

FEDERAL RESERVE SYSTEM

Capital One Financial Corporation
McLean, Virginia

Order Approving the Merger of Bank Holding Companies

Capital One Financial Corporation (“Capital One”), a financial holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act¹ to merge with North Fork Bancorporation, Inc. (“North Fork”), Melville, New York, and acquire its subsidiary banks, North Fork Bank (“NF Bank”), Mattituck, New York, and Superior Savings of New England, National Association (“Superior Savings”), Branford, Connecticut.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (71 Federal Register 29,627 (2006)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.³

Capital One, with total consolidated assets of approximately \$89.5 billion, is the 36th largest depository organization in the United States,⁴

¹ 12 U.S.C. § 1842. Capital One and North Fork also have requested the Board’s approval to hold and exercise options to purchase up to 19.9 percent of each other’s common stock. Both options would expire on consummation of the proposal.

² North Fork engages in asset management, securities brokerage, and the sale of investment products through its nonbank subsidiaries. Capital One proposes to acquire those nonbank subsidiaries in accordance with section 4(k) of the BHC Act.

³ The Board received four comments expressing concerns about various aspects of the proposal.

⁴ Asset and national ranking and deposit data are as of June 30, 2006.

controlling deposits of approximately \$32.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Capital One owns three subsidiary depository institutions that operate in Louisiana, Texas, and Virginia⁵ and engages in numerous nonbanking activities that are permissible under the BHC Act.

North Fork, with total consolidated assets of approximately \$59.4 billion, is the 41st largest depository organization in the United States, controlling deposits of \$37.2 billion. North Fork owns two subsidiary depository institutions that operate in New York, New Jersey, and Connecticut. In New York, North Fork is the fifth largest depository organization, controlling deposits of \$33.2 billion. North Fork is the 15th largest depository organization in Connecticut, controlling deposits of \$799.9 million, and the 13th largest depository organization in New Jersey, controlling deposits of \$3.2 billion.⁶

On consummation of this proposal, Capital One would become the 24th largest depository organization in the United States, with total consolidated assets of approximately \$154 billion (including pro forma accounting adjustments). Capital One would control deposits of approximately \$69.8 billion, which represent less than 2 percent of the total amount of deposits of insured depository institutions in the United States.

⁵ Capital One owns Capital One Bank, Glen Allen, and Capital One, F.S.B. (“Capital One FSB”), McLean, both in Virginia. Capital One also owns Capital One, National Association (“CONA”), New Orleans, Louisiana, formerly known as Hibernia National Bank, which Capital One acquired in connection with its merger with Hibernia Corporation in 2005 (“Hibernia Proposal”). See Capital One Financial Corporation, 91 Federal Reserve Bulletin 512 (2005) (“Hibernia Order”).

⁶ State ranking and deposit data are as of June 30, 2006, and reflect merger activity through July 7, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of Capital One is Virginia,⁷ and North Fork is located in New York, New Jersey, and Connecticut.⁸

Based on a review of all the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.⁹ In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market.

⁷ A bank holding company's home state is the state in which the total deposits of all subsidiary banks of the company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. 12 U.S.C. § 1841(o)(4)(C).

⁸ For purposes of section 3(d), the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. 12 U.S.C. §§ 1841(o)(4)-(7) and 1842(d)(1)(A) and (d)(2)(B).

⁹ 12 U.S.C. §§ 1842(d)(1)(A)&(B), 1842(d)(2)(A)&(B). Capital One is adequately capitalized and adequately managed, as defined by applicable law. NF Bank and Superior Savings have been in existence and operated for the minimum period of time required by applicable state law (five years). On consummation of the proposal, Capital One would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States and less than 30 percent of the total amount of deposits of insured depository institutions in New York, New Jersey, and Connecticut. All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served.¹⁰

Capital One and North Fork do not compete directly in any relevant banking market. Based on all the facts of record, the Board concludes that consummation of the proposal would have no significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market. Accordingly, the Board has determined that competitive factors are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination and other supervisory information from the primary federal and state supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by Capital One, and public comments received on the proposal.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and significant nonbanking

¹⁰ 12 U.S.C. § 1842(c)(1).

operations.¹¹ In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board has carefully considered the financial factors of the proposal. Capital One, all its subsidiary depository institutions, and all the subsidiary depository institutions of North Fork currently are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board also finds that Capital One has sufficient financial resources to effect the proposal.¹² The proposed transaction is structured as a partial share

