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September 20, 2024

VIA EZFile

Brent Hassell
Assistant Vice President
The Federal Reserve Bank of Richmond
P.O. Box 27622
Richmond, VA 23261

Re: Additional Information Regarding Application by Capital One Financial Corporation to Acquire Discover Financial Services (the “Additional Information Request”)

We are submitting this letter and the related exhibits in response to your request for additional information, dated September 10, 2024, regarding the application seeking the prior approval of the Board of Governors of the Federal Reserve System (the “Federal Reserve”) for Capital One Financial Corporation (“Capital One”), the parent of Capital One, National Association, to acquire Discover Financial Services (“Discover”) and thereby acquire control of its subsidiary bank, Discover Bank (the “Application”). For ease of reference, your questions are included in bold with the responses immediately following. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Application.

Brent Hassell
The Federal Reserve Bank of Richmond
September 20, 2024
Page 2

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Confidential treatment is being requested under the federal Freedom of Information Act, 5 U.S.C. § 552 (the “FOIA”), and the implementing regulations of the Board of Governors of the Federal Reserve System (the “Federal Reserve”), for the information contained in the Confidential Exhibits Volume to this letter (the “Confidential Materials”). The Confidential Materials include, for example, information regarding the business strategies and plans of (1) Capital One Financial Corporation (“COFC”), Vega Merger Sub, Inc. (“Merger Sub”) and Capital One, National Association (“CONA”) and (2) Discover Financial Services (“Discover”) and Discover Bank, and other information regarding additional matters of a similar nature, which is commercial or financial information that is both customarily and actually treated as private by COFC, Merger Sub, CONA, Discover and Discover Bank and provided to the government under an assurance of privacy. Certain information in the Confidential Materials also includes confidential supervisory information, which is protected from disclosure. None of this information is the type of information that would otherwise be made available to the public under any circumstances. All such information, if made public, could result in substantial and irreparable harm to COFC, Merger Sub, CONA, Discover and Discover Bank. Other exemptions from disclosure under the FOIA may also apply. In addition, investors and potential investors could be influenced or misled by such information, which is not reported in any documents filed or to be filed in accordance with the disclosure requirements of applicable securities laws, as a result of which COFC, Merger Sub, CONA, Discover and Discover Bank could be exposed to potential inadvertent violations of law or exposure to legal claims. Accordingly, confidential treatment is respectfully requested for the Confidential Materials under the FOIA and the Federal Reserve’s implementing regulations.

Please contact the undersigned (212-403-1354), Matthew T. Carpenter (212-403-1031) or Ledina Gocaj (212-403-1022) before any public release of any of this information pursuant to a request under the FOIA or a request or demand for disclosure by any governmental agency, congressional office or committee, court or grand jury. Such prior notice is necessary so that COFC, Merger Sub, CONA, Discover and Discover Bank may take appropriate steps to protect such information from disclosure.

If you have any questions about this submission or confidential treatment request, please do not hesitate to contact me.

Very truly yours,



Richard K. Kim

Brent Hassell
The Federal Reserve Bank of Richmond
September 20, 2024
Page 3

Enclosures

cc (by email):

Jenny Small, Office of the Comptroller of the Currency
(Jenny.Small@occ.treas.gov)

Jeffrey Ralston, Federal Deposit Insurance Corporation
(jralston@fdic.gov)

Lisa Collison, Delaware Office of the State Bank Commissioner
(lisa.collison@delaware.gov)

Matthew M. Guest, Wachtell, Lipton, Rosen & Katz
Brandon C. Price, Wachtell, Lipton, Rosen & Katz
Matthew T. Carpenter, Wachtell, Lipton, Rosen & Katz
Ledina Gocaj, Wachtell, Lipton, Rosen & Katz

**Capital One Financial Corporation Public Responses to Additional Information Request
from the Federal Reserve Bank of Richmond, dated September 10, 2024**

