

CAPITAL ONE FINANCIAL CORPORATION

APPLICATION FOR AUTHORITY OF AN OUT-OF-STATE
BANK HOLDING COMPANY
TO ACQUIRE A DELAWARE BANK OR BANK HOLDING COMPANY

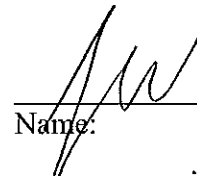
March 21, 2024

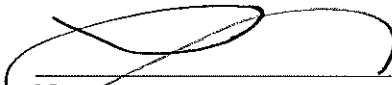
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I. Certification

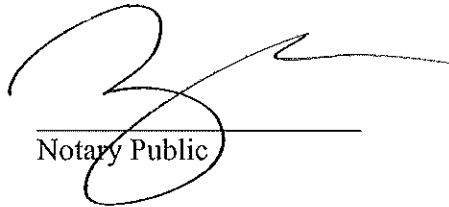
The undersigned, Matthew Cooper, General Counsel & Corporate Secretary of Capital One Financial Corporation, a Delaware corporation (the "Applicant"), having first been duly authorized, does hereby make application on behalf of the Applicant to acquire Discover Financial Services, a Delaware corporation and a Delaware bank holding company, and Discover Bank, a Delaware banking corporation.

The undersigned acknowledges that he has read and is familiar with the provisions of the Delaware Interstate Banking Act and all rules and regulations issued in connection therewith; that all of the information provided as part of this Application is, to the best of the knowledge and belief of the undersigned, true and accurate; and that he is duly authorized to execute this certification on behalf of the Applicant.

WITNESS: 
Name: _____
Julia Williams


Name: _____
Matthew Cooper
General Counsel & Corporate Secretary

Sworn to and subscribed before me, a Notary Public of the Commonwealth of Virginia, this 19 day of March, 2024.



Notary Public



II. Identification of Applicant

A. State formal name and state of incorporation of applicant.

The Applicant's name is Capital One Financial Corporation. The Applicant's state of incorporation is Delaware.

B. Identify the name and address of a resident of the State of Delaware who is designated as agent of the applicant for the service of any paper, notice or legal process upon applicant in connection with any matter arising out of Subchapter IV, Chapter 8, Title 5, Delaware Code.

Mark V. Purpura, Esquire
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801

III. Acquisition

A. Identify the Delaware bank or bank holding company to be acquired (if a bank holding company, further identify the bank subsidiary or subsidiaries of such holding company).

The Delaware bank holding company to be acquired is Discover Financial Services, a Delaware corporation ("Discover"). The sole bank subsidiary of such Delaware bank holding company is Discover Bank, a Delaware banking corporation ("Discover Bank").

B. Describe the method of acquisition of the Delaware bank holding company or bank (if not otherwise included as part of the Application for Formation of an Interim Bank, enclose as an exhibit to this Application a copy of the acquisition agreement between the applicant and the Delaware bank or bank holding company).

In the proposed acquisition, there will be three mergers. First, Vega Merger Sub, Inc., a Delaware corporation ("Merger Sub") and a wholly owned subsidiary of the Applicant, will merge with and into Discover, with Discover continuing as the surviving corporation (the "First Step Merger"). Immediately following the First Step Merger and as part of a single, integrated transaction, Discover will merge with and into the Applicant, with the Applicant continuing as the surviving corporation and the separate corporate existence of Discover will cease (the "Second Step Merger"). Immediately following the Second Step Merger, Discover Bank will merge with and into Capital One, National Association, a national banking association and a wholly owned subsidiary of the Applicant ("CONA"), with CONA continuing as the surviving entity and the separate corporate existence of Discover Bank will cease (the "Bank Merger"). The First Step Merger, the Second Step Merger and the Bank Merger are hereinafter referred to collectively as the "Proposed Transaction."

Each outstanding share of Discover's common stock ("Discover Common Stock") will be converted into the right to receive 1.0192 shares (the "Exchange Ratio") of common stock of the Applicant (the "Applicant Common Stock"). Each share of Discover preferred stock will be automatically converted into the right to receive one (1) share of the applicable series of new preferred stock of the Applicant and each outstanding Discover depositary share will be automatically converted into a new depositary share of the Applicant. Each Discover restricted stock unit award (a "Discover RSU Award") that is outstanding immediately prior to the effective time will be converted into a restricted stock unit award with respect to Applicant Common Stock (a "COFC RSU Award"), with the number of shares underlying such award adjusted based on the Exchange Ratio. Each such COFC RSU Award will otherwise continue to be subject to the same terms and conditions (including vesting terms) as applied to the corresponding Discover RSU Award. Each Discover performance stock unit award (a "Discover PSU Award") that is outstanding immediately prior to the effective time will be converted into a cash-based award (a "COFC Cash-Based Award") in respect of an amount in cash equal to the product of (i) the total number of shares subject to the Discover PSU Award, with the number of shares of Discover Common Stock determined based on the greater of target and actual performance through the last quarter ending simultaneously with or prior to the effective time for Discover PSU Awards for which as of the effective time more than one year of the performance period has elapsed, and target performance for Discover PSU Awards for which as of the effective time one year or less of the performance period has elapsed, multiplied by the product of the Exchange Ratio and the average of the closing sale prices of Applicant Common Stock for the five full trading days ending on the day preceding the closing date. Each converted COFC Cash-Based Award will otherwise continue to be subject to the same terms and conditions (including service-based vesting terms) as applied to the corresponding Discover PSU Award.

