
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

**Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934**

**August 16, 2012
Date of report (Date of earliest event reported)**

Commission File No. 1-13300

CAPITAL ONE FINANCIAL CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

54-1719854
(I.R.S. Employer
Identification No.)

1680 Capital One Drive, McLean, Virginia
(Address of Principal Executive Offices)

22102
(Zip Code)

Registrant's telephone number, including area code:
(703) 720-1000

(Former name, former address and former fiscal year, if changed since last report)
(Not applicable)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 3.03. Material Modification to Rights of Security Holders.

On August 20, 2012, Capital One Financial Corporation (the “Company”) issued and sold 35,000,000 depository shares (“Depository Shares”), each representing a 1/40th interest in a share of Fixed Rate Non-Cumulative Perpetual Preferred Stock, Series B, \$0.01 par value, with a liquidation preference of \$25 per Depository Share (equivalent to \$1,000 per share of Series B Preferred Stock) (the “Series B Preferred Stock”). The Company filed a Certificate of Designations (the “Certificate of Designations”) with the Secretary of State of the State of Delaware, establishing the voting rights, powers, preferences and privileges, and the relative, participating, optional or other rights, and the qualifications, limitations or restrictions thereof, of the Series B Preferred Stock on August 16, 2012. Holders of the Depository Shares will be entitled to all proportional rights and preferences of the Series B Preferred Stock (including dividend, voting, redemption and liquidation rights).

Under the terms of the Series B Preferred Stock, the ability of the Company to pay dividends on, make distributions with respect to, or to repurchase, redeem or acquire its common stock or any preferred stock ranking on parity with or junior to the Series B Preferred Stock, is subject to restrictions in the event that the Company does not declare and either pay or set aside a sum sufficient for payment of dividends on the Series B Preferred Stock for the immediately preceding dividend period.

The description of the terms of the Series B Preferred Stock is qualified in its entirety by reference to the Certificate of Designations, which is included as Exhibit 3.1 to this Current Report on Form 8-K and is incorporated by reference herein.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

The Certificate of Designations became effective upon filing with the Secretary of State of the State of Delaware and it amends the Company’s Restated Certificate of Incorporation. The terms of the Series B Preferred Stock are more fully described in Item 3.03 of this Current Report on Form 8-K and the Certificate of Designations which is included as Exhibit 3.1 to this Current Report on Form 8-K, both of which are incorporated by reference herein.

Item 8.01 Other Events

On August 13, 2012, the Company entered into an Underwriting Agreement (the “Underwriting Agreement”) with Merrill Lynch, Pierce, Fenner & Smith Incorporated, J. P. Morgan Securities LLC, Morgan Stanley & Co. LLC, UBS Securities LLC and Wells Fargo Securities, LLC, as the representatives of the several underwriters named therein (collectively, the “Underwriters”), pursuant to which the Company agreed to sell to the Underwriters 35,000,000 Depository Shares, each representing a 1/40th ownership interest in a share of Series B Preferred Stock and granted them an option to purchase up to an additional 5,000,000 Depository Shares to cover over-allotments, if any.

The Underwriting Agreement contains customary representations, warranties and agreements of the Company, conditions to closing, indemnification rights and obligations of the parties, and termination provisions. Under the terms of the Underwriting Agreement, the Company agreed to indemnify the Underwriters against certain specified types of liabilities, including liabilities under the Securities Act of 1933, as amended, and to contribute to payments the Underwriters may be required to make in respect of these liabilities.

The net proceeds of the offering of the 35,000,000 Depository Shares were approximately \$853 million, after deducting underwriting commissions and estimated offering expenses. The offering was made pursuant to the prospectus supplement dated August 13, 2012 and the accompanying prospectus dated April 30, 2012, filed with the Securities and Exchange Commission pursuant to the Company’s effective registration statement on Form S-3 (File No. 333-181047) (the “Registration Statement”). The following documents are being filed with this Current Report on Form 8-K and are incorporated by reference into the Registration Statement: (a) the Underwriting Agreement, (b) the Certificate of Designations, (c) the Deposit Agreement dated August 20, 2012, between the Company, Computershare Trust Company, N.A., as Depository, Computershare Inc. and the holders from time to time of the depository receipts described therein, to which Deposit Agreement the Form of Depository Receipt is attached as Exhibit A and (d) a validity opinion with respect to the Depository Shares and the Series B Preferred Stock.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description of Exhibit</u>
1.1	Underwriting Agreement dated August 13, 2012
3.1	Certificate of Designations of Fixed Rate Non-Cumulative Perpetual Preferred Stock, Series B, dated August 16, 2012
4.1	Deposit Agreement, dated August 20, 2012
5.1	Opinion of Gibson, Dunn & Crutcher LLP
23.1	Consent of Gibson, Dunn & Crutcher LLP (included in Exhibit 5.1)

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Company has duly caused this Current Report on Form 8-K to be signed on its behalf by the undersigned hereunto duly authorized.

CAPITAL ONE FINANCIAL CORPORATION

Dated: August 20, 2012

By: /s/ John. G. Finneran, Jr.

Name: John. G. Finneran, Jr.

Title: General Counsel and Corporate Secretary

35,000,000 DEPOSITARY SHARES
EACH REPRESENTING A 1/40TH INTEREST IN A SHARE OF
FIXED RATE NON-CUMULATIVE PERPETUAL PREFERRED
STOCK, SERIES B
OF
CAPITAL ONE FINANCIAL CORPORATION
UNDERWRITING AGREEMENT

August 13, 2012

J.P. Morgan Securities LLC
383 Madison Avenue, 3rd Floor
New York, NY 10179

Merrill Lynch, Pierce, Fenner & Smith
Incorporated
One Bryant Park
New York, NY 10036

Morgan Stanley & Co. LLC
1585 Broadway
New York, NY 10036

UBS Securities LLC
677 Washington Boulevard
Stamford, CT 06901

Wells Fargo Securities, LLC
301 S. College Street
Charlotte, NC 28288

As Representatives of the several
Underwriters named in Schedule I hereto

Dear Sirs:

Capital One Financial Corporation, a Delaware corporation (the "Company"), proposes to issue and sell to the underwriters named in Schedule I hereto (the "Underwriters"), for whom you are acting as representative (the "Representatives"), an aggregate of 35,000,000 depository shares (the "Initial Shares"), each such share

representing ownership of 1/40th of a share of the Company's Fixed Rate Non-Cumulative Perpetual Preferred Stock, Series B, par value \$0.01 per share, with a liquidation preference of \$1,000 per share (the "Preferred Stock"). In addition, the Company proposes to grant to the Underwriters the option to purchase from the Company up to an additional 5,000,000 depositary shares (the "Option Shares") in accordance with the terms and conditions hereof. The Preferred Stock will, when issued, be deposited by the Company against delivery of Depositary Receipts ("Depositary Receipts") to be issued by Computershare Trust Company, N.A. ("Computershare" or the "Depositary"), under a Deposit Agreement (the "Deposit Agreement"), to be dated as of the Closing Date (as defined herein), among the Company, the Depositary and the holders from time to time of the Depositary Receipts issued thereunder. Each Depositary Receipt will evidence one or more Shares. The Initial Shares and the Option Shares are herein collectively referred to as the "Shares." For purposes of this Agreement, "Depositary Shares" means the depositary shares, each such share representing ownership of 1/40th of a share of Preferred Stock.

1. Registration Statement and Prospectus. The Company has prepared and filed with the Securities and Exchange Commission (the "Commission") a registration statement on Form S-3 (File No. 333-181047) under the Securities Act of 1933, as amended (the "Securities Act") in respect of its debt securities, its junior subordinated debt securities, shares of its preferred stock, \$0.01 par value, depositary shares, shares of its common stock, \$0.01 par value, its purchase contracts, units, trust preferred securities that may be issued by a related trust, and warrants (as amended through the date of this Agreement, being herein referred to as the "Registration Statement"). Such Registration Statement has become effective. The Registration Statement contains a base prospectus in the form in which it has most recently been filed with the Commission on or prior to the date of this Agreement (the "Base Prospectus"), to be used in connection with the public offering and sale of the Shares. Any preliminary prospectus supplement to the Base Prospectus that describes the Shares and the offering thereof and is used prior to filing of the Prospectus is called, together with the Base Prospectus, a "preliminary prospectus." The term "Prospectus" shall mean the final prospectus supplement relating to the Shares, together with the Base Prospectus, that is first filed pursuant to Rule 424(b) under the Securities Act after the date and time that this Agreement is executed and delivered by the parties hereto but shall not include any free writing prospectus (as such term is used in Rule 405 under the Securities Act). Any Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act; any reference to any amendment or supplement to any preliminary prospectus or the Prospectus shall be deemed to refer to and include any documents filed after the date of such preliminary prospectus or Prospectus, as the case may be, under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (collectively, the "Exchange Act"), and incorporated by reference in such preliminary prospectus or Prospectus, as the case may be. The Company also has prepared and filed (or will file) with the Commission the Issuer Free Writing Prospectuses (as defined below) set forth on Schedule II hereto. All references in this Agreement to the Registration Statement, a preliminary prospectus, the Prospectus, or any amendments or supplements to any of the foregoing, shall include any copy thereof filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval System ("EDGAR").

2. Agreements to Sell and Purchase. On the basis of the representations and warranties contained in this Agreement, and subject to its terms and conditions, the Company agrees to issue and sell to the Underwriters, and each Underwriter agrees, severally and not jointly, to purchase from the Company the respective number of Initial Shares set forth opposite the name of such Underwriter in Schedule I hereto, in each case at a purchase price (the "Purchase Price") of \$24.2125 per share (in the case of Initial Shares sold to retail investors) or \$24.625 per share (in the case of Initial Shares sold to institutional investors).

