



CALIFORNIA REINVESTMENT COALITION

Board of Directors

HEIDI LI
Chair
API Legal Outreach

JAMES ZAHRAKKA
Vice Chair, North
Law Foundation of Silicon Valley

JM BLIESNER
Vice Chair, South
UC San Diego

JOSEPH RIDOUT
Secretary
Consumer Action

PAUL AINGER
Treasurer

CHANCELA AL-MANSOUR
Southern California
Housing Rights Center

ROBERTO BARRAGAN
Valley Economic Development
Center (VEDC)

LUIS GRANADOS
Mission Economic Development
Association (MEDA)

SHARON KINLAW
Fair Housing Council of
the San Fernando Valley

SYLVIA ROSALES-FIKE
AnewAmerica Community
Corporation

STEVE SCHWARTZ
California FarmLink

NAMOCH SOKHOM
Pacific Consortium in
Employment (PACE)

ROBERT VILLARREAL
CDC Small Business Finance

KATRINA VIZINAU
Community Housing
Development Corporation of
North Richmond

CLARENCE WILLIAMS
California Capital

ALAN FISHER
Executive Director

October 12, 2011

Adam M. Drimer, Assistant Vice President
Federal Reserve Bank of Richmond
701 East Byrd Street
Richmond, VA 23261

Re: Capital One application to acquire ING

Dear Mr. Drimer,

Thank you for the opportunity to comment further about Capital One's proposed acquisition of ING Bank. This proposed acquisition fails both Bank Holding Company Act legal obligations to provide net public benefits and to meet the convenience and needs of the communities served. As proposed, the acquisition will have dramatic negative impacts on Californians, Capital One's largest market and biggest source of revenue and profit worldwide. The California Reinvestment Coalition therefore urges the Federal Reserve to deny approval of Capital One's application.

Should Capital One seek to amend its application, the Federal Reserve should require the bank to add a detailed, measureable plan for providing benefits to California in the form of affordable and accessible financial products and Community Reinvestment Act quality loans, investments and services in California commensurate with the bank's business here. Furthermore, the Federal Reserve should not decide any application until revised CRA regulations have been adopted and the public has had sufficient opportunity to review the companies' 2010 and 2011 Home Mortgage Disclosure data, CRA performance evaluations, and customer complaint information.

Capital One is built on a predominantly high-rate, fee heavy credit card business. The company's 2010 income after expense and tax for its credit card business was \$2.274 billion, or 83% of its income after expenses, taxes and losses of \$2.743 (as reported in the 10-K, pages 40, table 7, and 20, Income Statement following Item 6). Over a quarter of the company's credit card income is non-interest, over \$2.7 billion of total credit card revenue of \$10.6 billion.

It is widely accepted and not denied that Capital One plans to leverage ING's deposits and customer base to grow its credit card business. Because Capital One's products tend to strip Californians of wealth rather than build our financial stability, and Capital One does more of this type of lending in California than in any other state, this acquisition promises more harm than good for California.

Capital One also refuses to provide loans, investments and services that meet Community Reinvestment Act standards. Over 60% of its recently announced commitment to lend \$180 billion over ten years is nothing but a repackaging of its existing lending strategy. The remainder will be targeted only to geographic areas where Capital One has physical branches. None of the ostensible benefit is intended for California even though California is where the bank does the most business.



Capital One's products strip wealth rather than provide benefits to California small businesses and households that need affordable housing and banking services

Simply put, Capital One's business model exploits consumers. The bank's revenue from finance charges and other customer fees equals a staggering 42% of profits. In its SEC 10-K filing, Capital One even admits that if borrowers begin "avoiding late fees, over the limit fees, finance charges and other fees [it] could have an adverse impact on our revenues." This reliance on finance charges hits California particularly hard: California cardholders pay an estimated \$140.2 million in finance charges and other customer fees alone.

Capital One's saving and checking accounts are unaffordable and inaccessible

To open a Capital One saving or checking account, a customer must already have a bank account from which they can write a check or initialize a transfer and they must have a social security or state ID. With these conditions, Capital One has effectively refused to service over a million Californians who currently lack bank accounts. By comparison, other banks offer California accounts that can be opened with any government ID, including foreign consul "*matricula*" cards. Capital One's failure to recognize the needs of Californians shows either how out of touch they are with the needs of consumers in this state or that they simply do not want these customers, or perhaps both.