For a more detailed description of the Proposed Transaction, including the method of acquisition, please see the public portion of the Application to the Board of Governors of the Federal Reserve System for prior approval for Capital One Financial Corporation to acquire Discover Financial Services pursuant to Section 3 of the Bank Holding Company Act of 1956 and Section 225.15 of Regulation Y of the Board of Governors of the Federal Reserve System, which was filed with the Board of Governors of the Federal Reserve System (the "Federal Reserve Board") on March 20, 2024 (the "FRB Application"). The public portion of the FRB Application is attached as Exhibit A to the Public Exhibits portion of this Application. The Applicant also filed with the Federal Reserve Board certain confidential information relating to the Proposed Transaction as part of the FRB Application, which is contained in Exhibit 1 to the Confidential Exhibits portion of this Application. A copy of the Agreement and Plan of Merger, dated as of February 19, 2024, by and among the Applicant, Discover and Merger Sub (the "Acquisition Agreement"), is attached as Tab 1 to the Public Exhibits volume of the FRB Application attached as Exhibit A to the Public Exhibits portion of this Application. A copy of the Agreement and Plan of Merger, dated February 19, 2024, between CONA and Discover Bank, relating to the Bank Merger (the "Bank Merger Agreement"), is attached as Tab 7 to the Public Exhibits volume of the FRB Application attached as Exhibit A to the Public Exhibits portion of this Application.

C. Indicate whether this Application is the only pending application for the acquisition of a Delaware bank or bank holding company. If not, identify and attach a copy of any other application pending.

This Application is the only pending application of the Applicant for the acquisition of a Delaware bank or bank holding company. There are no other applications by the Applicant or any affiliate thereof to acquire a Delaware bank or bank holding company.

D. Attach as an exhibit a statement of counsel that the Delaware bank holding company and/or Delaware bank are not prohibited by its articles of incorporation, charter, or legislative act from being acquired.

Attached as Exhibit B to the Public Exhibits portion of this Application is an opinion of counsel for the Applicant that (i) Discover is not prohibited by its certificate of incorporation or by any legislative act of the State of Delaware from being acquired by the Applicant, and (ii) Discover Bank is not prohibited by its certificate of incorporation or by any legislative act of the State of Delaware from being acquired by the Applicant.

E. If not previously filed, attach as exhibits the most recent statement of income and condition, together with the three most recent annual statements of income and condition of each bank subsidiary of the Delaware bank holding company to be acquired filed with the Office of the State Bank Commissioner or, if a national bank, the Comptroller of the Currency.

Attached as Exhibit C to the Public Exhibits portion of this Application are Discover Bank's Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices as of December 31, 2023 (which is the most recent report), December 31, 2022, and December 31, 2021.

F. State whether the proposed acquisition has received: (1) the necessary approval of the stockholders of the out-of-state bank holding company and the Delaware bank holding company or bank (if so, attach certified copies of the resolutions of such approval; if not, describe the status of such approval processes); and (2) whether all necessary federal regulatory approvals have been obtained (if so, provide copies of such approvals; if not, describe the status of the application process for such approvals and attach actual or pro forma applications without exhibits except for transmittal correspondence, and any responses from the federal regulatory authorities).

The Proposed Transaction is subject to receipt of necessary approvals of the stockholders of each of the Applicant and Discover, as described in the Acquisition Agreement. The Acquisition Agreement contemplates that the Applicant will call a meeting of its stockholders to approve the issuance of shares of Applicant Common Stock constituting the consideration to be received by Discover common stockholders in the First Step Merger. The required approval of the stockholders of the Applicant for the issuance of such shares is the affirmative vote of a majority of the votes cast by the holders of common stock of the Applicant at the stockholders' meeting. Similarly, the Acquisition Agreement contemplates that Discover will call a meeting of its stockholders to adopt

the Acquisition Agreement and the transactions contemplated thereby. The required approval of the stockholders of Discover for the adoption of the Acquisition Agreement and the transactions contemplated thereby is the affirmative vote of the holders of a majority of the outstanding shares of common stock of Discover entitled to vote. In connection with the solicitation of the required stockholder approvals of the Applicant and Discover for the Proposed Transaction, the Applicant and Discover will file a joint proxy statement with the Securities and Exchange Commission (the "SEC"). All other necessary stockholder approvals of the Applicant, Merger Sub, Discover and Discover Bank required for the Proposed Transaction have been obtained.

Approvals of the Federal Reserve Board and the Office of the Comptroller of the Currency (the "OCC") are also required in connection with the Proposed Transaction. The FRB Application was filed with the Federal Reserve Board on March 20, 2024, and is currently pending. As noted above, (i) a copy of the public portion of the FRB Application, including transmittal correspondence relating thereto, is attached as Exhibit A to the Public Exhibits portion of this Application, and (ii) a copy of the confidential portion of the FRB Application is attached as Exhibit 1 to the Confidential Exhibits portion of this Application.

An application was submitted on March 20, 2024, to the OCC for prior approval of the Bank Merger (the "OCC Application") pursuant to section 18(c) of the Federal Deposit Insurance Act (the "Bank Merger Act"), and to operate Discover Bank's current main office location as a licensed branch of CONA pursuant to the Bank Merger Act, section 36(d) of the National Bank Act, and the OCC's implementing regulations. A copy of the public portion of the OCC Application, including transmittal correspondence relating thereto, is attached as Exhibit D to the Public Exhibits portion of this Application, and (ii) a copy of the confidential portion of the OCC Application is attached as Exhibit 2 to the Confidential Exhibits portion of this Application.

Finally, a notice has been filed with the Federal Reserve Board under section 4(c)(8) of the Bank Holding Company Act of 1956, as amended (the "BHC Act"), and the Federal Reserve Board's Regulation Y of the Applicant's intention to acquire the nonbanking activities and companies of Discover as part of the Proposed Transaction.

There are no other United States federal regulatory approvals required for the Proposed Transaction.