¹¹ Two commenters criticized the relationships of Capital One and North Fork with unaffiliated nontraditional providers of financial services. As a general matter, these businesses are licensed by the states where they operate and are subject to applicable state law. The Board considered the relationships of Capital One and Hibernia National Bank (now CONA) with these types of providers in the Hibernia Order and hereby readopts and reaffirms those findings and decisions herein. Capital One represented that it has made no significant changes to the manner in which Capital One and its affiliates conduct their lending relationships with such providers since the Hibernia Proposal. According to Capital One, NF Bank's Middle-Market Lending Group provides banking services to licensed check-cashing businesses in New York and New Jersey, and NF Bank's Small Business Financial Services Group extends a small number of loans to nontraditional providers of financial services. Capital One represented that NF Bank does not play any role in the lending practices or credit-review processes of these firms. In addition, North Fork owns a check-cashing business licensed by and operated exclusively in New York. The Board has consulted with the New York State Banking Department on this check-cashing business.

¹² A commenter requested that, in light of the compensation to be received by certain North Fork executives in connection with the proposal, the Board consider whether it has authority to evaluate the appropriateness of compensation arrangements for executive officers in connection with merger and acquisition

exchange and partial cash purchase of shares. Capital One will use existing resources and the proceeds of long-term debt to fund the cash purchase of shares.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of Capital One, North Fork, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking agencies with the organizations and their records of compliance with applicable banking law, including anti-money laundering laws.¹³ The Board also has considered Capital

transactions subject to the BHC Act. The Board has taken the compensation arrangements for North Fork's executives into account in evaluating this proposal under the financial and managerial factors. As noted, Capital One and North Fork would remain well capitalized on consummation of the proposal. In addition, information about these arrangements was disclosed to the shareholders of Capital One and North Fork, and they approved the proposed transactions.

¹³ One commenter opposed the proposal in part based on a lawsuit and investigations undertaken by the Attorneys General of Minnesota and West Virginia in their respective states relating to Capital One's marketing of its credit cards. The Board considered this matter in the Hibernia Order and has reviewed additional information with respect to these actions, including information provided by Capital One and confidential supervisory information. The Board notes that in February 2006, Capital One and the State of Minnesota entered into a Consent Judgment, which by its terms constituted a full and final resolution of all claims brought by the state and was not deemed an admission of liability by Capital One. According to the terms of the Consent Judgment, Capital One agreed not to distribute certain advertisements in Minnesota for a period of 18 months after the date of the Consent Judgment and to pay a total of \$749,999, to be divided equally among Minnesota-based chapters of the Legal Aid Society, the Minnesota Association of Community Organizations for Reform Now, and the State of Minnesota. The Board will continue to monitor the investigation by the Attorney General of West Virginia and notes that neither Board action on this proposal nor any supervisory action by the Board under the BHC Act would interfere with the Attorney General's review or with the ability of a court to resolve any litigation pertaining to this matter.

One's plans for implementing the proposal, including the proposed management after consummation.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board must also consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").¹⁴ The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.¹⁵

The Board has considered carefully all the facts of record, including reports of examination of the CRA performance records of the subsidiary insured depository institutions of Capital One and North Fork, data reported by Capital One and North Fork under the Home Mortgage Disclosure Act ("HMDA"),¹⁶ other

¹⁴ 12 U.S.C. § 2901 et seq.

¹⁵ 12 U.S.C. § 2903.

¹⁶ 12 U.S.C. § 2801 et seq.

information provided by Capital One, confidential supervisory information, and public comments received on the proposal.

Two commenters opposed the proposal or expressed concern based on the levels of lending by the subsidiary depository institutions of Capital One and North Fork to LMI communities and the institutions' records of serving those communities through community development grants and loans. One of these commenters was particularly concerned that the acquisition of North Fork would adversely affect LMI residents in New York City if North Fork's current CRA programs were altered.¹⁷ The commenters also alleged, based primarily on 2004 and 2005 HMDA data, that Capital One and North Fork engaged in discriminatory treatment of minority individuals in the home mortgage lending operations of their subsidiary depository institutions.