Among existing banking consumers, there has been a lot of customer antipathy for the deal on banking blogs and the internet. Most are a variation on this one: "I've been really happy with ING but Capital One has a horrible reputation for fees and customer support, quite the opposite to ING's business model." ING savings accounts are known for their high interest, no minimum balance required features. In contrast, Capital One warns shareholders that, "If we are required to offer higher interest rates to attract or maintain deposits, our funding costs will be adversely impacted."

Another stark difference between the two banks is on overdraft policies. While ING charges only a small interest on the amount of the overdraft, Capital One charges a flat fee of \$35 for every overdraft of more than \$5. An ING customer who may have been charged 22 cents for being overdrawn by ten dollars for a week will be shocked to learn that Capital One charges \$35. And, since Capital One continues to re-order transactions from high-to-low, and charges customers for up to four overdrafts in a day, customers can expect to be charged up to \$120 on a day they had enough deposits to cover all transactions but one.

Capital One aggressively markets high-rate and fee-heavy credit cards

Capital One claims that it has expanded access to credit by "providing products that matched risk with pricing" and that they seek to ensure that "appropriate products are ... accessible to and effectively serve low and moderate income households." However, Capital One's most affordable credit card for people with "Average" credit is over 17% APR and is loaded with hair-trigger fees and finance charges. The company's provision of only high cost loans to low or moderate-income households echoes the approach of subprime mortgage lenders that claimed their pricing was necessary rather than merely greedy. It also reflects a business philosophy centered in taking as much wealth from consumers as legally allowed. To wit, the company's 27% loss in non-interest income, about \$1 billion, in 2010 is explained as "primarily attributable to a reduction in penalty fees resulting from the implementation of provisions of the CARD Act and a reduction in customer accounts." (Capital One's 2010 10-K, page 40)

Consumer Reports has ranked Capital One worst among the major credit card holders based on cardholder experiences with fees, interest rates and customer service. The Office of the Comptroller of

the Currency reports that Capital One was the fifth largest recipient of consumer complaints in both 2008 and 2009. HSBC followed both years as the sixth largest recipient of complaints. Combined, as they soon will be, these banks' complaints make them the fourth most complained about bank, receiving over 3,718 complaints in 2009— over 1,000 more complaints than the next worst bank. Eighty-six percent of the complaints were about credit card accounts.

Capital One claims both that the number of complaints it has received matches the bank's share of the credit market and that complaints have fallen in 2010 and 2011. However, recent customer experiences reported to Consumer's Union are rife with claims that Capital One is suddenly and after several years raising credit card interest rates 6 and 10 percentage points. These customers consistently state that Capital One representatives justify the sudden hike by saying that notice of was given in 2009- two years before- or that they must have had a promotional rate that expired.

These claims signal possible violations of Truth in Lending and other consumer protection disclosure laws. CRC has requested complaint data from the OCC for 2010 and 2011. The Federal Reserve should not issue a decision until it and the public have had a chance to consider this information.

Capital One's auto loans are bad for California borrowers

Capital One's volume of auto loans in the California market totaled \$1.4 billion last year, its second highest volume in any other geographic market. However, the average auto loan in the company's most recent securitization was an expensive subprime loan (to a borrower with a 632 credit score) with an average rate of 12.96%. Some loans had rates as high as 29.68%. It isn't surprising then that nearly 1 in 10 customers had delinquencies.

Capital One also has a track record of business practices that have lead to costly legal intervention by consumers. Capital One has agreed to pay over \$217 million to settle class action allegations that Capital One improperly repossessed vehicles, failed to give the legally required notices so that the consumers would be able to pay the charges and reclaim their vehicles, sell the vehicles at auction and sought to collect deficiency judgments against the consumers. Capital One also agreed to write to credit reporting agencies to have the derogatory reports against auto lending borrowers removed.

It is also troubling that Capital One raised preemption defenses in these cases. Capital One seeks to do a large amount of business in California, while simultaneously arguing that it is not subject to California consumer protection laws.