IV. Information regarding formation of interim bank (OPTIONAL)

A. If applicant is seeking a certificate of public convenience and advantage from the Commissioner for an interim bank as part of this Application, then applicant should comply with the provisions of Regulation No. 102 with respect to the formation of such interim bank as part of this Application; provided, however, that an application for authorization to form an interim bank which is filed as part of this Application by an out-of-state bank holding company shall be governed by the notice, publication and hearing requirements of this Application as described in the section captioned "Application Process," rather than the notice and publication requirements of Regulation No. 102.

The Applicant is not seeking a certificate of public convenience and advantage from the Commissioner for an interim bank as part of this Application.

B. If applicant has previously applied for a certificate of public convenience and advantage for an interim bank from the Comptroller of the Currency, attach the certificate of public convenience and advantage issued with respect to such interim bank. If such certificate has not been issued, provide a copy of the application to form such interim bank without exhibits other than the transmittal letter and any responses received from the Office of the Comptroller of the Currency.

The Applicant has not applied for a certificate of public convenience and advantage for an interim bank from the OCC in connection with the Proposed Transaction.

V. Information addressing the criteria for approving or disapproving an acquisition provided for at 5 Del. C. § 844(b).

A. Financial history of the applicant.

1. Describe in narrative fashion the financial history of the applicant, its affiliates, and its bank and non-bank subsidiaries over the past three (3) years. Include as exhibits all annual statements of income and condition filed with the bank regulatory authority or authorities in each state where the bank holding company maintains a bank subsidiary or, in the case of a national bank, with the Comptroller of the Currency; provided, that such filings shall not be required with respect to any bank subsidiary under the jurisdiction of a bank regulatory authority with whom the State Bank Commissioner shall have entered into a cooperative agreement for the provision of such reports pursuant to the provisions of 5 Del. C. § 845 or any other provision of Title 5.

Capital One Financial Corporation

The Applicant is a Delaware corporation and the top-tier holding company for the Capital One organization, a leading financial services provider headquartered in McLean, Virginia. For the purposes of this Application, references to Capital One refer to the consolidated organization, inclusive of the Applicant, CONA and their affiliates.

Established in 1994, Capital One is a diversified financial services provider with a history of strong and sustainable financial performance that strategically positions it for growth across its core businesses. Capital One offers a broad array of financial products and services to consumers, small businesses and commercial clients through digital channels, branch locations, cafés and other distribution channels. Capital One has continued to bring technological innovations to the world of finance by being one of the first large enterprises to move entirely to the public cloud.

The Applicant is registered as a bank holding company under the BHC Act and a financial holding company under the Gramm-Leach-Bliley Act amendments to the BHC Act. The Applicant operates through CONA, its national bank subsidiary, and other nonbank subsidiaries. Capital One's

international activities are performed primarily through Capital One (Europe) plc (“COEP”), an indirect subsidiary of CONA that provides consumer lending products in the United Kingdom, and Capital One Bank (Canada Branch), a foreign branch office of CONA that provides consumer lending products in Canada.

As of December 31, 2023, the Applicant had total assets on a consolidated basis of \$478.5 billion, consolidated total deposits of \$348.4 billion, and consolidated total shareholders’ equity of \$58.1 billion. The Applicant exceeds the requirements to be “well capitalized” under the Federal Reserve Board’s regulations for bank holding companies. As of December 31, 2023, the Applicant had, on a consolidated basis, a Tier 1 risk-based capital ratio of 14.2%, a total risk-based capital ratio of 16.0% and a leverage ratio of 11.2%, and a common equity tier 1 risk-based capital ratio of 12.9%.

COFC’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, National Association

CONA is a national bank with its headquarters and main office in McLean, Virginia. CONA is a wholly owned subsidiary of the Applicant and currently operates licensed, domestic branches in seven states (Connecticut, Louisiana, Maryland, New Jersey, New York, Texas and Virginia) and the District of Columbia. CONA offers a broad spectrum of financial products and services directly to consumers, small businesses and commercial clients, including retail and commercial deposits, credit cards, auto loans, small business and commercial loans and cash management services.

On October 1, 2022, Capital One Bank (USA), National Association (“COBNA”), a wholly owned subsidiary of the Applicant, merged with and into CONA, with CONA continuing as the surviving national bank (the “COBNA Merger”). COBNA engaged exclusively in credit card operations, offering credit cards for both consumers and small businesses, both inside the United States and outside the United States. Following the COBNA Merger, Capital One continues to offer products and services outside of the United States principally through COEP, and through a branch of CONA in Canada. Both COEP and the Canadian branch of CONA have the authority to provide credit card loans.

As of December 31, 2023, CONA had total consolidated assets of \$475.6 billion and total deposits of \$374.2 billion. CONA exceeds the requirements to be “well capitalized” under the regulations of the OCC. As of December 31, 2023, CONA had a Common Equity Tier 1 risk-based capital ratio of 13.1%, a Tier 1 risk-based capital ratio of 13.1%, a total risk-based capital ratio of 14.3% and a leverage ratio of 10.3%.

Attached as Exhibit E to the Public Exhibits portion of this Application are the publicly available Consolidated Reports of Condition and Income for CONA as of the close of business on December 31, 2023, December 31, 2022 and December 31, 2021. Attached as Exhibit F to the Public Exhibits portion of this Application is the publicly available Consolidated Report of Condition and Income for COBNA as of the close of business on December 31, 2021.