¹⁷ The commenter made specific recommendations for community development programs for Capital One and its subsidiary bank after consummation of this merger that were modeled on pledges previously made by North Fork. Another commenter expressed concern that Capital One had not made community development lending commitments specific to New Jersey and to specific types of organizations. The Board notes that the CRA does not require depository institutions to engage in particular kinds of lending or in lending to specific types of organizations. Moreover, the Board views the enforceability of third-party pledges, initiatives, and agreements as matters outside the CRA. The Board has explained that an applicant must demonstrate a satisfactory record of performance under the CRA without reliance on plans or commitments for future action. In addition, the Board has consistently found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. *See, e.g., Wachovia Corporation*, 91 Federal Reserve Bulletin 77 (2005). Instead, the Board focuses on the existing CRA performance record of an applicant and the programs that an applicant has in place to serve the needs of its CRA assessment areas at the time the Board reviews a proposal under the convenience and needs factor.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions of both organizations. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.¹⁸

CONA, Capital One's largest subsidiary depository institution as measured by total deposits, received a "satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency ("OCC"), as of January 12, 2004. Capital One FSB and Capital One Bank both received "outstanding" ratings at their most recent CRA performance evaluations.¹⁹ NF Bank received an "outstanding" rating from the Federal Deposit Insurance Corporation ("FDIC"), as of August 19, 2002, and Superior Savings received a "satisfactory" rating from the OCC, as of August 1, 2005. Capital One has indicated that it does not expect the proposed merger to result in the discontinuation of any products or services offered by North Fork, except to the extent that Capital One offers a comparable product or service.²⁰

¹⁸ See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 and 36,640 (2001).

¹⁹ Capital One FSB's and Capital One Bank's most recent evaluations were both as of July 18, 2005, by the Office of Thrift Supervision ("OTS") and the Federal Reserve Bank of Richmond ("Reserve Bank"), respectively.

²⁰ A commenter expressed concern that Capital One has limited experience in branch services and mortgage lending. As noted above, Capital One intends to maintain the current services provided by North Fork. In addition, Capital One stated that it intends to retain key management personnel at North Fork's branches.

B. CRA Performance of Capital One

1. CONA. CONA received an overall “satisfactory” CRA performance rating at its January 2004 evaluation.²¹ The Board previously considered the CRA performance of CONA in the Hibernia Order and hereby reaffirms and readopts its findings and decisions herein. Capital One represented that it has retained or expanded all CRA programs in place at CONA since it acquired the bank. As noted in the Hibernia Order, examiners commended CONA’s responsiveness to the credit needs of its assessment areas, particularly in providing loan products to small businesses. Examiners noted CONA’s good overall distribution of loans to borrowers of different income levels, adequate levels of community development lending and investment, and accessible service-delivery systems in its assessment areas. Examiners also commended its excellent community development services.

Since the 2004 CRA evaluation, Capital One represented that CONA has originated more than \$300 million in community development loans, made or committed to make qualified investments totaling \$34 million, and provided \$1.8 million in community development grants.²²

2. Capital One FSB. As noted, Capital One FSB received an overall “outstanding” CRA performance rating at its July 2005 evaluation.²³ The institution

²¹ The evaluation period was from October 18, 1999, through January 12, 2004, except for the lending test, which was evaluated from January 1, 2000, through December 31, 2002.

²² These amounts were provided from January 31, 2004, to March 31, 2006. In addition, CONA provided special assistance to the communities affected by Hurricane Katrina through charitable donations, fundraising coordination, grants of payment deferrals for business and individual customers, and extensions of lines of credit on favorable terms.

²³ The evaluation period was from April 1, 2003, to June 30, 2005, except for the review of retail lending, which was evaluated from January 1, 2003, to

received a “high satisfactory” rating under the lending and services tests and an “outstanding” rating under the investment test in this evaluation.

Examiners noted that Capital One FSB’s geographic distribution of consumer loans was reasonable in relation to the demographic characteristics of its assessment area and that the geographic distribution of mortgage loans and small loans to businesses was commensurate with both demographic and peer lending data. According to examiners, the percentage of consumer installment loans made to LMI borrowers in the institution’s assessment area exceeded the percentage of LMI families residing in that area. Capital One FSB’s distribution of consumer credit cards to borrowers of different income levels also was reasonable compared with the demographic data. In addition, examiners noted favorably the institution’s special installment-loan product that was primarily used by LMI borrowers.²⁴

Examiners commended Capital One FSB for increasing its community development lending, which totaled approximately \$15.8 million during the most recent evaluation period. Examiners also noted the innovative nature of Capital One FSB’s lending arrangements with community development fund initiatives, affordable housing organizations, and other nonprofit organizations that served LMI individuals.