In addition, the Company agrees to issue and sell the Option Shares to the several Underwriters as provided in this Agreement, and the Underwriters, on the basis of the representations and warranties contained in this Agreement, and subject to its terms and conditions, shall have the option to purchase from the Company the Option Shares at the Purchase Price for the sole purpose of covering sales of depositary shares in excess of the number of Initial Shares.

If any Option Shares are to be purchased, the number of Option Shares to be purchased by each Underwriter shall be the number of Option Shares which bears the same ratio to the aggregate number of Option Shares being purchased as the number of Initial Shares set forth opposite the name of such Underwriter in Schedule I hereto (or such number increased as set forth in Section 10) bears to the aggregate number of Initial Shares being purchased by the several Underwriters, subject, however, to such adjustments to eliminate any fractional depositary shares as the Representatives in their sole discretion shall make.

The Underwriters may exercise the option to purchase the Option Shares once at any time in whole or in part on or before the thirtieth day following the date of this Agreement by written notice from the Representatives to the Company. Such notice shall set forth the aggregate number of Option Shares as to which the option is being exercised and the date and time when the Option Shares are to be delivered and paid for, which, if such option is exercised three or more business days prior to the Closing Date, shall be the same date and time as the Closing Date (as hereinafter defined), and shall in any event (i) not be earlier than the Closing Date or fifth full business day after the delivery date of such notice (whichever is earlier), nor (ii) later than the tenth full business day after the delivery date of such notice. Any such notice shall be given at least two business days prior to the date and time of delivery specified therein.

3. Terms of Public Offering. The Company is advised by the Representatives that the Underwriters propose (i) to make a public offering of their respective portions of the Shares as soon after the execution hereof as practicable and (ii) initially to offer the Shares upon the terms set forth in the Prospectus.

4. Delivery and Payment. The Company will deliver, or cause to be delivered, the Shares to the Representatives for the account of each Underwriter against

payment by or on behalf of such Underwriter of the Purchase Price by wire transfer of Federal (same-day) funds to the account specified by the Company to the Representatives at least twenty-four hours in advance, by causing Computershare and Computershare Inc., collectively as registrar, to register the Shares in the name of Cede & Co., or such other nominee as DTC may designate, and shall cause DTC to credit the Shares to the account of Morgan Stanley & Co. LLC at DTC. The time and date of such delivery and payment, with respect to the Initial Shares, shall be 10:00 A.M., New York City time on the fifth business day, unless otherwise permitted by the Commission pursuant to Rule 15c6-1 of the Exchange Act (the "Closing Date"), following the date of the Prospectus or such other time and date as the Representatives and the Company may agree upon in writing, and with respect to the Option Shares shall be 10:00 A.M., New York City time, on the date specified by the Representatives in the written notice given by the Underwriters of their election to purchase such Option Shares, or at such other time and date as the Underwriters and the Company may agree upon in writing (the "Option Closing Date").

5. Agreements of the Company. The Company agrees with the Underwriters:

(a) To file the Prospectus with the Commission pursuant to Rule 424(b)(5) not later than the second business day following the execution and delivery of this Agreement.

(b) During the period beginning at the Time of Sale (as defined below) and ending on the later of the Closing Date or such date as in the opinion of counsel for the Underwriters, the Prospectus is no longer required by law to be delivered in connection with sales by an Underwriter or a dealer, including in circumstances where such requirement may be satisfied pursuant to Rule 172 (the "Prospectus Delivery Period"), prior to amending or supplementing the Registration Statement, the Disclosure Package (as defined below) or the Prospectus (including any amendment or supplement through incorporation by reference of any report filed under the Exchange Act), the Company shall furnish to the Representatives for review a copy of each such proposed amendment or supplement.

(c) If, during the Prospectus Delivery Period, any event or development shall occur or condition exist as a result of which the Disclosure Package or the Prospectus as then amended and supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, or if in the judgment of the Company it shall be necessary to amend or supplement the Disclosure Package or the Prospectus, or to file under the Exchange Act any document incorporated by reference in the Disclosure Package or the Prospectus, in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, or if it is otherwise necessary to amend or supplement the Registration Statement, the Disclosure Package or the Prospectus, or to file under the Exchange Act any document incorporated by reference in the Disclosure Package or the Prospectus, or to file a new registration statement containing the Prospectus, in order to comply with law, including

in connection with the delivery of the Prospectus, the Company agrees to (i) notify the Representatives of any such event or condition and (ii) promptly prepare (subject to paragraph (b) above), file with the Commission (and use its best efforts to have any amendment to the Registration Statement or any new registration statement be declared effective) and furnish at its own expense to the Underwriters and to dealers, amendments or supplements to the Registration Statement, the Disclosure Package or the Prospectus, or any new registration statement, necessary in order to make the statements in the Disclosure Package or the Prospectus as so amended or supplemented, in light of the circumstances then prevailing or under which they were made, not misleading or so that the Registration Statement, the Disclosure Package or the Prospectus, as amended or supplemented, will comply with law.

(d) The Company will prepare a final term sheet for the Shares containing only a description of the Shares, in a form approved by the Representatives, and will file such term sheet pursuant to Rule 433(d) under the Securities Act within the time required by such rule (the "Final Term Sheet"). Any such Final Term Sheet is an Issuer Free Writing Prospectus for purposes of this Agreement.

(e) The Company represents that (other than the Final Term Sheet) it has not made, and agrees that, unless it obtains the prior written consent of the Representatives, it will not make, any offer relating to the Shares that would constitute an issuer free writing prospectus as defined in Rule 433 of the Securities Act (each, an "Issuer Free Writing Prospectus") or that would otherwise constitute a "free writing prospectus" as defined in Rule 405 of the Securities Act) required to be filed by the Company with the Commission or retained by the Company under Rule 433 of the Securities Act; provided that the prior written consent of the Representatives shall be deemed to have been given in respect of any Free Writing Prospectus included in Schedule II hereto. Any such free writing prospectus consented to by the Representatives is hereinafter referred to as a "Permitted Free Writing Prospectus." The Company agrees that (i) it has treated and will treat, as the case may be, each Permitted Free Writing Prospectus as an Issuer Free Writing Prospectus, and (ii) has complied or will comply, as the case may be, with the requirements of Rules 164 and 433 of the Securities Act applicable to any Permitted Free Writing Prospectus, including in respect of timely filing with the Commission, legending and record keeping. The Company consents to the use by any Underwriter of (i) a free writing prospectus that contains no "issuer information" (as defined in Rule 433(h)(2) under the Securities Act) that was not included (including through incorporation by reference) in the Prospectus or a previously filed Issuer Free Writing Prospectus, (ii) any Issuer Free Writing Prospectus listed on Schedule II hereto, or (iii) (x) information describing the preliminary terms of the Shares or their offering or (y) information that describes the final terms of the Shares or their offering and that is included in the Final Term Sheet.

(f) To advise the Representatives promptly and, if requested by the Representatives, to confirm such advice in writing, (i) of any request by the Commission for amendments to the Registration Statement or amendments or supplements to the Prospectus or the Disclosure Package or for additional information, (ii) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration

Statement or of the suspension of qualification of the Shares for offering or sale in any jurisdiction, or the initiation of any proceeding for such purposes, and (iii) of the happening of any event during the Prospectus Delivery Period which makes any statement of a material fact made in the Registration Statement or the Prospectus untrue or which requires the making of any additions to or changes in the Registration Statement or the Prospectus in order to make the statements therein not misleading. To prepare and file with the Commission, promptly upon the Representatives' reasonable request, any amendment or supplement to the Registration Statement, the Base Prospectus, the Prospectus or the Disclosure Package which may be necessary or advisable in connection with the distribution of the Shares by the Underwriters, and to use its best efforts to cause any such post-effective amendment to the Registration Statement to become promptly effective. If at any time the Commission shall issue any stop order suspending the effectiveness of the Registration Statement, the Company will make every reasonable effort to obtain the withdrawal or lifting of such order at the earliest possible time.

(g) To furnish to each Underwriter, without charge, signed copies of the Registration Statement as first filed with the Commission and of each amendment to it, including all exhibits, and to furnish to each Underwriter such number of conformed copies of the Registration Statement as so filed and of each amendment to it, without exhibits, as such Underwriter may reasonably request.

(h) During the Prospectus Delivery Period, to furnish to each Underwriter and dealer as many copies of the Base Prospectus and the Prospectus (each as amended or supplemented) as such Underwriter or dealer may reasonably request.

(i) Prior to any public offering of the Shares, to cooperate with the Representatives and counsel for the Underwriters in connection with the registration or qualification of the Shares for offer and sale by the several Underwriters and by dealers under the state securities or Blue Sky laws of such jurisdictions as the Representatives may request, to continue such qualification in effect so long as required for distribution of the Shares and to file such consents to service of process or other documents as may be necessary in order to effect such registration or qualification, provided that in no event shall the Company be obligated to qualify to do business in any jurisdiction where it is not so qualified or take any action that would subject it to service of process in suits other than those arising out of the offering or sale of the Shares in any jurisdiction where it is not now so subject.

(j) To make generally available to its security holders as soon as reasonably practicable an earnings statement covering a period of at least twelve months after the effective date of the Registration Statement which shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 under the Securities Act.

(k) If at any time during the five year period after the date of this Agreement, the Company ceases to file reports with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, (i) to mail as soon as reasonably practicable after the end of each fiscal year to the record holders of the Shares a financial report of the Company and its subsidiaries on a consolidated basis (and a similar financial report of all unconsolidated

subsidiaries, if any), all such financial reports to include a consolidated balance sheet, a consolidated statement of operations, a consolidated statement of cash flows and a consolidated statement of changes in stockholders' equity as of the end of and for such fiscal year, together with comparable information as of the end of and for the preceding year, certified by independent certified public accountants, and (ii) to mail and make generally available as soon as reasonably practicable after the end of each quarterly period (except for the last quarterly period of each fiscal year) to such holders, a consolidated balance sheet, a consolidated statement of operations and a consolidated statement of cash flows (and similar financial reports of all unconsolidated subsidiaries, if any) as of the end of and for such period, and for the period from the beginning of such year to the close of such quarterly period, together with comparable information for the corresponding periods of the preceding year.