Broker-Dealers

The Applicant and CONA, as applicable, maintain three registered broker-dealers regulated by the SEC and the Financial Industry Regulatory Authority — Capital One Securities, Inc. ("COS"), KippsDeSanto & Company ("KD&C") and Triple Tree, LLC ("TT") (collectively, the "Broker-Dealers"). COS, a direct subsidiary of the Applicant, was established in 2000, and its main office is in New Orleans, Louisiana. COS is licensed in California, Connecticut, Florida, Illinois, Louisiana, Maryland, Massachusetts, New York, Pennsylvania, Texas and Virginia. KD&C, a direct subsidiary of CONA, was established in 2007, and its main office is in McLean, Virginia. KD&C is licensed in Virginia. TT, a direct subsidiary of CONA, was established in 1997, and its main office is in Minneapolis, Minnesota. TT is licensed in Minnesota and New York.

The Broker-Dealers are subject to, among other things, net capital rules designed to measure the general financial condition and liquidity of each Broker-Dealer. Under these rules, the Broker-Dealers are required to maintain the minimum net capital deemed necessary to meet their continuing commitments to customers and others, and to keep a substantial portion of their assets in relatively liquid form. These rules also limit the ability of each Broker-Dealer to transfer capital to its parent company and other affiliates. The Broker-Dealers are subject to regulations covering their business operations, including sales and trading practices, public and private offerings, publication of research reports, use and safekeeping of client funds, and securities, capital structure, record-keeping and the conduct of directors, officers and employees.

Further financial history of the Applicant and its affiliates is contained in its Annual Reports on Form 10-K for the years ended 2023, 2022 and 2021, which are attached as Exhibit G to the Public Exhibits portion of this Application.

2. Provide for the past three calendar years, copies of all Form 10-K's and quarterly reports filed on Form 10-Q (or their state equivalents)(if required) with respect to the bank holding company, together with all proxy statements, tender offer materials, other disclosure documents, etc. relating to the proposed application (if required), or any other acquisition undertaken by applicant.

If an applicant is not required to file any report under the Securities Exchange Act of 1934 (15 U.S.C. § 78 *et seq.* as amended), or an equivalent state filing, the applicant shall file information substantially equivalent to the information which would otherwise be contained in such reports in a form reasonably satisfactory to the Commissioner, including the previous three years' statements of condition and a three year income statement, statements of changes in shareholders' equity, all as prepared in accordance with generally accepted accounting principles.

Copies of the Annual Reports on Form 10-K filed by the Applicant with the SEC for the years ended 2023, 2022 and 2021 are attached as Exhibit G to the Public Exhibits portion of this Application. The Applicant will make a supplemental filing to this Application consisting of the Registration Statement on Form S-4, which will include the Joint Proxy Statement and a prospectus as exhibits, when filed by the Applicant with the SEC.

B. Provide a statement in narrative form of a three (3) year business plan of applicant for the Delaware bank holding company and its bank and non-bank subsidiaries, or the Delaware bank to be acquired. Such plan should include but is not limited to a description of:

1. In detail, any proposed change during the first year of operation in the products or services offered by the Delaware bank or the subsidiary or subsidiaries of the Delaware bank holding company.

2. In detail, any contemplated or proposed change during the first year after the effective date of the acquisition in the executive officers of the Delaware bank or the Delaware bank holding company, with specific reference to the termination, transfer, or reduction of authority or responsibilities of any such executive officers.

3. Using the current table of organization of the Delaware bank or bank subsidiary, describe proposed changes in levels of employment among non-management personnel.

4. Any change in the geographic market to be served by the Delaware bank or the subsidiary of the Delaware bank holding company (with specific reference to the opening, closing or expansion of branches).

5. Additional products or services which the Delaware bank or subsidiary of the Delaware bank holding company will provide after the acquisition.

6. For the next three (3) years, proposed changes in the capitalization of the Delaware bank or the Delaware bank holding company and any subsidiary thereof.

With respect to each of the above subject areas, include specific references, if any, to any relevant sections of the acquisition agreement, merger agreement with an interim bank, any other agreement or understanding (with any person or party) not incorporated in such acquisition or merger agreements or any exhibits or supplements as to any of such items.

This portion of the application is not applicable as it pertains to Discover and Discover Bank. Pursuant to the Second Step Merger and the Bank Merger, Discover and Discover Bank will be merged out of existence. However, certain information is being provided to address the integration of the Discover and Discover Bank businesses into Capital One following the Proposed Transaction.

Products and Services

The Proposed Transaction is a strategic combination of two banking organizations with customer-centric business models that are dedicated to the enhancement of the communities in which they operate. Capital One has a number of business and associated features that do not directly overlap with Discover's active businesses, including the following products and services which it will continue to provide following the Proposed Transaction:

Auto Finance: Auto Finance provides loans to consumers across the credit spectrum for the purpose of purchasing or refinancing new and used automobiles. Auto Finance originates loans primarily through two channels: direct and dealer (also known as indirect). Through its extensive dealer relationships, Auto Finance purchases retail contracts, which are secured by automobiles. Auto Finance's indirect channel products include financing for the purchase of new and used vehicles; the direct channel's sole product is the refinancing of existing motor vehicle loans directly to consumers.

Auto Navigator: Auto Navigator is a proprietary technology built by Capital One that enables consumers to research potential vehicles to purchase, view dealer inventory across the United States and receive vehicle pricing information. Consumers can use Auto Navigator to receive pre-qualified offers on financing. Capital One views Auto Navigator as a unique offering in the marketplace, and therefore, a value driver of this specific business line.

Small Business Card: Capital One is one of the nation's largest business card franchises, offering an array of business card options that meet the needs of small and mid-market business customers of various credit levels and spending habits, as well as preferences in rewards such as cash back and travel. Additionally, business customers benefit from a suite of services such as automated payments, fraud protection, employee cards, multi-user capabilities, reporting, accounting integrations, and virtual card offerings.

Small Business Banking: The Small Business Banking business provides digital and traditional banking services including loans, both term and revolving, to small business owners, generally in the Company's regional markets. The business resides within the Consumer Bank line of business.