Capital One's business lending does not serve small businesses or businesses in lower income communities

According to a 2009 Capital One's Multiasset Execution Trust prospectus, almost 15% of Capital One's business credit card business is from California. (By comparison, Florida is the 2nd largest source, making up only 8.12 %.) However, like Capital One's consumer lending, its business lending is almost exclusively through expensive credit cards that don't meet the needs of small businesses, those that make less than \$1 million in annual revenue, in low and moderate income areas.

Evidence of this is the fact Capital One's loans to such business in California, as a share of total California business lending, is 30 to 40 percent less than these businesses' share of the total number of businesses in the state. In fact, the share of non-credit card small business lending of all small business loans is much higher in California than Capital One's share of card-based business lending relative to their non-

card business lending. Put another way, Capital One's business lending strategy is diametrically opposite to small business lending trends in California.

In addition, Capital One has withdrawn from Small Business Administration lending, citing poor performance. Apparently, Capital One has found it more profitable to offer only business cards with immediate repayment terms that are much more expensive than SBA products. As a result, California businesses borrowing from Capital One end up paying more in finance charges - in just six months ending June 30, 2011, California business card holders paid Capital One an estimated \$145 million in finance charges alone.

In addition to being more expensive, business cards are also exempt from Truth in Lending and CARD Act protections. As a result, businesses that are forced to rely on credit cards are subject to unpredictable pricing structures, penalty fees, lack of disclosures and other harmful practices.

Even more concerning, a recent Pew Health Group study found that Capital One was among banks that market business cards to households. Pew's analysis shows that between January 2006 and December 2010, American households- even those struggling near the federal poverty line- received over 2.6 billion business credit card solicitations, over 9% of all credit card direct mail received.

The Federal Reserve should work with the OCC, the CFPB and other regulators to investigate whether Capital One has violated or deceptively made an end-run around consumer protection laws before making a final decision on this application.

Capital One's mortgage lending does not serve the majority of California households

Capital One's annual 10-K report shows California to be the home to the second largest number of home loans from the Bank's Consumer Banking Business. Despite being this, Capital One's home lending is far more inequitable than other lenders towards racial and ethnic households who, combined, have made up the majority of the state's households for over ten years. Capital One and ING are currently not meeting the convenience and needs of the majority of California's homeowners and homebuyers.

In looking at 2009 data for home purchase and refinance lending to California owner occupants, Capital One's lending is almost non-existent. Capital One originated a mere 32 such loans in California. Amazingly, not one of these loans went to a Latino borrower, and only 1 loan went to an African American borrower. Capital One is not serving the needs of African-American and Latino homebuyers.

While only 2.7% of the industry's lending in California was for home improvement, home improvement lending comprised fully 96% of Capital One's home lending in the state. (ING apparently originated no home improvement loans to owner occupants in California in 2009.) However, it is difficult to know what to make of these 749 loans, whose average loan size was a mere \$11,000. By comparison, the average home improvement loan size for Wells Fargo was \$281,000, \$268,000 for Bank of America, \$225,000 for JPMorgan Chase, and \$514,000 for Citimortgage. What home improvements was Capital One financing for \$11,000? Without knowing what the loans were for it is difficult to assess the needs that were met. The Federal Reserve should scrutinize Capital One's HMDA lending to determine for what purpose the loans were originated.

Also of concern is Capital One's abnormally high rate of not reporting race of borrowers. In 2009, 74% of home improvement loans were to borrowers where no race data were reported. In contrast, the

industry rate for race not reported in California on home improvement loans was 16.9%. The Federal Reserve should also scrutinize Capital One's HMDA lending to determine why the race reporting was so low.

ING also did not meet the credit needs of low and moderate income borrowers or borrowers of color in California. In virtually every category of interest, ING underperformed in relation to the industry as a whole. ING made .3%, 1.6%, and 23.5% of its loans to African American borrowers, Latino borrowers, and neighborhoods that are comprised mainly of people of color (50%-100% minority census tracts). This was well below the industry performance of 1.9%, 12.6%, and 30%, respectively. It should be noted that 25.6% of ING's loans had no race data, compared to 14.6% for the industry as a whole. Income of borrower and census tract however is accounted for on all loans and here ING underperformed as well, with a very low 4.3% and 5.1% of loans to LMI borrowers and LMI neighborhoods, respectively, compared to 19.7% and 11.7% for the industry as a whole. And this is with ING including several California MSAs in its supplemental assessment areas. This points to the weakness of the supplemental assessment area model and the need for Capital One to accept formal CRA assessment areas in California.