(l) To pay all costs, expenses, fees and taxes incident to (i) the preparation, printing, filing and distribution under the Securities Act of the Base Prospectus, each preliminary prospectus and all amendments and supplements to any of them prior to or during the Prospectus Delivery Period, any Issuer Free Writing Prospectus and the Disclosure Package, (ii) the printing and delivery of the Prospectus and all amendments or supplements to it during the Prospectus Delivery Period, (iii) the registration or qualification of the Shares for offer and sale under the securities or Blue Sky laws of the several states (including in each case the fees and disbursements of counsel for the Underwriters relating to such registration or qualification and memoranda relating thereto), (iv) the listing of the Shares with the New York Stock Exchange (the "NYSE"), (v) filings and clearance with FINRA in connection with the offering, (vi) furnishing such copies of the Registration Statement, the Prospectus and all amendments and supplements thereto as may be requested for use in connection with the offering or sale of the Shares by the Underwriters or by dealers to whom Shares may be sold, (vii) the preparation, issuance, execution and delivery of the Shares and (viii) the fees and expenses of any transfer agent or registrar in connection with the Shares.

(m) To apply the net proceeds from the sale of the Shares in the manner described under the caption "Use of Proceeds" in the Prospectus.

(n) To use its best efforts to do and perform all things required or necessary to be done and performed under this Agreement by the Company prior to the Closing Date and the Option Closing Date, if any, and to satisfy all conditions precedent to the delivery of the Shares.

(o) For the period ending 30 days after the date of the Prospectus, the Company will not (i) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of, directly or indirectly, any Preferred Stock or Depositary Shares, any other preferred stock of the Company (or depositary shares in respect thereof), or any securities convertible into or exercisable or exchangeable for Preferred Stock, Depositary Shares, or any other preferred stock of the Company (or depositary shares in respect thereof), or (ii) enter into any swap or other agreement that transfers, in whole or in part, any of the economic

consequences of ownership of Preferred Stock or Depositary Shares, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Preferred Stock or Depositary Shares or such other securities, in cash or otherwise, without the prior written consent of the Representatives, other than the Preferred Stock and Depositary Shares to be sold hereunder; except that, notwithstanding the foregoing, the Company may fulfill its obligations under Article III (Registration Rights) of the Shareholders Agreement, dated as of February 17, 2012, by and between Capital One Financial Corporation and ING Groep N.V. during such period; provided further, that this Section 5(o) shall be of no effect, shall not apply with respect to, and shall in no way limit or restrict the Company from issuing, granting or selling shares of its common stock.

(p) Not to take, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of the Shares.

(q) To use its best efforts to list within 30 days from the Closing Date, subject to notice of issuance, the Shares on the NYSE and to maintain such listing.

(r) To maintain a transfer agent and, if necessary under the jurisdiction of incorporation of the Company, a registrar for the Shares.

6. Representations and Warranties of the Company. The Company represents and warrants to each Underwriter:

(a) The Company meets the requirements for use of Form S-3 under the Securities Act. The Registration Statement has become effective; no stop order suspending the effectiveness of the Registration Statement is in effect, and, to the best of the Company's knowledge, no proceedings for such purpose are pending before or threatened by the Commission. No order preventing the use of any preliminary prospectus or any Issuer Free Writing Prospectus has been issued by the Commission.

(b) (i) At the time of filing the Registration Statement, (ii) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the Securities Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the Exchange Act or form of prospectus), and (iii) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c)) made any offer relating to the Shares in reliance on the exemption of Rule 163, the Company was a "well-known seasoned issuer" as defined in Rule 405, including not having been an "ineligible issuer" as defined in Rule 405.

(c) The Registration Statement is an "automatic shelf registration statement" as defined in Rule 405, that initially became effective within three years of the date hereof.

(d) The Company has not received from the Commission any notice pursuant to Rule 401(g) objecting to the use of the automatic shelf registration statement form. If

at any time during the Prospectus Delivery Period the Company receives from the Commission a notice pursuant to Rule 401(g)(2) or otherwise ceases to be eligible to use the automatic shelf registration statement form, the Company will (i) promptly notify the Representatives, (ii) promptly file a new registration statement or post-effective amendment on the proper form relating to the Shares, in a form satisfactory to the Representatives, (iii) use its best efforts to cause such registration statement or post-effective amendment to be declared effective as soon as practicable, and (iv) promptly notify the Representatives of such effectiveness. The Company will take all other action necessary or appropriate to permit the public offering and sale of the Shares to continue as contemplated in the registration statement that was the subject of the Rule 401(g)(2) notice or for which the Company has otherwise become ineligible. References herein to the Registration Statement shall include such new registration statement or post-effective amendment, as the case may be.

(e) The Company agrees to pay the required Commission filing fees relating to the Shares within the time required by Rule 456(b)(1) without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r).

(f) (i) At the respective times the Registration Statement and any post-effective amendment thereto became or becomes effective prior to the Closing Date, neither the Registration Statement nor such amendment included or will include an untrue statement of a material fact or omitted or will omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) the Registration Statement and the Prospectus comply and, as amended or supplemented, if applicable, as of the date such amendment becomes effective or such supplement is filed with the Commission, as the case may be, will comply in all material respects with the Securities Act, (iii) the Prospectus does not contain and, as amended or supplemented, if applicable, as of the date such amendment becomes effective or such supplement is filed with the Commission, as the case may be, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that the representations and warranties set forth in this paragraph (f) do not apply to statements or omissions in the Registration Statement or the Prospectus based upon information relating to any Underwriter furnished to the Company in writing by such Underwriter expressly for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Underwriter consists of the information described as such in Section 8 hereof and (iv) the documents incorporated by reference in the Prospectus pursuant to Item 12 of Form S-3 under the Securities Act, at the time they were or hereafter are filed with the Commission prior to the Closing Date, complied and will comply in all material respects with the requirements of the Exchange Act, and, when read together and with the other information in the Prospectus, as of the date of the Prospectus and at all times subsequent thereto up to the Closing Date, did not and will not contain an untrue statement of material fact or did not and will not omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(g) The term “Disclosure Package” shall mean (i) the Base Prospectus, including the preliminary prospectus supplement dated August 13, 2012, as amended or supplemented at the Time of Sale (as defined below) and (ii) the Issuer Free Writing Prospectuses, if any, identified on Schedule II hereto. As of the Time of Sale, the Disclosure Package did not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from the Disclosure Package based upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Underwriter consists of the information described as such in Section 8 hereof. As used in this paragraph and elsewhere in this Agreement “Time of Sale” shall mean 5:53 p.m. on August 13, 2012.

(h) Each Issuer Free Writing Prospectus does not include any information that conflicts with the information contained in the Registration Statement, including any document incorporated by reference therein that has not been superseded or modified. The foregoing sentence does not apply to statements in or omissions from any Issuer Free Writing Prospectus based upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Underwriter consists of the information described as such in Section 8 hereof.

(i) The Company has not distributed and will not distribute, prior to the later of the Closing Date and the completion of the Underwriters’ distribution of the Shares, any offering materials in connection with the offering and sale of the Shares other than a preliminary prospectus, the Prospectus, and any Issuer Free Writing Prospectus reviewed and consented to by the Representatives and included in Schedule II hereto.

(j) The Company and each of its subsidiaries that is a “Significant Subsidiary” within the meaning of such term as defined in Rule 1-02 of Regulation S-X of the Commission (the “Significant Subsidiaries”) is validly existing as a corporation (or, in the case of each of Capital One Bank (USA), National Association and Capital One, National Association, as a national banking association organized under the laws of the United States, or, in the case of ING Bank, fsb, a federal stock savings bank organized under the laws of the United States) in good standing under the laws of its jurisdiction of incorporation and has in all material respects the corporate power and authority to operate its business as it is currently being conducted and to own, lease and operate its properties, and each is duly qualified and is in good standing as a foreign corporation authorized to do business in each jurisdiction in which the nature of its business or its ownership or leasing of property requires such qualification, except where the failure to be so qualified would not have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(k) All of the outstanding shares of capital stock of, or other ownership interests in, each of the Company’s Significant Subsidiaries have been duly authorized and validly issued and are fully paid and non-assessable, and are owned by the Company, free and clear of any security interest, claim, lien, encumbrance or adverse interest of any nature.

(l) The Company has an authorized capitalization as set forth under the consolidated balance sheet data contained in the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2012; all of the outstanding shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable and are not subject to any preemptive or similar rights; except as described in the Registration Statement, the Prospectus and the Disclosure Package, there are no outstanding rights (including, without limitation, pre-emptive rights), warrants or options to acquire, or instruments convertible into or exchangeable for, any shares of capital stock or other equity interest in the Company or any of its subsidiaries, or any contract, commitment, agreement, understanding or arrangement of any kind relating to the issuance of any capital stock of the Company or any such subsidiary, any such convertible or exchangeable securities or any such rights, warrants or options; the capital stock of the Company, including the Shares and the Preferred Stock, conforms in all material respects to the description thereof contained in the Registration Statement, the Prospectus and the Disclosure Package.

(m) The Shares have been duly authorized and, when issued and delivered to the Underwriters against payment therefor as provided by this Agreement, will be validly issued and, upon deposit of the Preferred Stock with the Depositary pursuant to the Deposit Agreement, and the due execution of the Deposit Agreement and the Depositary Receipts by the Depositary, will be entitled to the rights under, and the benefits of, the Deposit Agreement.