Commercial Banking: The Commercial Banking business provides lending, capital markets and transaction services to corporations. To meet the product demands of clients, Commercial Banking is divided into two primary lines of business: Commercial Real Estate and Corporate Banking. Six horizontal business functions support these primary lines of business: (1) treasury management, (2) capital markets, (3) underwriting and portfolio management, (4) commercial operations, (5) commercial risk and (6) commercial business office. Commercial Banking serves clients at both regional and national scale depending on the line of business.

These businesses are a strategic priority and Capital One believes that there will be opportunities to offer these compelling products and services to Discover's customers through Capital One. There will be no significant changes to Capital One's products, which, aside from Discover's payment service products operated through the Discover network, the PULSE network and Diners Club International (collectively, the "Discover Global Network"), will remain the primary products of the combined organization following the Proposed Transaction. Capital One expects to utilize its strong credit card issuance platform to drive increased volume to the Discover Global Network, which, coupled with expected additional investments in the Discover Global Network, position the Discover Global Network to compete more effectively with Visa, Mastercard, and Amex. For products or services that are not offered by Capital One, following the Proposed Transaction, Capital One will continue to service those products for legacy customers and assess

whether there are additions to the Capital One suite of products that would align to the organization's overall strategy and risk profile.

Executive Officers

For information with respect to the directors and senior executive officers of the Applicant and CONA following the Proposed Transaction, please see Section II.B. of the FRB Application attached as Exhibit A to the Public Exhibits portion of this Application.

Non-Management Personnel

Please see Exhibit 3 to the Confidential Exhibits portion of this Application for a current table of organization of Discover Bank's and its affiliates' Delaware operations. Acquiring and investing in great talent is a key competitive differentiator for Capital One, and Capital One is dedicated to maintaining this level of talent through and following the integration of Discover into Capital One. Through the course of the integration, workforce planning will be done to evaluate the combined organization as synergies and efficiencies are identified while retaining and investing in key destination talent. There is no current plan to reduce overall levels of employment among non-management personnel in Delaware following the Proposed Transaction.

Geographic Market

There is no current intention to change the geographic market currently served by Discover Bank following the Proposed Transaction, and the Proposed Transaction will not adversely affect the quantity or quality of banking services in Delaware or any other community served by Discover or CONA. Discover Bank operates a single licensed banking location at 502 E Market St, Greenwood, DE, 19950. CONA will continue this location as a licensed bank branch following the Bank Merger. No branch closures are expected as a result of the Proposed Transaction. Although Discover Bank has a single retail location at its main office in Greenwood, Delaware, it operates as a direct bank on a national basis. As a direct bank, Discover Bank currently offers and services its lending and deposit products and services nationwide. Following the Proposed Transaction, Capital One will continue to offer products on a national basis. Discover Bank customers will have access to a broader set of financial products and services, including, but not limited to, full service digital banking products and a robust network of 259 branches (as of June 2024, reflecting previously determined actions unrelated to the Proposed Transaction), and 55 Capital One Cafes (as of June 2024, reflecting previously determined actions unrelated to the Proposed Transaction).

Capitalization

The Applicant and CONA have capital ratios well in excess of the minimum capital ratios required in the supervisory stress testing exercises as demonstrated by their most recent capital plan submitted as part of the Federal Reserve Board's annual capital plan submission process under its capital plan rule. On consummation of the Proposed Transaction, the capital and liquidity resources and ratios of the Applicant and CONA will remain well above regulatory requirements and consistent with supervisory expectations. The Applicant and CONA will continue to maintain

prudent capital and liquidity planning and associated risk management practices, including capital and liquidity stress testing programs. For further information on the pro forma and projected financials, capital ratios and asset quality of the Applicant and CONA, please see Tab 17 of the Public Exhibits volume of the OCC Application attached as Exhibit D to the Public Exhibits portion of this Application.

The Applicant will continue to have strong managerial resources and risk management systems to continue operating in a safe and sound manner and complete a successful integration of Discover. The Applicant has a robust risk management program in place, including for capital, liquidity, credit, market, operational and compliance risks. To assist in the decision-making process for the Proposed Transaction and planning for a successful integration, the Applicant, including CONA management, led a comprehensive due diligence review of all lines of business and functional areas of Discover and Discover Bank, including credit, compliance, risk management, Bank Secrecy Act/anti-money laundering (“BSA/AML”), cyber security, liquidity, operations, human resources, finance, internal audit and legal. A summary of key findings is included as Tab A of the Confidential Exhibits volume of the FRB Application attached as Exhibit 1 to the Confidential Exhibits portion of this Application.

The Applicant has implemented and maintains a strong and effective compliance risk management program, including for compliance with the BSA and other AML laws, sanctions restrictions issued by the U.S. Department of Treasury’s Office of Foreign Assets Control, and fair lending and other consumer protection laws. The Applicant also has a strong enterprise risk management framework that is applied across all risk categories and all three lines of defense to ensure effective risk identification, management and reporting. Capital One will begin to apply its Risk Management Framework and policies to Discover’s businesses and risk management functions immediately upon the closing of the Proposed Transaction, and will fully integrate Discover's risk management functions into Capital One’s programs through a comprehensive integration plan.

For further information concerning the managerial and financial resources and future prospects of the Applicant, including the risk management systems of the Applicant, please see Section II. of the FRB Application attached as Exhibit A to the Public Exhibits portion of this Application.

C. State whether the applicant, or any subsidiary thereof, would control, together with any affiliated insured depository institution (as defined in the Federal Deposit Insurance Act at 12 U.S.C. § 1813(c)), 30 percent or more of the total amount of deposits of insured depository institutions in this State after the proposed acquisition. If so, explain why the Application should be approved in accordance with the convenience and needs of the public of this State.

