the proposal. For any existing or proposed principal of Applicant or Bank-Bank Holding Company that is also a principal of any other depository institution holding company, provide the following information:**

Please refer to Introductory Statement.

- a. Name, address, and title or position with Applicant, Bank/Bank Holding Company, and the other depository institution or depository institution holding company (give the name and location of the other depository institution or depository institution holding company);**
- b. Number and percentage of each class of shares of Applicant and Bank/Bank Holding Company owned, controlled, or held with power to vote by this individual;**
- c. Principal occupation if other than with Applicant or Bank/Bank Holding Company; and**
- d. Percentage of direct or indirect ownership held in the other depository institution or depository institution holding company if such ownership**

**represents 10 percent of more of any class of shares. (Information that has been collected or updated within the past 12 months may be submitted, unless Applicant has reason to believe that such information is incorrect.)**

Not applicable. No management interlocks exist between Capital One and other depository institutions or depository institution holding companies.

- 9. Discuss any material change in the financial condition of Bank/Bank Holding Company since the most recent examination/inspection. Indicate the amount of any dividend payment by Bank/Bank Holding Company since the date of the most recent report of condition and report of income and dividends. Also, indicate the amount of any Bank/Bank Holding Company dividends that are planned prior to consummation. For applications filed pursuant to section 3(a)(1) of the BHC Act, provide for Bank a copy of all schedules from the most recent report of condition and report of income and dividends as filed with a Federal supervisory authority.**

Please refer to Confidential Exhibit I.

- 10. If the consolidated assets of the resulting organization are less than \$500 million, for each principal of Applicant who either would retain personal indebtedness or act as guarantor for any debt that was incurred in the acquisition of shares of Applicant or Bank/Bank Holding Company, provide the following:**
- a. Name of borrower and title, position, or other designation that makes the borrower a principal of Applicant;**
  - b. Amount of personal indebtedness to be retained;**
  - c. A description of the terms of the borrowing, and the name and location of the lender, and a copy of any related loan agreement or loan commitment letter from the lender;**
  - d. Statement of net worth as of a date within three months of Applicant's final filing of the application. The statement of net worth should be in sufficient detail to indicate each principal group of assets and liabilities of the reporting principal, and the basis for the valuation of assets (provide supporting documentation, as appropriate). In addition to debts and liabilities, the reporting principal should state on a separate schedule, any endorsed, guaranteed, or otherwise indirect or contingent liability for the obligation of others; and**
  - e. Statement of most current year's income. In addition to indicating each principal source of annual income, the reporting principal should list annual fixed obligations arising from amortization and other debt servicing. (If the most current year's statement is not representative of the future, the reporting principal should submit a pro forma income statement and discuss**

**the significant changes and the basis for those changes.)**

Not applicable. The total banking assets of the resulting organization will exceed \$500 million. Additionally, no principal of Notificant will retain personal indebtedness or act as guarantor for any such debt.

### **Competition**

- 11. Discuss the effects of the proposed transaction on competition considering the structural criteria specified in the Board’s Rules Regarding Delegation of Authority (section 265.11c(11)(v)). Applicant may be required to provide additional information if Federal Reserve staff determines that the proposal exceeds existing competitive guidelines. Also, if divestiture of all or any portion of any bank or nonbanking company constitutes part of this proposal, discuss in detail the specifics and timing of such divestiture.**

Please refer to the Introductory Statement for an analysis of the competitive impact of the Acquisition.

- 12. If the proposal involves the acquisition of nonbank operations under section 4(c)(8) and 4(j) of the Bank Holding Company Act, a Form FR Y-4 should be submitted in connection with FR Y-3 filing. At a minimum, the information related to the nonbank operations should include the following:**
- a. A description of the proposed activity(ies);**
  - b. The name and location of Applicant’s and Bank’s direct or indirect subsidiaries that engage in the activity(ies);**
  - c. Identification of the geographic markets in which competition would be affected by the proposal;**
  - d. A description of the effect of the proposal on competition in the relevant markets; and**
  - e. A list of major competitors in each affected market.**

**In addition, the applicant should identify any other nonbank operations to be acquired, with brief descriptions of the activities provided.**

Not applicable.

- 13. In an application in which any principal of Applicant or Bank/Bank Holding Company is also a principal of any other insured depository institution or depository institution holding company, give the name and location of each office of such other institution that is located within the relevant banking market of Bank/Bank Holding Company, and give the approximate road miles by the most accessible and traveled route between those offices and each of the offices of Bank/Bank Holding Company.**

Not applicable. There are no management interlocks between Capital One or ING Bank and any other unaffiliated depository institution or depository institution holding company.