(n) The Preferred Stock represented by the Shares has been duly authorized and, when the Shares are issued and delivered against payment therefor pursuant to this Agreement, the Preferred Stock will be validly issued, fully paid and non-assessable, and will have the rights set forth in the Certificate of Designations for the Preferred Stock.

(o) This Agreement has been duly authorized, executed and delivered by the Company and is a valid and binding agreement of the Company enforceable in accordance with its terms (except as limited by (i) bankruptcy, insolvency or similar laws affecting creditors' rights generally and (ii) equitable principles of general applicability and as rights to indemnity and contribution hereunder may be limited by applicable law).

(p) The Deposit Agreement has been duly authorized, executed and delivered by the Company and is a valid and binding agreement of the Company enforceable in accordance with its terms (except as limited by (i) bankruptcy, insolvency or similar laws affecting creditors' rights generally and (ii) equitable principles of general applicability and as rights to indemnity and contribution hereunder may be limited by applicable law).

(q) Neither the Company nor any of its Significant Subsidiaries is in violation of its respective charter or by-laws or in default in any material respect in the performance of any obligation, agreement or condition contained in any bond, debenture, note or other evidence of indebtedness material to the Company and its subsidiaries,

taken as a whole, or in any other agreement, indenture or instrument material to the conduct of the business of the Company and its subsidiaries, taken as a whole, to which the Company or any of its Significant Subsidiaries is a party or by which it or any of its Significant Subsidiaries or their respective property is bound.

(r) The execution, delivery and performance of this Agreement and the Deposit Agreement, the issuance and sale of the Shares and compliance by the Company with all the provisions hereof and thereof and the consummation by the Company of the transactions contemplated hereby and thereby will not require any consent, approval, authorization or other order of any court, regulatory body, administrative agency or other governmental body (except those that have been previously received from the U.S. Department of the Treasury and the Federal Reserve Board and as such may be required under the securities or Blue Sky laws of the various states) and will not conflict with or constitute a breach of any of the terms or provisions of, or a default under, the charter or by-laws of the Company or any of its Significant Subsidiaries or any material indenture, agreement, or other instrument to which it or any of its Significant Subsidiaries is a party or by which it or any of its Significant Subsidiaries or their respective property is bound, or violate or conflict with any laws, administrative regulations or rulings or court decrees applicable to the Company, any of its Significant Subsidiaries or their respective property.

(s) Except as otherwise set forth in the Disclosure Package, there are no material legal or governmental proceedings pending to which the Company or any of its subsidiaries is a party or of which any of their respective property is the subject, and, to the best of the Company's knowledge, no such proceedings are threatened or contemplated. No contract or document of a character required to be described in the Registration Statement or the Prospectus or to be filed as an exhibit to the Registration Statement is not so described or filed as required.

(t) The Company and each of its Significant Subsidiaries are in compliance in all material respects with all laws administered by and regulations of the U.S. Department of Treasury, Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and any other federal or state bank regulatory authority with jurisdiction over the Company or any of its subsidiaries (the "Bank Regulatory Authorities"), other than where such failures to comply would not have a material adverse effect on the Company and its subsidiaries, taken as a whole. Except in each case as set forth in the Disclosure Package and the Prospectus, neither the Company nor any of its Significant Subsidiaries is a party to any written agreement or memorandum of understanding with, or a party to any commitment letter or similar undertaking to, or is subject to any order or directive by, or is a recipient of any extraordinary supervisory letter from, or has adopted any board resolutions at the request of, any Bank Regulatory Authority which restricts materially the conduct of its business, or requires any material change in its policies or practices relating to capital, credit or management, nor have any of them been advised by any Bank Regulatory Authority that it is contemplating issuing or requesting (or is considering the appropriateness of issuing or requesting) any such order, decree, agreement, memorandum of understanding, extraordinary supervisory letter, commitment letter or similar submission, or any such board resolutions.

(u) The Company and each of its subsidiaries has such permits, licenses, franchises and authorizations of governmental or regulatory authorities (“permits”), as are necessary to own, lease and operate its respective properties that are material to the Company and its subsidiaries, taken as a whole, or to the conduct of the business of the Company and its subsidiaries, taken as a whole; the Company and each of its subsidiaries has fulfilled and performed all of its material obligations with respect to such permits and no event has occurred which allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any other material impairment of the rights of the holder of any such permit; and, except as described in the Disclosure Package and the Prospectus, such permits contain no restrictions that are materially burdensome to the Company and its subsidiaries, taken as a whole.

(v) Ernst & Young LLP are independent public accountants with respect to the Company as required by the Securities Act.

(w) To the knowledge of the Company, Ernst & Young LLP, who have reviewed certain financial statements of ING Bank, fsb, a federal stock savings bank (“ING Direct”) and its subsidiaries, are independent public accountants with respect to ING Direct and its subsidiaries within the applicable rules and regulations adopted by the Commission and the Public Company Accounting Oversight Board (United States).

(x) To the knowledge of the Company, KPMG LLP, who have reviewed certain financial statements of the Acquired Assets and the Assumed Liabilities, each as defined under that certain HSBC Purchase and Sale Agreement dated August 10, 2011 among HSBC Finance Corporation, HSBC USA Inc., HSBC Technology and Services (USA) Inc. and the Company, are independent public accountants with respect to the Acquired Assets and the Assumed Liabilities within the applicable rules and regulations adopted by the Commission and the Public Company Accounting Oversight Board (United States).

(y) The consolidated financial statements, together with related schedules and notes forming part of the Registration Statement, the Disclosure Package and the Prospectus (and any amendment or supplement thereto), present fairly in all material respects the consolidated financial position, results of operations and cash flows of the Company and its consolidated subsidiaries on the basis stated in the Registration Statement at the respective dates or for the respective periods to which they apply; such statements and related schedules and notes have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods involved, except as disclosed therein; and the other financial and statistical information and data set forth in the Registration Statement, Disclosure Package and the Prospectus (and any amendment or supplement thereto) is, in all material respects, accurately presented and prepared on a basis consistent with such consolidated financial statements and the books and records of the Company. The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement,

the Disclosure Package and the Prospectus fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines applicable thereto.

(z) The unaudited pro forma condensed combined financial information of the Company, ING Direct and the Acquired Assets and the Assumed Liabilities and the related notes thereto included or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus (and any amendment or supplement thereto) have been prepared in accordance with the Commission's rules and guidelines with respect to pro forma financial statements and have been properly presented on the bases described therein, and the assumptions used in the preparation thereof are reasonable, the adjustments used therein are appropriate to give effect to the transactions referred to therein and the pro forma information reflects the proper application of those adjustments to the historical financial statement amounts in the pro forma financial statements.

(aa) To the knowledge of the Company, the consolidated financial statements of ING Direct, together with related schedules and notes of ING Direct, included in or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus (and any amendment or supplement thereto), present fairly in all material respects the consolidated financial position, results of operations and cash flows of ING Direct and its consolidated subsidiaries on the basis stated in such documents as of their at the respective dates or for the respective periods to which they apply; to the knowledge of the Company, such statements and related schedules and notes have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods involved, except as disclosed therein; and, to the knowledge of the Company, the other financial and statistical information and data of ING Direct set forth in the Registration Statement, Disclosure Package and the Prospectus (and any amendment or supplement thereto) is, in all material respects, accurately presented and prepared on a basis consistent with such consolidated financial statements and the books and records of ING Direct.

(bb) To the knowledge of the Company, the consolidated financial statements of the Acquired Assets and the Assumed Liabilities, together with related schedules and notes of the Acquired Assets and the Assumed Liabilities, included in or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus (and any amendment or supplement thereto), present fairly in all material respects the consolidated financial position, results of operations and cash flows of the Acquired Assets and the Assumed Liabilities on the basis stated in such documents as of their respective dates or for the respective periods to which they apply; to the knowledge of the Company, such statements and related schedules and notes have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods involved, except as disclosed therein; and, to the knowledge of the Company, the other financial and statistical information and data of the Acquired Assets and the Assumed Liabilities set forth in the Registration Statement, Disclosure Package and the Prospectus (and any amendment or supplement thereto) is, in all material respects, accurately presented and prepared on a basis consistent with such consolidated financial statements and the books and records with respect to the Acquired Assets and the Assumed Liabilities.

(cc) The Company is not, and will not be after giving effect to the consummation of the transactions contemplated by this Agreement, including the application of the net proceeds from the sale of the Shares, required to register under the provisions of the Investment Company Act of 1940, as an “investment company” amended (the “Investment Company Act”), and is not required to take any other action with respect to or under the Investment Company Act for such transactions or the offer and sale of the Shares as contemplated thereunder or hereunder.

(dd) The Company maintains (i) effective internal control over financial reporting as defined under Rule 13a-15(f) of the Exchange Act, and (ii) a system of internal accounting controls sufficient to provide reasonable assurance that (A) transactions are executed in accordance with management’s general or specific authorizations; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (C) access to assets is permitted only in accordance with management’s general or specific authorization; and (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(ee) Except as disclosed in the Prospectus and the Disclosure Package, or in any document incorporated by reference therein, since the end of the Company’s most recent audited fiscal year, there has been (i) no material weakness in the Company’s internal control over financial reporting (whether or not remediated) and (ii) no change in the Company’s internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company’s internal control over financial reporting.

(ff) None of the Company, any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries is aware of or has taken any action, directly or indirectly, including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any “foreign official” ((including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) to influence official action or secure an improper advantage; and the Company, its subsidiaries and, to the knowledge of the Company, its affiliates have conducted their businesses in compliance in all material respects with applicable anti-corruption laws and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(gg) None of the Company, any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries is currently the subject of any sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury (“OFAC”); and the Company will not directly or indirectly use the proceeds of the offering of the Shares hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of or with any person or entity or in any country or territory that, at the time of such financing, is the subject of any sanctions administered by OFAC.