Discover Bank operates a digital bank and accepts deposits nationwide at its main office in Greenwood, Delaware. CONA has a location in Delaware, which is not a branch, as defined by the OCC, but rather an operational facility and accepts deposits via the CONA website from customers

nationwide. Capital One's Delaware location resulted from Capital One's acquisition of ING Direct in 2012, a nationwide digital bank.¹

As of June 30, 2023 (the most recent date for summary of deposits data available from the Federal Deposit Insurance Corporation (the "FDIC")), CONA and Discover Bank had deposits totaling \$224.2 billion and \$101.2 billion, respectively, booked in these Delaware locations. Thus, reflecting that both CONA and Discover Bank book deposits from customers nationwide at locations in Delaware, on a combined basis, as a result of the Proposed Transaction, CONA would hold approximately \$325.4 billion or 64.9% of the \$501.4 billion total amount of the reported deposits of insured depository institutions in Delaware. Importantly, (a) less than 1% of CONA's deposits that are booked in Delaware and (b) slightly over 1% of Discover Bank's deposits that are booked in Delaware are owned by depositors who provide CONA and Discover Bank, respectively, with a primary address in the State of Delaware. Counting only these Delaware-based depositors, CONA would hold slightly more than \$3 billion in deposits, representing slightly less than 2% of the reported deposits of insured depository institutions in Delaware on an adjusted basis (i.e., deducting CONA's and Discover Bank's non-Delaware-based depositors from the denominator as well).

Nonetheless, the Application should be approved, and the state concentration limit waived, pursuant to 5 Del. C. §§ 795H and 843(b) because (i) the policy considerations supporting state concentration limits are not violated by the combination of CONA and Discover Bank's large internet deposit businesses that generate nationwide deposits, (ii) the amount of deposits of CONA and Discover Bank do not constitute an undue concentration of resources or a substantial lessening of competition in the State of Delaware, and (iii) the approval of this Application is in accordance with the convenience and needs of the public of the State of Delaware.

The Delaware Interstate Banking Act (5 Del. C. §§ 841-847) retains the 30 percent concentration limits established by section 3(d) of the BHC Act, as amended by the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 and the Dodd-Frank Wall Street Reform and Consumer Protection Act, for interstate bank acquisitions.² Two primary purposes of the state concentration limit provided for in section 3(d) of the BHC Act were to act as a safeguard to maintain local competitiveness of financial institutions and limit potential undue concentrations of financial power at the state level.³

The Proposed Transaction will not lessen competition among financial institutions in Delaware or result in an undue concentration of resources or financial power in the Applicant in Delaware. As of June 30, 2023, CONA maintains \$224.2 billion of deposits booked in Delaware. However, less than 1% of those deposits are owned by depositors who provide CONA with a primary address in the State of Delaware. Similarly, as of June 30, 2023, Discover Bank holds \$101.2 billion of deposits booked at its main office in Delaware. However, only slightly over 1% of those deposits are owned by depositors who provide Discover Bank with a primary address in the

¹ The address of Capital One's Delaware location was originally 1 South Orange Street, Wilmington, Delaware, which has since been relocated to 802 Delaware Avenue, Wilmington, Delaware.

² See 12 U.S.C. § 1842(d)(2).

³ See S. REP. NO. 103-240, at 15, 18 (1994); H.R. REP. NO. 103-448, at 65-66 (1994); 140 CONG. REC. H6774-01, 1994 19,565 (1994) (statement of Sen. Margaret Roukema).

State of Delaware. Thus, CONA and Discover Bank hold a much smaller share of the local Delaware deposit market than suggested by the 64.9% concentration limit calculation based on the FDIC's Summary of Deposits. Further, CONA will only operate a single branch location in Delaware as a result of the Proposed Transaction, and numerous competitors maintain physical branch locations in Delaware or offer direct digital banking services to the Delaware public. Given the amount of competition for direct internet banking at the national level, the lack of geographic restrictions inherent in the banking industry, and the presence in Delaware of other banking organizations with physical branch networks throughout the State,⁴ the Delaware public will still have very many options for banking services other than CONA, following the Proposed Transaction. Upon consummation of the Proposed Transaction, CONA would hold less than 3% of the total nationwide deposits of all insured depository institutions.⁵

With respect to the convenience and needs of the public of Delaware, Capital One will build on the Applicant's and Discover's strong commercial, consumer and retail foundations to create an enhanced, more competitive financial institution. Both CONA and Discover Bank have proud histories of commitments to their communities, including Delaware. CONA has a long-standing track record of "Outstanding" Community Reinvestment Act performance since 2007, and has ranked first or second in community development lending among all banks since 2015, with over \$59 billion in CRA-qualified loans over that period. CONA is in the fourth year of its five-year, \$200 million Impact Initiative, supporting non-profit organizations seeking innovative solutions to address affordable housing, workforce development, small business creation, financial well-being and digital access. CONA appreciates the importance of Delaware, and remains committed to maintaining a strong presence in that market, as well as maintaining service excellence across the United States. The combined entity will benefit from the significant investments that Capital One has made over the last decade to modernize its technology and expand its suite of products and services offered to its customers. Capital One has a suite of intuitive digital tools that provide a personalized customer experience, including:

- Second Look: Proactively notifies customers of double charges, generous tips and other suspicious activity
- Eno: A natural language two-way SMS assistant can monitor charges, send fraud alerts and get answers to customer questions
- CreditWise: In addition to credit monitoring, CreditWise empowers customers to understand, build and use their credit responsibly with a digital score improvement tool and daily score refreshes.

⁴ As of June 30, 2023, there were more than 20 insured depository institutions booking deposits in the Delaware market. Please see [Exhibit H](#) to the Public Exhibits portion of this Application.