During the evaluation period, Capital One FSB’s qualified investments totaled approximately \$119.4 million and included purchases of qualified mortgage-backed securities and low-income-housing tax credits, investments in small business investment corporations, and deposits in community development fund initiatives.

March 31, 2005. Capital One FSB is a nationwide provider of consumer and commercial lending and offers consumer deposit products.

²⁴ This product featured a low minimum loan amount of \$1000 and flexible underwriting requirements.

In addition, examiners noted that Capital One FSB provided approximately \$8.6 million in financial grants during the assessment period.

Although Capital One FSB has no public offices, examiners noted that it provided customer-service call centers with extended hours and issued ATM cards to customers to allow them access to their money market accounts. Examiners also commended Capital One FSB for the technical assistance and financial advice it provided to a variety of nonprofit organizations in its assessment area and other communities in which Capital One FSB operated.

3. Capital One Bank. Capital One Bank is engaged primarily in credit card operations and has been designated as a limited-purpose bank, which is evaluated under the community development test for CRA performance.²⁵ In assigning a rating to a limited-purpose bank, examiners may consider the bank's community development loans, investments, and services nationwide rather than only in the bank's assessment area. In rating Capital One Bank "outstanding" at its July 2005 evaluation, Reserve Bank examiners noted that Capital One Bank's nationwide qualified investments increased from \$82 million to \$128 million during the evaluation period.²⁶ These investments included investments in low-income-housing tax credit projects, entities that support microenterprise development, and bonds issued by the Virginia Housing Development Authority.

During the evaluation period, Capital One Bank contributed more than \$6.5 million to a variety of organizations that primarily assist LMI individuals or areas or support microenterprise development. Examiners also noted that Capital One Bank provided technical assistance and financial expertise to

²⁵ See 12 CFR 228.25(a).

²⁶ The evaluation period was from April 28, 2003, to June 30, 2005.

organizations dedicated to community development, including affordable housing, social services, and small business development.

C. CRA Performance of North Fork

1. NF Bank. As noted, NF Bank received an overall “outstanding” rating in its August 2002 CRA evaluation.²⁷ Under the lending test, NF Bank received a rating of “outstanding,” and examiners commended the bank’s level of lending activity as reflecting an excellent responsiveness to the credit needs of its assessment area. Examiners found NF Bank’s overall distribution of loans to borrowers of different income levels to be very good, particularly its home purchase loans. During the evaluation period, NF Bank’s percentages of home purchase loans exceeded the percentages for lenders in the aggregate (“aggregate lenders”).²⁸ Similarly, the percentage of its home purchase loans to LMI geographies exceeded the percentages for aggregate lenders during the evaluation period. Examiners also noted that the geographic distribution of the bank’s loans to small businesses was excellent.²⁹

Since its most recent evaluation, NF Bank has remained an active mortgage lender in its assessment area. For example, Capital One represented that NF Bank and its mortgage subsidiary, GreenPoint Mortgage Funding, Inc. (“GreenPoint”), Novato, California, closed more than \$525 million of multifamily

²⁷ The evaluation period was October 1, 1999, through June 30, 2002, with the exception of the lending test, for which the evaluation period was January 1, 2000, through June 30, 2002.

²⁸ The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that reported HMDA data in a given market.

²⁹ For purposes of the evaluation, small businesses are businesses with gross annual revenues of \$1 million or less.

housing loans in its assessment area in 2004 and \$534 million of such loans in 2005. Capital One also represented that NF Bank's percentages of home purchase loans and refinance loans originated in LMI geographies in New Jersey exceeded the percentages for aggregate lenders in 2004 and 2005. In addition, Capital One stated that NF Bank and GreenPoint, on a combined basis, made more than \$1.3 billion in small business loans in the New York and New Jersey assessment area in 2004.

Examiners commended NF Bank's leadership role in making community development loans that respond to the credit needs of economically disadvantaged areas, individuals, and small businesses through its community investment efforts and innovative and flexible loan practices. During the evaluation period, NF Bank made community development loans totaling \$83.4 million to affordable housing projects, nursing homes serving elderly residents in LMI neighborhoods, and other community development groups. NF Bank also originated or purchased \$345 million in affordable multifamily housing loans for properties in LMI neighborhoods.