(hh) The operations of the Company and its subsidiaries are in material compliance with applicable financial recordkeeping and reporting requirements, including those of the Currency and Foreign Transactions Reporting Act of 1970, as amended, Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), the applicable anti-money laundering statutes of all jurisdictions in which the Company and its subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency having jurisdiction over the Company and its subsidiaries (collectively, the “Money Laundering Laws”) and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened, which could reasonably be expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(ii) The charges, accruals and reserves on the books of the Company in respect of any income and corporation tax liability for any years not finally determined are adequate to meet any assessments or re-assessments for additional income tax for any years not finally determined, except to the extent of any inadequacy that would not have a material adverse affect on the Company and its subsidiaries, taken as a whole.

(jj) Since the date of the most recent financial statements of the Company included or incorporated by reference in the Registration Statement, the Prospectus and the Disclosure Package, (i) there has not been any change in the capital stock or any material change in the long-term debt of the Company, or any dividend or distribution of any kind declared, set aside for payment, paid or made by the Company on any class of capital stock (other than ordinary course dividends and equity issuances under the Company’s existing employee compensation plans), or any material adverse change, or any development involving a prospective material adverse change, in or affecting the business, properties, management, financial position, stockholders’ equity, results of operations or prospects of the Company and its subsidiaries, taken as a whole; (ii) neither the Company nor any of its subsidiaries has entered into any transaction or agreement (other than transactions entered into in the ordinary course of the Company’s business) that is material to the Company and its subsidiaries, taken as a whole, or incurred any liability or obligation, direct or contingent, that is material to the Company’s and its subsidiaries, taken as a whole; (iii) neither the Company nor any of its subsidiaries has

sustained any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or any action, order or decree of any court or arbitrator or governmental regulatory authority, except in each case as otherwise disclosed in the Registration Statement, the Prospectus and the Disclosure Package.

(kk) The Company has not taken, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of the Shares.

7. Representations and Warranties of the Underwriters. Each Underwriter hereby represents and agrees that (other than the Final Term Sheet) it has not and will not make any offer relating to the Shares that would constitute a “free writing prospectus” as defined in Rule 405 under the Securities Act without the prior consent of the Company or as permitted in Section 5(e) above and that Schedule II hereto is a complete list of any free writing prospectus for which the Underwriters have received such consent.

8. Indemnification. (a) The Company agrees to indemnify and hold harmless each Underwriter, each of its directors and each of its officers and agents and each person, if any, who controls the Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act and each affiliate of any Underwriter within the meaning of Rule 405 under the Securities Act, from and against any and all losses, claims, damages, liabilities and judgments arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, the Prospectus, the Disclosure Package or any Issuer Free Writing Prospectus (each as amended or supplemented if the Company shall have furnished any amendments or supplements thereto) or any preliminary prospectus, or arising out of or based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such losses, claims, damages, liabilities or judgments are caused by any such untrue statement or omission or alleged untrue statement or omission based upon information relating to any Underwriter furnished in writing to the Company by or on behalf of such Underwriter through the Representatives expressly for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Underwriter consists of the information described as such in this Section 8.

(b) In case any action shall be brought against any indemnified party based upon any preliminary prospectus, the Registration Statement, the Prospectus or the Disclosure Package or any amendment or supplement thereto and with respect to which indemnity may be sought against the Company, such indemnified party shall promptly notify the Company in writing and the Company shall assume the defense thereof, including the employment of counsel reasonably satisfactory to such indemnified party and payment of all fees and expenses. Any indemnified party shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the employment of such counsel shall have been specifically authorized in writing by the Company, (ii) the Company shall have failed to assume the defense and

employ counsel or (iii) the named parties to any such action (including any impleaded parties) include both such indemnified party and the Company and such indemnified party shall have been advised by such counsel that there may be one or more legal defenses available to it which are different from or additional to those available to the Company (in which case the Company shall not have the right to assume the defense of such action on behalf of such indemnified party, it being understood, however, that the Company shall not, in connection with any one such action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys (in addition to any local counsel) for all such indemnified parties, which firm shall be designated in writing by the Representatives, and that all such reasonable fees and expenses shall be reimbursed as they are incurred). The Company shall not be liable for any settlement of any such action effected without its written consent but if settled with the written consent of the Company, the Company agrees to indemnify and hold harmless any indemnified party from and against any loss or liability by reason of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes (i) an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding and (ii) does not include any statement as to, or an admission of, fault, culpability or failure to act by or on behalf of any indemnified party.

(c) Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Company, each of its directors and each of its officers who signs the Registration Statement and each person controlling the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, to the same extent as the foregoing indemnity from the Company to each Underwriter but only to the extent of losses, claims, damages, liabilities and judgments arising out of or based upon information relating to such Underwriter furnished in writing by or on behalf of such Underwriter expressly for use in the Registration Statement, the Base Prospectus, the Disclosure Package or the Prospectus. The Representatives confirm that the Underwriters' names on the cover page of the preliminary prospectus supplement and the Prospectus and the Underwriters' names in the first paragraph, the first sentence of the second paragraph, the fourth paragraph, the fifth and sixth sentences of the eighth paragraph, the eleventh paragraph, the second sentence of the twelfth paragraph and the thirteenth paragraph under the heading "Underwriting" in the preliminary prospectus supplement and the Prospectus were furnished in writing to the Company by or on behalf of the Underwriters expressly for use therein. In case any action shall be brought against the Company, any of its directors, any such officer or any person controlling the Company based on the Registration Statement, the Base Prospectus, any preliminary prospectus or the Prospectus and in respect of which indemnity may be sought against any Underwriter, the Underwriter shall have the rights and duties given to the Company (except that if the Company shall have assumed the defense thereof, such Underwriter shall not be required to do so, but may employ separate counsel therein and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of

the Underwriter), and the Company, its directors, any such officers and any person controlling the Company shall have the rights and duties given to the Underwriter, by Section 8(b) hereof.

(d) If the indemnification provided for in paragraphs (a), (b) and (c) of this Section 8 is unavailable to an indemnified party in respect of any losses, claims, damages, liabilities or judgments referred to therein, then each indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages, liabilities and judgments (i) in such proportion as is appropriate to reflect the relative benefits received by the indemnifying party on the one hand and the indemnified party on the other hand from the offering of the Shares or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the indemnifying party on the one hand and the indemnified party on the other hand in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or judgments, as well as any other relevant equitable considerations. The relative benefits received by the Company and the Underwriters shall be deemed to be in the same proportion as the total net proceeds from the offering of the Shares (before deducting expenses) received by the Company, and the total underwriting discounts and commissions received by the Underwriters, bear to the total price to the public of the Shares, in each case as set forth in the table on the cover page of the Prospectus. The relative fault of the Company and the Underwriters shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Company or the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 8(d) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an indemnified party as a result of the losses, claims, damages, liabilities or judgments referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 8, no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Shares underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' respective obligations to contribute pursuant to this Section 8(d) are several in proportion to the respective number of Shares purchased by the Underwriters hereunder and not joint.

9. Conditions of Underwriters' Obligations. The several obligations of the Underwriters to purchase the Shares under this Agreement are subject to the satisfaction of each of the following conditions:

(a) All the representations and warranties of the Company contained in this Agreement shall be true and correct on the Closing Date and the Option Closing Date, if any, with the same force and effect as if made on and as of the Closing Date or such Option Closing Date, as applicable.

(b) The Prospectus shall have been filed with the Commission in the manner and within the time period required by Rule 424(b) under the Securities Act, and at the Closing Date and the Option Closing Date, if any, no stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been commenced or shall be pending before or, to the best knowledge of the Company, contemplated by the Commission.

(c) Any material required to be filed by the Company pursuant to Rule 433(d) under the Securities Act, shall have been filed with the Commission within the applicable time periods prescribed for such filings under Rule 433.

(d) Subsequent to the execution and delivery of this Agreement and prior to the Closing Date and the Option Closing Date, if any, there shall not have been any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded any of the Company's securities by any "nationally recognized statistical rating organization", as such term is defined under Section 3(a)(62) of the Exchange Act.

(e) (i) Since the date of the latest balance sheet included in the Registration Statement and the Prospectus, there shall not have been any material adverse change, or any development involving a prospective material adverse change, in the condition, financial or otherwise, or in the earnings, affairs or business prospects, whether or not arising in the ordinary course of business, of the Company and its subsidiaries taken as a whole, except as set forth or contemplated in the Prospectus, (ii) since the date of the latest balance sheet included in the Registration Statement and the Prospectus there shall not have been any material adverse change, or any development involving a prospective material adverse change, in the capital stock or in the long-term debt of the Company from that set forth or contemplated in the Registration Statement and Prospectus, (iii) the Company and its subsidiaries shall have no liability or obligation, direct or contingent, which is material to the Company and its subsidiaries, taken as a whole, other than those reflected in the Registration Statement and the Prospectus and (iv) on the Closing Date and the Option Closing Date, if any, the Underwriters shall have received a certificate dated the Closing Date or such Option Closing Date, as applicable, signed by the Chief Financial Officer and the Treasurer of the Company, confirming the matters set forth in paragraphs (a), (b), (c), (d) and (e) (i) – (iii) of this Section 9.

(f) The Underwriters shall have received on the Closing Date and the Option Closing Date, if any, an opinion (reasonably satisfactory to the Representatives and counsel for the Underwriters, as applicable), dated the Closing Date or such Option Closing Date, as applicable, of a Chief Counsel or General Counsel of the Company or such other person as the Representatives and the Company may agree. The opinion of such counsel shall be rendered to the Underwriters at the request of the Company and shall so state therein.

(g) The Underwriters shall have received on the Closing Date and the Option Closing Date, if any, an opinion (reasonably satisfactory to the Representatives and counsel for the Underwriters, as applicable), dated the Closing Date or such Option Closing Date, as applicable, of Gibson, Dunn & Crutcher LLP, special counsel to the Company.