⁵ Calculation represents Total Liabilities Before Exclusions less Total Allowable Exclusions plus Interest Accrued and Unpaid on Deposits aggregated for all FDIC-insured banks and thrifts and reported on their Consolidated Report of Condition and Income for the quarter ended December 31, 2023. As of December 31, 2023, banks and thrifts held \$17.7 trillion in adjusted domestic deposits.

Capital One is one of the nation's largest business card franchises, offering an array of business card options that meet the needs of small and mid-market business customers of various credit levels and spending habits, as well as preferences in rewards such as cash back and travel. Additionally, business customers benefit from a suite of services such as automated payments, fraud protection, employee cards, multi-user capabilities, reporting, accounting integrations, and virtual card offerings.

Capital One offers simple checking products, with no monthly fees or minimum balance requirements, and was the first major bank to completely eliminate overdraft fees while still allowing customers to retain the ability to utilize this service. Capital One's flagship 360 checking product is Bank On certified. Capital One has a full service digital bank offering customers over 40 fully digitized features and services. Unique features include the ability to add cash to checking accounts at any CVS, Walgreens, or Duane Reade by Walgreens location; real-time alerts about checking account activity from Capital One and Eno (Capital One's virtual assistant); multiple overdraft options (e.g., auto-decline, free transfers, no fee overdraft). The Proposed Transaction will allow Capital One to continue to innovate and improve its offerings, and to significantly expand the availability of its flagship Bank On certified, no monthly fees, no minimum balance requirements and no overdraft fee checking product to even more consumers.

Capital One operates 259 (as of June 2024, reflecting previously determined actions unrelated to the Proposed Transaction) bank branches across three distinct regions which Delaware residents and businesses will be able to access while traveling in these locations: (i) New York/New Jersey (ii) Maryland/DC/Virginia, and (iii) Louisiana/Texas. Additionally, Capital One has 55 Capital One Cafés (as of June 2024, reflecting previously determined actions unrelated to the Proposed Transaction), delivering a completely unique experience. The Cafés do not offer teller cash services, but do have deposit gathering ATMs. Capital One is also currently piloting and intends to expand its deployment of cashier's check issuance kiosks and cardless ATM access. Café Ambassadors provide financial literacy and wellness education, assist customers with account servicing, account opening, and problem resolution. Capital One credit and debit cardholders receive access to private working spaces.

As noted in Part V.B of this Application, Capital One has a number of products and services that do not directly overlap with Discover's active businesses that will be available to Discover customers following the Proposed Transaction.

The Applicant is committed to continuing its strong record of Community Reinvestment Act ("CRA") performance and helping to serve the needs of its communities nationwide and within its CRA assessment areas, including Delaware. As part of the Proposed Transaction, Capital One is proactively meeting with community groups, including community groups in Delaware, and considering how best to continue to meet the needs of the communities it serves. Following these discussions, Capital One plans to develop a community benefit plan reflecting the feedback from the communities.

Furthermore, Capital One expects to serve the convenience and needs of the public of the State of Delaware by continuing the Applicant's and Discover's history of fostering economic

development and employment within the State of Delaware, as discussed in Part V.E. of this Application.

Based on all the foregoing, the approval of the Application is in accordance with the convenience and needs of the public of the State of Delaware.

D. If applicant has acquired or has made application to acquire any other Delaware bank holding company or Delaware bank, describe in detail the extent to which the acquisition which is the subject of this Application will affect present competition between the banks or bank subsidiaries of a Delaware bank holding company to be acquired under this Application and the Delaware bank or bank subsidiary of a Delaware bank holding company previously acquired or pending acquisition approval.

The Applicant has not acquired or made an application to acquire any other Delaware bank holding company or Delaware bank since its acquisition of ING Direct USA in 2012, after which ING Bank, fsb was merged with and into CONA. As explained in Part V.C. of this Application, the prior acquisition of ING Bank, fsb by the Applicant will not result in an undue concentration of resources or a substantial lessening of competition in the State of Delaware.

E. Describe in detail the activities which applicant proposes for fostering economic development and employment within the State of Delaware. By way of historical background, and as part of such description, include the following information:

1. With respect to the commercial loan activity of the bank subsidiaries of both the applicant and the Delaware bank or bank subsidiary of the bank holding company to be acquired, the total dollar value, and the percentage of total commercial loans outstanding, of the following categories of commercial loans:

- a. Small business loans (SBA)**
- b. Other small business loans**
- c. Industrial authority development loans**
- d. Financing of ESOP's and leveraged buy-outs**
- e. Financing directly or indirectly of non-profit, community development projects**
- f. Loans in other categories designed to stimulate industrial growth and employment**

Commercial Loan Activity

CONA provides commercial lending services to companies in many different industry sectors, including: aerospace, defense and government services; commercial real estate; healthcare; commercial and industrial companies; food, beverage and agricultural; financial sponsors and private equity; financial institutions; technology, media and telecommunications; community finance and affordable housing; energy; not-for-profit; municipal finance; gaming; and apparel and consumer goods. CONA commercial customers typically include companies with annual revenues between \$20 million and \$2 billion. As of December 31, 2023, CONA and Discover Bank had \$45.2 billion and \$147 million, respectively, in commercial and industrial loans to U.S. addresses. CONA's total

includes \$13.2 billion of small business and small farm loans. Discover Bank's \$147 million in commercial and industrial loans to U.S. addresses is comprised exclusively of small business and farm loans. In 2023, CONA had \$1.3 million in small business loans, including SBA loans, outstanding in the State of Delaware. CONA originated the financing for and provides servicing on the loans for 22 multi-family housing properties in Delaware, which are collectively valued at \$634.5 million. Neither CONA nor Discover Bank have material activities in Delaware in industrial authority development loans or the financing of ESOPs. For information concerning Capital One's industrial authority development lending and financing of ESOPs and leveraged buy-outs, please see Exhibit 4 to the Confidential Exhibits portion of this Application. As of December 31, 2023, Discover Bank had over \$61 million of CRA loans outstanding. From 2020 through 2023, CONA originated over \$30.6 billion of community development loans nationwide. For further information concerning the financing of non-profit, community development projects, please see the discussion below under the heading "Economic Development and Employment" detailing CONA's and Discover Bank's community development lending for CRA purposes within the State of Delaware.