NF Bank has continued its community development lending since its most recent evaluation.³⁰ Capital One stated that NF Bank provided \$650 million in general community development loans and \$450 million in affordable multifamily

³⁰ One commenter expressed concern about NF Bank's CRA programs in New Jersey. NF Bank entered the New Jersey market by acquiring The Trust Company of New Jersey ("Trust Company") in May 2004. NF Bank's CRA performance has not been evaluated since the acquisition. Capital One represented that since North Fork acquired Trust Company, North Fork has assigned employees familiar with community development lending to identify and underwrite those types of loans in New Jersey, and North Fork staff has participated in outreach efforts designed to promote homeownership opportunities for LMI borrowers and in LMI communities.

housing loans in 2004 and 2005. Capital One also represented that NF Bank has approved more than \$6.8 million in financing for affordable housing in New Jersey since 2004.

In the 2002 CRA evaluation, NF Bank received an “outstanding” rating under the investment test, and examiners commended NF Bank for taking a leadership role in investing in innovative and complex qualified investments in its assessment area. Examiners reported that during the evaluation period, NF Bank made community development investments in its New York assessment area totaling \$66.1 million, primarily in affordable housing initiatives. NF Bank also donated \$1.2 million to numerous community development organizations engaged in affordable housing development, social services, and neighborhood revitalization efforts in its assessment area.

Capital One represented that NF Bank made \$86.3 million in qualified community development investments, and that NF Bank and GreenPoint also made approximately \$5 million in community development grants on a combined basis, in 2004 and 2005.³¹ These community development investments and grants aided a broad range of community and housing development groups in its assessment area, including a \$10 million investment in housing revenue bonds issued by the New Jersey State Housing Mortgage Finance Agency for development of affordable housing for LMI families in the state.

In the 2002 CRA evaluation, NF Bank also received an “outstanding” rating for the service test. Examiners noted that NF Bank’s service-delivery systems

³¹ A commenter expressed concern that NF Bank engaged in less philanthropic activities than other local financial institutions and that such activities were not focused on community priorities. The Board notes that neither the CRA nor the federal banking agencies’ implementing rules require that institutions make charitable donations.

were accessible to geographies and individuals of different income levels throughout its assessment areas and that its branch network was well-dispersed geographically and conducive to banking by LMI individuals.³² In addition, examiners commended the bank for having an “excellent” level of innovative community development services. Examiners also noted that the bank’s outreach efforts included extensive financial literacy programs in LMI areas and small business seminars providing financial and technical assistance.

2. Superior Savings. Superior Savings received an overall “satisfactory” rating in its August 2005 evaluation.³³ Examiners concluded that the bank had an adequate level of community development lending, services, and qualified investments in its assessment areas and an adequate responsiveness to the credit and community development needs in its assessment areas.

During the 2002 evaluation period, Superior Savings extended \$13.7 million in community development loans and \$14.7 million in qualified community investments that were primarily related to affordable housing and neighborhood revitalization initiatives in LMI areas. Superior Savings engaged in various community development programs in its assessment areas, particularly in the Bronx borough of New York City, including financial literacy seminars

³² Capital One also stated that North Fork has hired New Jersey-based employees and senior executive officers with substantial experience in the New Jersey market to manage the bank’s retail and lending operations in the state and that, based on reviews conducted by independent companies of customer service in those branches, NF Bank’s New Jersey branches consistently have received excellent reports for branch service.

³³ The evaluation period was from September 30, 2002, through July 31, 2005. Superior Savings focuses on offering its services primarily through telemarketing and has been designated a wholesale institution by the OCC for CRA purposes. Superior Savings does not originate small business loans.

provided by Superior Savings' staff at local charitable institutions and schools. Although Superior Savings employed a telemarketing business strategy, examiners noted that it maintained one of its two branches in the East Tremont neighborhood, an underserved LMI area of the Bronx.

D. HMDA and Fair Lending Record

The Board has carefully considered the lending records of Capital One and North Fork in light of public comment received on the proposal. A commenter alleged, based on 2004 HMDA data, that Capital One FSB had made higher-cost loans³⁴ more frequently to African Americans and Hispanics than to nonminority borrowers nationwide.³⁵ Another commenter asserted, based on 2005 HMDA data, that a relatively high percentage of Capital One FSB's home mortgage loans to African Americans were higher-cost loans. In addition, the commenter alleged that GreenPoint, a mortgage subsidiary of North Fork, made higher-cost loans nationwide more frequently to African Americans than to nonminorities.³⁶ Further, the commenter asserted that on a combined basis in the New York City Metropolitan Statistical Area ("MSA"), GreenPoint and NF Bank made higher-cost loans more

³⁴ Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate (APR) exceeds the yield for U.S. Treasury securities of comparable maturity 3 or more percentage points for first-lien mortgages and 5 or more percentage points for second-lien mortgages. 12 CFR 203.4.