(h) The Underwriters shall have received on the Closing Date and the Option Closing Date, if any, an opinion, dated the Closing Date or such Option Closing Date, as applicable, of Morrison & Foerster LLP, counsel for the Underwriters, covering such matters as the Representatives may request.

(i) The Underwriters shall have received letters on and as of the date hereof and on and as of the Closing Date and the Option Closing Date, if any, in form and substance satisfactory to the Representatives, from Ernst & Young LLP, independent public accountants, with respect to the financial statements and certain financial information of the Company contained in the Registration Statement, any preliminary prospectus and the Prospectus.

(j) The Underwriters shall have received letters on and as of the date hereof and on and as of the Closing Date and the Option Closing Date, if any, in form and substance satisfactory to the Representatives, from Ernst & Young LLP, independent public accountants, with respect to the financial statements and certain financial information of ING Direct contained in the Registration Statement, any preliminary prospectus and the Prospectus.

(k) The Underwriters shall have received letters on and as of the date hereof and on and as of the Closing Date and the Option Closing Date, if any, in form and substance satisfactory to the Representatives, from KPMG LLP independent public accountants, with respect to the financial statements and certain financial information of the Acquired Assets and the Assumed Liabilities contained in the Registration Statement, any preliminary prospectus and the Prospectus.

(l) The Company shall not have failed at or prior to the Closing Date and the Option Closing Date, if any, to perform or comply with any of the agreements herein contained and required to be performed or complied with by the Company at or prior to the Closing Date or such Option Closing Date, as applicable.

10. Effective Date of Agreement and Termination. This Agreement shall become effective upon the execution of this Agreement.

This Agreement may be terminated at any time prior to the Closing Date by the Representatives by written notice to the Company if any of the following has occurred: (i) since the respective dates as of which information is given in the Registration Statement and Prospectus and since the Time of Sale, any material adverse change or development involving a prospective material adverse change (including, without limitation, the enactment, publication, decree or other promulgation of any federal or state statute, regulation, rule or order of any court or other governmental authority) in the condition, financial or otherwise, of the Company and its subsidiaries taken as a whole or the earnings, affairs, or business prospects of the Company and its subsidiaries taken as a whole, whether or not arising in the ordinary course of business, which would, in the judgment of the Representatives, make it impracticable to market the Shares on the terms and in the manner contemplated in the Prospectus, (ii) any outbreak or escalation of hostilities or other national or international calamity or crisis (including, without limitation, an act of terrorism) or change in economic conditions or in the financial markets of the United States or elsewhere that, in the judgment of the Representatives, is material and adverse and would, in the judgment of the Representatives, make it impracticable to market the Shares on the terms and in the manner contemplated in the Prospectus, (iii) the suspension or material limitation of trading in securities generally, or in the securities of the Company listed, on the NYSE, the NYSE Amex Equities or The NASDAQ Stock Market, limitation on prices on any such exchange, (iv) a material disruption in securities settlement that makes it impracticable to deliver the Shares in the manner contemplated by the Prospectus, or (v) the taking of any action by any federal, state or local government or agency in respect of its monetary or fiscal affairs which in the opinion of the Representatives has a material adverse effect on the financial markets in the United States.

If on the Closing Date any one or more of the Underwriters shall fail or refuse to purchase and pay for any of the Initial Shares which it or they have agreed to purchase hereunder on such date and the number of Initial Shares which such defaulting Underwriter or Underwriters, as the case may be, agreed but failed or refused to purchase is not more than one-tenth of the total number of Initial Shares to be purchased on such date by all Underwriters, each non-defaulting Underwriter shall be obligated severally, in the proportion which the number of Initial Shares set forth opposite its name in Schedule I bears to the total number of Initial Shares which all the non-defaulting Underwriters, as the case may be, have agreed to purchase, or in such other proportion as the Representatives may specify, to purchase the Initial Shares which such defaulting Underwriter or Underwriters, as the case may be, agreed but failed or refused to purchase on such date; provided that in no event shall the number of Initial Shares which any Underwriter has agreed to purchase pursuant to Section 2 hereof be increased pursuant to this Section 10 by an amount in excess of one-ninth of the number of Initial Shares without the written consent of such Underwriter. If on the Closing Date any Underwriter or Underwriters shall fail or refuse to purchase Initial Shares and the aggregate number of Shares with respect to which such default occurs is more than one-tenth of the aggregate number of Initial Shares to be purchased on such date by all Underwriters and arrangements satisfactory to the Representatives and the Company for purchase of such Initial Shares are not made within 48 hours after such default, this Agreement will terminate without liability on the part of any non-defaulting Underwriter or the Company.

In any such case which does not result in termination of this Agreement, either the Representatives or the Company shall have the right to postpone the Closing Date, but in no event for longer than seven days, in order that the required changes, if any, in the Registration Statement and the Prospectus or any other documents or arrangements may be effected. Any action taken under this paragraph shall not relieve any defaulting Underwriter from liability in respect of any default of any such Underwriter under this Agreement.

11. No Agency or Fiduciary Duty. The Company acknowledges and agrees that: (i) the purchase and sale of the Shares pursuant to this Agreement, including the determination of the public offering price of the Shares and any related discounts and commissions, is an arm's length commercial transaction between the Company, on the one hand, and the several Underwriters, on the other hand, and the Company is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement; (ii) in connection with each transaction contemplated hereby, each Underwriter is and has been acting solely as a principal and is not the agent or fiduciary of the Company or its affiliates, stockholders, creditors or employees or any other party; (iii) no Underwriter has assumed an advisory, agency or fiduciary responsibility in favor of the Company with respect to any of the transactions contemplated hereby (irrespective of whether such Underwriter has advised or is currently advising the Company on other matters) and no Underwriter has any obligation to the Company with respect to the offering contemplated hereby except the obligations expressly set forth in this Agreement; (iv) the several Underwriters and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company and the several Underwriters have no obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Underwriters have not provided any legal accounting, regulatory or tax advice with respect to the offering contemplated hereby and the Company has consulted its own legal, accounting, regulatory and tax advisors to the extent it deemed appropriate.

This Agreement supersedes all prior agreements and understandings (whether written or oral) among the Company and the several Underwriters, or any of them, with respect to the subject matter hereof. The Company hereby waives and releases, to the fullest extent permitted by law, any claims that the Company may have against the several Underwriters with respect to any breach or alleged breach of agency or fiduciary duty.

12. Miscellaneous. Notices given pursuant to any provision of this Agreement shall be addressed as follows: (a) if to the Company, to Capital One Financial Corporation, 1680 Capital One Drive, McLean, VA 22102, Attention: Director of Capital Markets, and (b) if to the Underwriters, to J.P. Morgan Securities LLC, 383 Madison Avenue, 3rd Floor, New York, NY 10179, Facsimile: (212) 834-6081, Attention: High Grade Syndicate Desk – 3rd Floor, Merrill Lynch, Pierce, Fenner & Smith Incorporated, 50 Rockefeller Plaza, NY1-050-12-02, New York, NY 10020, Facsimile: (646) 855-5958, Attention: High Grade Transaction Management/Legal, Morgan Stanley & Co. LLC, 1585 Broadway, New York, NY 10036, Facsimile: (212) 507-8999, Attention: Equity Syndicate Desk, with a copy to the Legal Department, UBS Securities LLC, 677

Washington Boulevard, Stamford, CT 06901, Facsimile: (203) 719-0495, Attention: Fixed Income Syndicate, and Wells Fargo Securities, LLC, 301 S. College Street, 6th Floor, Charlotte, NC 28288, Facsimile: (704) 383-9165, Attention: Transaction Management, or in any case to such other address as the person to be notified may have requested in writing.

13. Representations and Indemnities to Survive. The respective indemnities, contribution agreements, representations, warranties and other statements of the Company, its officers and directors and of the several Underwriters set forth in or made pursuant to this Agreement shall remain operative and in full force and effect, and will survive delivery of and payment for the Shares, regardless of (i) any investigation, or statement as to the results thereof, made by or on behalf of any Underwriter or by or on behalf of the Company, the officers or directors of the Company or any controlling person of the Company, (ii) acceptance of the Shares and payment for them hereunder and (iii) termination of this Agreement.

14. Reimbursement of Underwriters' Expenses. If this Agreement shall be terminated by the Underwriters for any reason under Section 10 of this Agreement, or because of any failure or refusal on the part of the Company to comply with the terms or to fulfill any of the conditions of this Agreement, the Company agrees to reimburse the several Underwriters for all out-of-pocket expenses (including the fees and disbursements of counsel) reasonably incurred by them.

15. Successors. Except as otherwise provided, this Agreement has been and is made solely for the benefit of and shall be binding upon the parties hereto, any director or officer of the Company referred to herein, any affiliated broker-dealer of an Underwriter referred to herein and any controlling persons referred to herein and any affiliate referred to herein and their respective successors and assigns, all as and to the extent provided in this Agreement, and no other person shall acquire or have any right under or by virtue of this Agreement. The term "successors and assigns" shall not include a purchaser of any of the Shares from any of the several Underwriters merely because of such purchase.

16. Applicable Law. This Agreement shall be governed and construed in accordance with the laws of the State of New York without reference to choice of law principles thereof.

17. Counterparts. This Agreement may be signed in various counterparts which together shall constitute one and the same instrument.

Please confirm that the foregoing correctly sets forth the agreement among the Company and the several Underwriters.