Please see the Schedules RC-C of the Consolidated Reports of Condition and Income of Discover Bank and CONA as of December 31, 2023, attached as Exhibits C and E, respectively, to the Public Exhibits portion of this Application, for additional commercial loan information for Discover Bank and CONA. For additional information concerning the commercial lending activities of CONA and Discover Bank, including the financing of community development projects and other community reinvestment activities, please see Section VII. of the FRB Application attached as Exhibit A to the Public Exhibits portion of this Application, and CONA's and Discover Bank's most recent CRA performance evaluations, attached as Exhibits I and J, respectively, to the Public Exhibits portion of this Application.

Economic Development and Employment

The Applicant and Discover have long histories of fostering economic development and employment in the State of Delaware through the operation of banking businesses with a national scope and community development activities. Currently, Capital One and Discover and its affiliates) employ over 1,300 and 1,000 people, respectively, in the State of Delaware. There is no current plan to reduce overall levels of employment among non-management personnel in Delaware following the Proposed Transaction. The business operations and employment levels of CONA and Discover Bank in Delaware contribute significantly to the Delaware economy and state and local tax bases, and foster economic development and employment in other business sectors in Delaware through the consumption of goods and services.

The Greenwood main office of Discover Bank includes a full-service retail location that is open to the public, primarily involved in deposit-taking and lending activities to support the local community, which will become a resulting branch of CONA as a result of the Proposed Transaction.

Both CONA and Discover have a strong commitment to serving the needs of their communities as demonstrated by each bank's strong CRA compliance record and performance in their most recent CRA performance evaluations, as well as each organization's ongoing community engagement activities. For the period from 2020 to 2023, CONA made over \$5.2 million in CRA-

qualified grants, over \$6.1 million of CRA-qualified investments, and over \$390 million of CRA-qualified loans within the State of Delaware. In addition to this financing, the employees of CONA have shown strong participation in community development activities with more than 4,900 CRA-qualified hours and more than 29,000 non-CRA-qualified hours volunteered within the State of Delaware during the same time period. Similarly, Discover Bank's overall CRA performance rating has been “Outstanding” or “Satisfactory” in each of its last seven CRA examinations. Discover Bank’s new investment and loan funding commitments directly benefitting Delaware totaled \$85 million and \$61 million in 2022 and 2023, respectively. The complementary nature of each bank’s business and CRA programs will result in an even stronger program with expanded opportunities moving forward. The combination of CONA and Discover Bank bring together robust CRA programs and unique best practices for serving the needs of low- and moderate income and underserved communities and small businesses. For specific information regarding the CRA activities of CONA and Discover Bank, including in Delaware, please see Section VII. of the FRB Application attached as Exhibit A to the Public Exhibits portion of this Application, the CRA Performance Evaluations attached as Exhibits I and J, respectively, to the Public Exhibits portion of this Application and the CRA Strategic Plan for 2023-2027 of Discover Bank, attached as Exhibit K to the Public Exhibits portion of this Application.

The Applicant intends to maintain or exceed the levels of community investment support and oversight following the consummation of the Proposed Transaction. In addition, the Applicant 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. As mentioned in Part V.C. of this Application above, as part of the Proposed Transaction, Capital One is proactively meeting with community groups, including community groups in Delaware, and considering how best to continue to meet the needs of the communities it serves. Following these discussions, Capital One plans to develop a community benefit plan reflecting the feedback from the communities.

Although no determinations have been made concerning the scope of the Applicant's and Discover’s combined Delaware operations following the Proposed Transaction, the Applicant intends to continue operating, and fostering economic development and employment, in Delaware consistent with the Applicant's overall business strategy, CRA plans, and the synergies that may be realized from the Proposed Transaction.

2. Enclose for both the bank subsidiary or subsidiaries of applicant and the Delaware bank or bank subsidiaries of the bank holding company to be acquired copies of the most recent report filed pursuant to the Home Mortgage Disclosure Act, 12 U.S.C. § 2801, *et seq.*

Attached as Exhibits L and M to the Public Exhibits portion of this Application are the most recent reports filed pursuant to the Home Mortgage Disclosure Act, 12 U.S.C. § 2801, et seq., for CONA and Discover Bank, respectively. Beginning in 2023, CONA does not have HMDA reporting obligations.

TABLE OF PUBLIC EXHIBITS

<u>Exhibit</u>	<u>Description</u>
Exhibit A	FRB Application
Exhibit B	Opinion of Counsel
Exhibit C	Consolidated Reports of Condition and Income for Discover Bank
Exhibit D	OCC Application
Exhibit E	Consolidated Reports of Condition and Income for CONA
Exhibit F	Consolidated Report of Condition and Income for COBNA
Exhibit G	2021, 2022 and 2023 Annual Reports on Form 10-K for the Applicant
Exhibit H	FDIC Summary of Deposits of the State of Delaware as of June 30, 2023
Exhibit I	CRA Performance Evaluation for CONA
Exhibit J	CRA Performance Evaluation for Discover Bank
Exhibit K	CRA Strategic Plan for 2023-2027 of Discover Bank
Exhibit L	CONA HMDA Report
Exhibit M	Discover Bank HMDA Report