³⁵ The commenter also alleged, on the basis of 2005 HMDA data, that GreenPoint made a high percentage of higher-cost loans to African-American borrowers in Newark, New Jersey.

³⁶ The commenter also contended that NF Bank extended an insufficient number of home mortgage loans to African-American and Hispanic borrowers in light of the demographic profile of its lending areas.

frequently to African Americans than to nonminorities.³⁷ The Board has reviewed HMDA data reported by Capital One FSB, NF Bank, and GreenPoint.³⁸

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial and ethnic groups in certain local areas, HMDA data provide an insufficient basis by themselves on which to conclude whether or not Capital One's subsidiary depository institutions, NF Bank, or GreenPoint are excluding or imposing higher credit costs on any group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.³⁹ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. Because of the limitations of HMDA data,

³⁷ The Board notes that NF Bank reported no higher-cost loans in 2005.

³⁸ The Board has focused its analysis on the 2005 HMDA data reported nationwide by Capital One FSB, NF Bank, and GreenPoint and by GreenPoint in the New York City and Newark, New Jersey MSAs.

³⁹ The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

the Board has considered these data carefully and taken into account other information, including examination reports that provide an on-site evaluation of compliance with fair lending laws by Capital One, North Fork, and their subsidiaries. The Board also has consulted with the Reserve Bank, the OTS, the OCC, and the FDIC about the fair-lending compliance records of Capital One Bank, Capital One FSB, CONA, and NF Bank, respectively.

The record, including confidential supervisory information, indicates that Capital One and North Fork have taken steps to help ensure compliance with fair lending laws and other consumer protection laws. CONA, NF Bank, and GreenPoint each has a fair lending compliance program that includes a second review of all loans marked for denial and an annual fair-lending review of its mortgage portfolio to determine whether there are any race- or ethnicity-related disparities in loan underwriting. Throughout both the Capital One and North Fork organizations, employees are required to attend annual fair-lending training sessions. In addition, Capital One stated that it intends to assimilate North Fork's consumer compliance operations into its consolidated compliance function and that the resultant organization will use best practices from both Capital One and North Fork to ensure that it maintains sound internal controls to promote compliance. As part of this integration, Capital One intends to provide ongoing role-based training to all its employees to ensure that they are well prepared to carry out their individual responsibilities in accordance with applicable consumer protection laws and regulations.

The Board also has considered the HMDA data in light of other information, including the programs described above and the overall performance records of the subsidiary banks of Capital One and North Fork under the CRA. These established efforts demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

E. Conclusion on Convenience and Needs and CRA Performance

The Board has considered carefully all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by the applicant, comments received on the proposal, and confidential supervisory information. Capital One represented that its national presence and financial and managerial resources will enhance the ability of NF Bank and Superior Savings to serve their customers and broaden their geographic reach and that the branch networks of NF Bank and Superior Savings will allow Capital One to offer a broader variety of products and services to its customers.⁴⁰ Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.⁴¹ In reaching

⁴⁰ One commenter expressed concern that Capital One would reduce or change the products and services it currently offers to customers in New Jersey. Capital One represented that it intends to continue offering NF Bank's current products and services to New Jersey customers and that it may offer additional products not currently offered by NF Bank.

⁴¹ A commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for any of the banks to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any supervisory authority. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to provide an opportunity for testimony or other presentations. 12 CFR 225.16(e), 262.3(i)(2), 262.25(d). The Board has considered carefully the commenter's request in light of all the facts of record.

its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Capital One with the conditions in this order and the commitments made to the Board in connection with the application. For purposes of this action, the commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the effective date of this order unless such period is extended for good cause by the Board or by the Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors,⁴² effective November 8, 2006.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

In the Board's view, the commenter had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that Board has considered carefully in acting on the proposal. The request fails to demonstrate why written comments do not present its views adequately or why a hearing or meeting otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting is denied.

⁴² Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Bies, Warsh, Kroszner, and Mishkin.