Very truly yours,

CAPITAL ONE FINANCIAL CORPORATION

By: /s/ Stephen Linehan

Name: Stephen Linehan

Title: Treasurer

Accepted:

J.P. MORGAN SECURITIES LLC
MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED
MORGAN STANLEY & CO. LLC
UBS SECURITIES LLC
WELLS FARGO SECURITIES, LLC

Acting on behalf of themselves and the several Underwriters
named in Schedule I hereto

By: J.P. MORGAN SECURITIES LLC

By: /s/ Robert Bottamedi

Name: Robert Bottamedi

Title: Vice President

By: MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

By: /s/ Matt Basler

Name: Matt Basler

Title: MD

By: MORGAN STANLEY & CO. LLC

By: /s/ Yurij Slyz

Name: Yurij Slyz

Title: ED

By: UBS SECURITIES LLC

By: /s/ Bill Yialamas

Name: Bill Yialamas

Title: Executive Director

Dept Capital Markets

By: /s/ Mehdi Manii

Name: Mehdi Manii

Title: Associate Director

UBS Securities LLC

By: WELLS FARGO SECURITIES, LLC

By: /s/ Carolyn Hurley

Name: Carolyn Hurley

Title: Director

SCHEDULE I

<u>Underwriters</u>	Number of Initial Shares To Be Purchased
J.P. Morgan Securities LLC	6,020,000
Merrill Lynch, Pierce, Fenner & Smith Incorporated	6,020,000
Morgan Stanley & Co. LLC	6,020,000
UBS Securities LLC	6,020,000
Wells Fargo Securities, LLC	6,020,000
Barclays Capital Inc.	700,000
Deutsche Bank Securities Inc.	700,000
Goldman, Sachs & Co.	700,000
RBS Securities Inc.	700,000
Janney Montgomery Scott LLC	175,000
Oppenheimer & Co. Inc.	175,000
RBC Dain Rauscher Inc.	175,000
Stifel, Nicolaus & Company, Incorporated	175,000
B.C. Ziegler and Company	87,500
Blaylock Robert Van, LLC	87,500
C.L. King & Associates, Inc.	87,500
Cabrera Capital Markets, LLC	87,500
City Securities Corporation	87,500
D.A. Davidson & Co.	87,500
Davenport & Company LLC	87,500
Halliday (HRC Investments Inc.)	87,500
J.J.B. Hilliard, W.L. Lyons, LLC	87,500
Keefe, Bruyette & Woods, Inc.	87,500
Muriel Siebert & Co., Inc.	87,500
Robert W. Baird & Co. Incorporated	87,500
Samuel A. Ramirez & Co., Inc.	87,500
Sterne, Agee & Leach, Inc.	87,500
Wedbush Securities Inc.	87,500
William Blair & Company, L.L.C.	87,500
Total	35,000,000

SCHEDULE II

Final Term Sheet, dated August 13, 2012

SII-1

**DEPOSITARY SHARES EACH REPRESENTING A 1/40TH INTEREST IN A SHARE OF
FIXED RATE NON-CUMULATIVE PERPETUAL PREFERRED STOCK, SERIES B**

Pricing Term Sheet

Issuer:	Capital One Financial Corporation
Security:	Depository shares (the "Depository Shares") each representing a 1/40 th interest in a share of Fixed Rate Non-Cumulative Perpetual Preferred Stock, Series B of the Issuer (the "Preferred Stock")
Expected Security Ratings:*	Ba1 / BB+ / BB (Moody's / S&P / Fitch)
Size:	\$875,000,000 (35,000,000 Depository Shares)
Over-allotment Option:	\$125,000,000 (5,000,000 Depository Shares)
Liquidation Preference:	\$25 per Depository Share (equivalent to \$1,000 per share of Preferred Stock)
Term:	Perpetual
Dividend Rate (Non-Cumulative):	6.00% per annum
Dividend Payment Dates:	Quarterly in arrears on March 1, June 1, September 1 and December 1 of each year, commencing on December 1, 2012
Day Count:	30/360
Trade Date	August 13, 2012
Settlement Date:	August 20, 2012 (T+5)
Optional Redemption:	The Issuer may redeem the Preferred Stock at its option, (i) in whole or in part, from time to time, on any dividend payment date on or after September 1, 2017 at a redemption price equal to \$1,000 per share (equivalent to \$25 per Depository Share), plus any declared and unpaid dividends, or (ii) in whole but not in part, at any time within 90 days following a regulatory capital treatment event (as defined in the preliminary prospectus supplement dated August 13, 2012), at a redemption price equal to \$1,000 per share (equivalent to \$25 per Depository Share), plus any declared and unpaid dividends.
Listing:	Application will be made to list the Depository Shares on the New York Stock Exchange (the "NYSE") under the symbol "COFPRP." Trading of the Depository Shares on the NYSE is expected to commence within a 30-day period after the original issuance date of the Depository Shares.
Public Offering Price:	\$25 per Depository Share
Underwriting Discounts and Commissions:	\$0.6343 per Depository Share
Net Proceeds (before expenses) to Issuer:	\$852,798,597.50
Joint Book-Running Managers:	J.P. Morgan Securities LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co. LLC, UBS Securities LLC and Wells Fargo Securities, LLC
Co-Managers:	Barclays Capital Inc., Deutsche Bank Securities Inc., Goldman, Sachs & Co. and RBS Securities Inc.
CUSIP/ISIN for the Depository Shares:	14040H402 / US14040H4020

*Note: A securities rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time.

Capital One Financial Corporation has filed a registration statement (including a prospectus and preliminary prospectus supplement) with the SEC for the offering to which this communication relates. Before you invest, you should read each of these documents and the other documents Capital One Financial Corporation has filed with the SEC and incorporated by reference in such documents for more complete information about Capital One Financial Corporation and this offering. You may get these documents for free by visiting EDGAR on the SEC Web site at www.sec.gov. Alternatively, you may obtain a copy of these documents by calling J.P. Morgan Securities LLC at 1-212-834-4533, Merrill Lynch, Pierce, Fenner & Smith Incorporated toll-free at 1-800-294-1322, Morgan Stanley & Co. LLC at 1-866-718-1649, UBS Securities LLC toll-free at 1-877-827-6444 (ext. 561-3884) and Wells Fargo Securities, LLC toll-free at 1-800-326-5897.

Any disclaimers or other notices that may appear below are not applicable to this communication and should be disregarded. Such disclaimers were automatically generated as a result of this communication being sent via Bloomberg or another email system.

CERTIFICATE OF DESIGNATIONS
OF
FIXED RATE NON-CUMULATIVE PERPETUAL PREFERRED STOCK, SERIES B
OF
CAPITAL ONE FINANCIAL CORPORATION

Capital One Financial Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), in accordance with the provisions of Sections 141 and 151 thereof, does hereby certify:

At a meeting of the Board of Directors (the "Board") of the Corporation duly convened and held on January 30 and 31, 2012, the Board duly adopted resolutions (a) authorizing the issuance and sale by the Corporation of one or more series of the Corporation's authorized and unissued preferred stock ("Preferred Stock"), and (b) appointing a Preferred Stock Committee (the "Preferred Stock Committee") of the Board to act on behalf of the Board in, without limitation, approving the terms and conditions of, and authorizing the execution, delivery and filing of any certificate of designations relating to any such series of Preferred Stock fixing the designations, powers, preferences, rights, privileges, qualifications, limitations, restrictions, terms and conditions of such series of Preferred Stock;

Thereafter, on August 13, 2012, the Preferred Stock Committee duly adopted the following resolution creating a series of 1,000,000 shares of Preferred Stock of the Corporation designated as "Fixed Rate Non-Cumulative Perpetual Preferred Stock, Series B" by written consent:

RESOLVED, that pursuant to the provisions of the Restated Certificate of Incorporation and the amended and restated bylaws of the Corporation and applicable law, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be and hereby is created, and that the designation and number of shares of such series, and the voting and other powers, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

Part 1. Designation and Number of Shares. There is hereby created out of the authorized and unissued shares of Preferred Stock a series of Preferred Stock designated as the "Fixed Rate Non-Cumulative Perpetual Preferred Stock, Series B" (hereinafter called "Series B Preferred Stock"). The authorized number of shares of Series B Preferred Stock shall be 1,000,000 shares, \$0.01 par value per share, having a liquidation preference of \$1,000 per share. The number of shares constituting Series B Preferred Stock may be increased from time to time in accordance with law up to the maximum number of shares of Preferred Stock authorized to be issued under the Restated Certificate of Incorporation of the Corporation, as amended, less all shares at the time authorized of any other series of Preferred Stock, and any such additional shares of Series B Preferred Stock would form a single series with the Series B Preferred Stock. Shares of Series B Preferred Stock will be dated the date of issue, which shall be referred to herein as the "original issue date". Shares of outstanding Series B Preferred Stock that are

redeemed, purchased or otherwise acquired by the Corporation, or converted into another series of Preferred Stock, shall be cancelled and shall revert to authorized but unissued shares of Preferred Stock undesignated as to series.

Part 2. Standard Provisions. The Standard Provisions contained in Annex A attached hereto are incorporated herein by reference in their entirety and shall be deemed to be a part of this Certificate of Designations to the same extent as if such provisions had been set forth in full herein.

Part 3. Definitions. The following terms are used in this Certificate of Designations (including the Standard Provisions in Annex A hereto) as defined below:

- (a) "Common Stock" means the common stock, par value \$0.01 per share, of the Corporation.
- (b) "original issue date" means the date of issue of the Series B Preferred Stock.
- (c) "Preferred Stock" means any and all series of preferred stock of the Corporation, including the Series B Preferred Stock.

Part 4. Certain Voting Matters. Holders of shares of Series B Preferred Stock will be entitled to one vote for each such share on any matter on which holders of Series B Preferred Stock are entitled to vote, including any action by written consent.

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IN WITNESS WHEREOF, Capital One Financial Corporation has caused this Certificate of Designations to be signed by the undersigned as of this 16th day of August, 2012.

CAPITAL ONE FINANCIAL CORPORATION

By: /s/ AMY D. COOK

Name: Amy D. Cook

Title: Assistant Secretary

[Certificate of Designations]

STANDARD PROVISIONS

Section 1. Definitions.