The Federal Reserve has repeatedly noted that home lending is more fairly distributed when banks lend in their formal CRA assessment areas. The poor performance by both banks emphasizes the case for strong CRA obligations in California, particularly in light of ING's poor performance despite having responsibility for CRA supplemental assessment areas in California.

Capital One has made no investments to support affordable housing and community development in California

Capital One has made no loans or investments to support affordable housing and community economic development in California despite doing most of its business in California, having the capacity through its existing staff in commercial lending and having supported affordable housing and community development in areas where the bank has branches. The Federal Reserve should not take any comfort in the support that Capital One has received from non-profit organizations and small businesses in Houston, New York and other areas where the bank has branches. Rather, this support should lead the Federal Reserve to question the bank's claim that it lacks the capacity to invest in California's affordable housing and community economic development efforts.

Indeed, a representative of the Enterprise Foundation made clear in his testimony at the San Francisco public meeting on October 5 that Capital One has not made use of Enterprise's ability to act as a financial intermediary for Capital One to support affordable housing in Northern California. Instead, the bank has used Enterprise, and other large non-profit community development organizations, to target its efforts only in areas where the bank has branches. Notably, none of these areas are where the bank does the most business.

This raises two distinct, important and inescapable conclusions. First, Capital One's claim that it has no capacity to make these loans and investments in California is baseless given its past reliance on national and regional intermediaries that lend and invest in California. Second, Capital One's claim that it will grow its community development lending and investments as it has after prior acquisitions offers no comfort to California since the company has only done so where the bank has branches.

The bank's recently announced "community investment" plan does not provide benefits to or satisfy CRA needs in California.

As proposed, this deal is simply no good for California. Rather than providing much needed affordable and accessible banking and financing services, Capital One merely plans to increase its expensive credit card and other consumer business in California. Capital One's boast that it benefits the public by providing risk based products seeks to only hoodwink consumers and regulators alike into accepting expensive products that rely on customers' inability to borrow within set limits, fully pay monthly balances and protect themselves from sudden rate and fee increases.

A few facts illustrate the company's reliance on unaffordable, high-rate, high-fee consumer products. Capital One's profit (income after expense and taxes) for its credit card business was \$2.274 billion, or 83% of Capital One's total profit (income after expenses, taxes and losses) of \$2.743 billion. As the country's the 5th biggest national credit card lender, Capital One has managed to impose late fees and finance charges valued at over 66% of its revenue. Given that Capital One admits that one-third of its card business is subprime, its already announced intent to acquire HSBC, the 9th biggest credit card lender in the country, signals nothing but an increase in the company's reliance on fee and finance charge revenue stripped from people who can least afford it.

As Capital One's largest market, California doesn't need any more of these 'benefits'. Instead, California needs affordable banking services, including products that meet the standard of those made pursuant to the Community Reinvestment Act. However, Capital One has made it abundantly clear that it intends no such program for California.

Capital One's recently announced \$180 billion "Community Investment Commitment" is a cynical ruse that simply repackages their existing business and exploits lower income communities. Just two weeks ago, CRC received a letter from Capital One stating that "[they] do not have plans to implement a full CRA program in California." (Letter from Dorothy Broadman, Capital One Community Development Banking Head, September 23, 2011.) Capital One has not even assured Californians that it will sustain, much less grow, ING's existing limited CRA activities here. In fact, Capital One's general counsel stated at the Federal Reserve public meeting last Wednesday that the non-consumer lending portion of the commitment will be targeted only to areas where the bank has branches. In other words, if this application is approved as is, California can expect to get even more consumer loans and none of the non-consumer loans.

The Federal Reserve should not consider the so-called commitment as a community program commensurate with the bank's capacity or even one that follows the letter or spirit of CRA. By acquiring ING Capital One will have grown its assets by 524% in the last four years. In contrast, its proposed commitment is merely two and half the value, as a percentage of assets, of CRA loans and investments made in Texas and Louisiana. In fact, nearly 60% of Capital One's purported commitment consists of expensive consumer loans that strip wealth from lower income communities rather than help to build it. These are the Capital One loans and products that generate over \$2 billion in annual revenue just from service charges and other customer related fees.