Section 4 of the BHC Act

- 1. In the “Nonbank Subsidiaries of Discover Bank” Table of Public Exhibit B of Capital One’s letter to the Federal Reserve Bank of Richmond dated June 14, 2024, Capital One states that it intends to rely upon section 4(c)(8) of the BHC Act to retain the voting shares of The Student Loan Corporation (“SLC”), Riverwoods, Illinois, during the period beginning with the consummation of the merger of Vega Merger Sub, Inc. with and into Discover and ending with the consummation of the merger of Discover Bank with and into CONA (the “Intermediate Period”). Public information suggests that Discover plans to sell a portfolio of student loans. Discuss whether SLC has been or will be sold or dissolved prior to the consummation of Capital One’s proposal to acquire Discover. If so, provide the anticipated closing date of the sale of the student loan portfolio and sale or dissolution of SLC. If SLC will not be sold or dissolved, describe in detail the activities it would conduct during the Intermediate Period, and confirm whether Capital One continues to rely on section 4(c)(8) of the BHC Act to retain the shares of SLC during the Intermediate Period.**

In November of 2023, Discover announced that Discover Bank would stop accepting new applications for private student loans as of February 1, 2024 and that Discover’s Board of Directors authorized management to explore a sale of Discover Bank’s private student loan portfolio. Loan applications received on or before January 31, 2024 were processed and at this time no applications remain pending.

On July 17, 2024, Discover Bank entered into a purchase agreement with Santiago Holdings, LP, an Ontario limited partnership and an affiliate of each of Carlyle Group Inc. and KKR & Co. Inc. (“Santiago Holdings”), pursuant to which Discover Bank agreed to sell its private student loan portfolio to Santiago Holdings (the “Discover Student Loan Sale”), with Firstmark Services, a division of Nelnet Inc. assuming responsibility for servicing the portfolio upon the sale. The cash purchase price payable to Discover Bank in the transaction is estimated to be up to approximately \$10.8 billion, which reflects the principal balance of the private student loan portfolio of approximately \$10.1 billion as of June 30, 2024, and an additional premium, plus any outstanding accrued and unpaid interest at closing. The Discover Student Loan Sale is expected to be completed in multiple closings by the end of 2024, subject to waiver or satisfaction of customary closing conditions. For more information, see Discover’s Current Report on Form 8-K filed with the SEC on July 17, 2024 and Amendment No. 2 to Capital One’s Registration Statement on Form S-4 filed with the SEC on July 26, 2024.

As noted in this request, the consummation of the merger of Vega Merger Sub, Inc. with and into Discover would by necessity occur prior to the merger of Discover Bank with and into CONA. However, these steps would occur concurrently.

Since Discover acquired SLC in 2010, SLC has not engaged in originating student loans and does not hold the student loans that are being sold in the Discover Student Loan Sale (as such loans are held by Discover Bank). SLC's activities are limited to performing administrative tasks with respect to certain student loan trusts. As discussed below, SLC engages Discover Bank or unaffiliated third parties to perform these functions. SLC has no dedicated employees and does not perform these functions directly.

As of the date hereof, SLC's activities consist solely of acting as the administrator of certain legacy asset securitization trusts and the named servicer with respect to the student loans held by such legacy trusts. As noted above, SLC has sub-contracted out its servicing obligations to unaffiliated entities, for trusts for which neither Discover Bank nor its affiliates owns the trust certificates, or to Discover Bank for trusts for which Discover Bank owns the trust certificate. Only one of these legacy trusts, for which Discover Bank owns the trust certificate, is a component of the Discover Student Loan Portfolio Sale. Therefore, at the present time, Discover does not have any plans for a sale or dissolution of SLC or any change to the activities of SLC whether the Discover Student Loan Portfolio Sale is completed or not.

Capital One would rely upon section 4(c)(8) of the BHC Act, codified at 12 U.S.C. § 1843(c)(8), and 12 CFR 225.28(b)(1) to retain the shares of SLC. In addition, consistent with 12 CFR 225.22(e)(2)(i), Discover Bank—as a state-chartered subsidiary bank of Capital One during the Intermediate Period—could retain shares of SLC during the Intermediate Period “on the basis of section 4(c)(5) of the BHC Act, of the kinds and amounts explicitly eligible by federal statute for investment by a national bank,”¹ because 12 U.S.C. § 24(Seventh) provides that a “national bank and its operating subsidiaries may make, purchase, sell, service, or warehouse loans or other extensions of credit for its own or another’s account, including consumer loans, credit card loans, commercial loans, residential mortgage loans, commercial mortgage loans, and standby letters of credit.”²

¹ 12 CFR 225.22(e)(2)(i).

² OCC, *Activities Permissible for National Banks and Federal Savings Associations*, Cumulative, 2017 Edition 32 (citing to 12 USC 24(Seventh), 371; 12 CFR 5.34).