### **Convenience and Needs**

14. (a) **Describe how the proposal will meet the convenience and needs of the target Bank’s community(ies). List any significant changes in services or products that will result from the consummation of the transaction. If any services or products will be discontinued, describe and explain the reasons.**

As discussed in the Introductory Statement, the Acquisition is consistent with convenience and needs considerations and will result in a broader range of products and services. The resulting product offerings will include an enhanced product list and expanded delivery channels for ING Bank customers.

Although Capital One and ING Bank will work to identify any duplication of products or services, it is not anticipated that there will be any significant changes that would adversely affect the convenience and needs considerations.

- (b) **Discuss the programs, products, and activities of the depository subsidiaries of the Applicant or the target Bank that will meet the existing or anticipated needs of its community(ies) under the applicable criteria of the Community Reinvestment Act (CRA) regulation, including the needs of low- and moderate-income geographies and individuals. For a subsidiary of the Applicant or target Bank that has received a CRA composite rating of “needs to improve” or “substantial noncompliance” institution-wide or, where applicable, in a state or multi-state MSA, or has received an evaluation of less than satisfactory performance in an MSA or in the non-MSA portion of a state in which the applicant is expanding as a result of the transaction, describe the specific actions, if any, that have been taken to address the deficiencies in the institution’s CRA performance record since the rating.**

Please refer to the Introductory Statement.

## **EXHIBITS**

<u>Exhibit 1</u>	Purchase Agreement
<u>Exhibit 2</u>	Capital One 2010 Annual Report to Shareholders and Quarterly Report on Form 10-Q for the Quarter Ended March 31, 2011
<u>Exhibit 3</u>	OTS Authorization for Cafes
<u>Exhibit 4</u>	Tables Relating to Competitive Analysis
<u>Exhibit 5</u>	Tables Relating to Systemic Risk Analysis
<u>Exhibit 6</u>	Thrift Financial Reports of ING Bank for the Quarter Ended March 31, 2011, and the Year Ended December 31, 2010.

## **CONFIDENTIAL EXHIBITS**

**(SET FORTH IN SEPARATELY BOUND CONFIDENTIAL SUPPLEMENT)\***

<u>Confidential Exhibit A</u>	Disclosure Schedules to the Purchase Agreement
<u>Confidential Exhibit B</u>	Post-Closing Operations and Integration Plans
<u>Confidential Exhibit C</u>	Risk Management and Compliance Assessments
<u>Confidential Exhibit D</u>	Parent Company Pro Forma Balance Sheets
<u>Confidential Exhibit E</u>	Consolidated Pro Forma Balance Sheets
<u>Confidential Exhibit F</u>	Pro Forma Risk-Adjusted Assets
<u>Confidential Exhibit G</u>	Pro Forma Capital Calculations
<u>Confidential Exhibit H</u>	Pro Forma Capital Impact on ING Bank
<u>Confidential Exhibit I</u>	Recent Financial Information Regarding ING Bank
<u>Confidential Exhibit J</u>	Analysis of ING Bank's Mortgage Portfolio
<u>Confidential Exhibit K</u>	Summary of Due Diligence Findings
<u>Confidential Exhibit L</u>	Overview of Liquidity Management Plan
<u>Confidential Exhibit M</u>	Summary of Capital One Key AML Personnel and Procedures

<u>Confidential Exhibit N</u>	Enhancements to Interest Rate Risk Management
<u>Confidential Exhibit O</u>	Cash Flow Projections
<u>Confidential Exhibit P</u>	OTS Authorization for Cafes P

\* As noted in the cover letter accompanying this filing, confidential treatment is being requested for the exhibits contained in the Confidential Supplement. The information contained in the Confidential Supplement includes, for example, information regarding the business strategies and plans of Capital One and ING Bank and information regarding other matters of a similar nature. This information is not the type of information that would be made available to the public under any circumstances. All such information, if made public, could result in substantial and irreparable harm to Capital One and ING Bank. In addition, potential investors could be influenced or misled by such information, which is not reported in any documents filed or to be filed in accordance with the disclosure requirements of applicable securities laws, as a result of which Capital One and ING Bank could be exposed to potential inadvertent violations of law or exposure to legal claims. Accordingly, confidential treatment is respectfully requested with respect to the Confidential Supplement, and Capital One respectfully requests that it be notified by Board staff if this request for confidentiality cannot be honored in order to allow Capital One and/or ING Bank to take appropriate steps to protect the confidentiality of such information.