Capital One should be required to provide CRA-grade loans, investments and services that meet California's needs.

Despite taking tremendous profits from California, Capital One refuses to provide Community Reinvestment Act loans, services and investments to California. Capital One's hollow excuse is that it cannot conduct CRA activities without brick-and-mortar branches here. The bank is hiding behind the fact that the branch requirement is a vestige from when the law was written in 1977- when banks did all of their business through branches. Since then, regulators have required internet banks, including ING

and Schwab, to meet community reinvestment and reporting obligations in the geographic areas where they do the most business.

The lack of branches has certainly not hindered Capital One's business in California. Rather, as discussed above, California has Capital One's largest geographic concentration of consumer and business credit cards and its second largest auto and home lending. ING's assets will merely strengthen Capital One's reach into Californian's wallets.

Moreover, the branch requirement is an outdated one from 1977, when CRA was passed by Congress and banks conducted almost all business from their branches. Now, the largest bank holding companies own banks that operate predominantly if not exclusively outside of a branch network. The regulators' decision not to require Capital One and ING Direct to have community reinvestment responsibility in the communities from which they profit harms California financial institutions and consumers alike. Given the intent of the statute, it is illogical for some financial institutions to take deposits from virtual branches and make millions in loans but have no reciprocal responsibility to consumers because they have no local branches.

The Board should follow the precedent of the OCC and the OTS, which have required internet banks to conduct CRA loans, investments and services in the geographies where the bank does its most business. For example, the OCC required Schwab's internet bank to report community development loans, investments and services in the top ten metropolitan areas in which it did business, including an annual summary of the type and number of loans and investments, and the geographic areas and income and racial characteristics of the borrowers served. The OTS similarly collected information about ING's community reinvestment in fourteen additional areas throughout the country.

The California Reinvestment Coalition expects and has negotiated community commitments representing twenty percent of deposits or more from major banks that work with low-income communities and communities of color. For the potential merged bank, this would add up to a national commitment of more than \$600 billion over ten years. The Bank's self-designed "commitment" is almost one-quarter of this level, full of language that hedges commitment and relies on consumer lending that regulators rarely count as community development. The language of the written commitment and verbal testimony indicates that the current "commitment" is intended only for geographies where the Capital One has branches and pointedly does not include California, where it does the bulk of its business.

Any community commitment should be crafted in concert with community-based organization in all the geographies where a bank does business. It should include affordable housing lending and investment, small business lending, community development lending and investment, consumer products, foreclosure prevention and other products and programs needed by these geographies. It should include grant making equal to two to three percent of net income before taxes of which at least fifty percent should go to nonprofit organizations doing economic development and affordable housing activities. Without community involvement from local nonprofit organizations and advocacy coalitions, "commitments" tend to look like the one proffered by Capital One: small, inadequate and undefined.

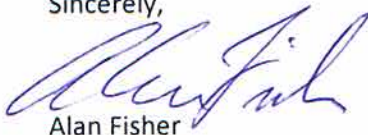
Conclusion

Try as it might, Capital One cannot, and the Federal Reserve should not allow it to, escape the truth of its reliance on wealth-stripping subprime lending, the negative impact the growth of this business poses

to California and the inadequacy of its Community Reinvestment Act activity where the bank does its most business.

For these reasons, the California Reinvestment Coalition urges the Federal Reserve to deny approval of Capital One's application as proposed. The Federal Reserve should require Capital One to amend its application for reconsideration and to include in that application a detailed, measureable plan for providing benefits to California in the form of affordable and accessible financial products and Community Reinvestment Act quality loans, investments and services in California commensurate with the bank's business here. The Federal Reserve should take no action until revised CRA regulations have been adopted and the public has had sufficient opportunity to review the companies' 2010 and 2011 Home Mortgage Disclosure data, CRA performance evaluations, and customer complaint information.

Sincerely,



Alan Fisher
Executive Director



Kevin Stein
Associate Director



Andrea Luquetta
Policy Advocate