(a) “Business Day” means any weekday that is not a legal holiday in New York, New York and that is not a day on which banking institutions in New York, New York are closed.

(b) “DTC” means The Depository Trust Company.

(c) “Regulatory Capital Treatment Event” means the good faith determination by the Corporation that, as a result of (1) any amendment to, or change (including any announced prospective change) in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective after the initial issuance of any share of the Series B Preferred Stock; (2) any proposed change in those laws or regulations that is announced or becomes effective after the initial issuance of any share of the Series B Preferred Stock; or (3) any official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced after the initial issuance of any share of the Series B Preferred Stock, there is more than an insubstantial risk that the Corporation will not be entitled to treat the full liquidation value of the shares of the Series B Preferred Stock then outstanding as “Tier 1 Capital” (or its equivalent) for purposes of the capital adequacy guidelines of Federal Reserve Regulation Y (or, as and if applicable, the capital adequacy guidelines or regulations of any successor appropriate federal banking regulator or agency), as then in effect and applicable, for as long as any share of the Series B Preferred Stock is outstanding.

(d) “Series B Dividend Payment Date” has the meaning set forth in Section 3(b).

(e) “Series B Dividend Period” means the period from and including a Series B Dividend Payment Date to, but excluding, the next Series B Dividend Payment Date, except that the initial Series B Dividend Period will commence on and include the original issue date of Series B Preferred Stock.

(f) “Series B Junior Securities” has the meaning set forth in Section 2(a).

(g) “Series B Parity Securities” has the meaning set forth in Section 2(b).

Section 2. Ranking. The shares of Series B Preferred Stock shall rank:

(a) senior, as to dividends and upon liquidation, dissolution and winding up of the Corporation, to the Common Stock, and to any other class or series of capital stock of the Corporation now or hereafter authorized, issued or outstanding that, by its terms, does not expressly provide that it ranks *pari passu* with the Series B Preferred Stock as to dividends and upon liquidation, dissolution and winding up, as the case may be (collectively, “Series B Junior Securities”); and

(b) on a parity, as to dividends and upon liquidation, dissolution and winding up of the Corporation, with any class or series of capital stock of the Corporation now or hereafter

authorized, issued or outstanding that, by its terms, expressly provides that it ranks *pari passu* with the Series B Preferred Stock as to dividends and upon liquidation, dissolution and winding up, as the case may be (collectively, “Series B Parity Securities”).

(c) The Corporation may authorize and issue additional shares of Series B Junior Securities and Series B Parity Securities without the consent of the holders of the Series B Preferred Stock.

Section 3. Dividends.

(a) Holders of Series B Preferred Stock will be entitled to receive, when, as and if declared by the Board or a duly authorized committee of the Board, out of assets legally available for the payment of dividends under Delaware law, non-cumulative cash dividends based on the liquidation preference of the Series B Preferred Stock at a rate equal to 6.00% per annum for each Series B Dividend Period from the original issue date of the Series B Preferred Stock to, and including, the redemption date of the Series B Preferred Stock, if any. If the Corporation issues additional shares of the Series B Preferred Stock after the original issue date, dividends on such shares will accrue from the date such additional shares are issued.

(b) If declared by the Board or a duly authorized committee of the Board, dividends will be payable on the Series B Preferred Stock (each such date, a “Series B Dividend Payment Date”) quarterly, in arrears, on March 1, June 1, September 1 and December 1 of each year, beginning on December 1, 2012. If any date on which dividends would otherwise be payable is not a Business Day, then the Series B Dividend Payment Date will be the next Business Day, without any adjustment to the amount.

(c) Dividends will be payable to holders of record of Series B Preferred Stock as they appear on the Corporation’s books on the applicable record date, which shall be the 15th calendar day before the applicable Series B Dividend Payment Date, or such other record date, no earlier than 30 calendar days before the applicable Series B Dividend Payment Date, as shall be fixed by the Board or a duly authorized committee of the Board.

(d) Dividends payable on Series B Preferred Stock will be computed on the basis of a 360-day year consisting of twelve 30-day months. Dollar amounts resulting from that calculation will be rounded to the nearest cent, with one-half cent being rounded upwards. Dividends on the Series B Preferred Stock will cease to accrue on the redemption date, if any, unless the Corporation defaults in the payment of the redemption price of the Series B Preferred Stock called for redemption.

(e) Dividends on the Series B Preferred Stock will not be cumulative. If the Board or a duly authorized committee of the Board does not declare a dividend on the Series B Preferred Stock in respect of a Series B Dividend Period, then no dividend shall be deemed to have accrued for such dividend period, be payable on the applicable Series B Dividend Payment Date or be cumulative, and the Corporation will have no obligation to pay any dividend for that Series B Dividend Period, whether or not the Board or a duly authorized committee of the Board declares a dividend for any future Series B Dividend Period with respect to the Series B Preferred Stock, the Corporation’s Common Stock, or any other class or series of the Corporation’s Preferred Stock.

(f) So long as any share of Series B Preferred Stock remains outstanding:

(1) no dividend shall be declared or paid or set aside for payment, and no distribution shall be declared or made or set aside for payment, on any Series B Junior Securities, other than (i) a dividend payable solely in Series B Junior Securities or (ii) any dividend in connection with the implementation of a shareholders' rights plan, or the redemption or repurchase of any rights under any such plan;

(2) no shares of Series B Junior Securities shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than (i) as a result of a reclassification of Series B Junior Securities for or into other Series B Junior Securities, (ii) the exchange or conversion of one share of Series B Junior Securities for or into another share of Series B Junior Securities, (iii) through the use of the proceeds of a substantially contemporaneous sale of other shares of Series B Junior Securities, (iv) purchases, redemptions or other acquisitions of shares of Series B Junior Securities in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of employees, officers, directors or consultants, (v) purchases of shares of Series B Junior Securities pursuant to a contractually binding requirement to buy Series B Junior Securities existing prior to the preceding Series B Dividend Period, including under a contractually binding stock repurchase plan, (vi) the purchase of fractional interests in shares of Series B Junior Securities pursuant to the conversion or exchange provisions of such stock or the security being converted or exchanged, (vii) purchases or other acquisitions by any of the Corporation's broker-dealer subsidiaries solely for the purpose of market making, stabilization or customer facilitation transactions in Series B Junior Securities in the ordinary course of business, (viii) purchases by any of the Corporation's broker-dealer subsidiaries of the Corporation's capital stock for resale pursuant to an offering by the Corporation of such capital stock underwritten by such broker-dealer subsidiary, or (ix) the acquisition by the Corporation or any of the Corporation's subsidiaries of record ownership in junior stock for the beneficial ownership of any other persons (other than for the beneficial ownership by the Corporation or any of the Corporation's subsidiaries), including as trustees or custodians, nor shall any monies be paid to or made available for a sinking fund for the redemption of any such securities by the Corporation); and

(3) no shares of Series B Parity Securities shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly, during a dividend period (other than (i) pursuant to *pro rata* offers to purchase all, or a *pro rata* portion, of the Series B Preferred Stock and such Series B Parity Securities, if any, (ii) as a result of a reclassification of Series B Parity Securities for or into other Series B Parity Securities, (iii) the exchange or conversion of Series B Parity Securities for or into other Series B Parity Securities or Series B Junior Securities, (iv) through the use of the proceeds of a substantially contemporaneous sale of other shares of Series B Parity Securities, (v) purchases of shares of Series B Parity Securities pursuant to a contractually binding requirement to buy Series B Parity Securities existing prior to the preceding dividend period, including under a contractually binding stock repurchase plan, (vi) the purchase of fractional interests in shares of Series B Parity Securities pursuant to the conversion or exchange provisions of such stock or the security

being converted or exchanged, (vii) purchases or other acquisitions by any of the Corporation's broker-dealer subsidiaries solely for the purpose of market making, stabilization or customer facilitation transactions in Series B Parity Securities in the ordinary course of business, (viii) purchases by any of the Corporation's broker-dealer subsidiaries of the Corporation's capital stock for resale pursuant to an offering by the Corporation of such capital stock underwritten by such broker-dealer subsidiary, or (ix) the acquisition by the Corporation or any of the Corporation's subsidiaries of record ownership in Series B Parity Securities for the beneficial ownership of any other persons (other than for the beneficial ownership by the Corporation or any of the Corporation's subsidiaries), including as trustees or custodians, nor shall any monies be paid to or made available for a sinking fund for the redemption of any such securities by the Corporation);

unless, in each case, the full dividends for the preceding Series B Dividend Period on all outstanding shares of Series B Preferred Stock have been declared and paid or declared and a sum sufficient for the payment thereof has been set aside.

(g) The Corporation will not declare or pay or set apart funds for the payment of dividends on any Series B Parity Securities unless the Corporation has paid or set apart funds for the payment of dividends on the Series B Preferred Stock. When dividends are not paid in full upon the shares of Series B Preferred Stock and any Series B Parity Securities, all dividends declared upon shares of Series B Preferred Stock and any Series B Parity Securities will be declared on a proportional basis so that the amount of dividends declared per share will bear to each other the same ratio that accrued dividends for the Series B Preferred Stock, and accrued dividends, including any accumulations, on any Series B Parity Securities, bear to each other for the then-current Series B Dividend Period.

(h) Subject to the foregoing, and not otherwise, dividends (payable in cash, stock or otherwise), as may be determined by the Board or a duly authorized committee of the Board, may be declared and paid on the Common Stock and any other class or any Series B Junior Securities or Series B Parity Securities from time to time out of any assets legally available for such payment, and the holders of Series B Preferred Stock shall not be entitled to participate in any such dividend.

(i) Dividends on the Series B Preferred Stock will not be declared, paid or set aside for payment to the extent such act would cause the Corporation to fail to comply with applicable laws and regulations, including applicable capital adequacy guidelines.

Section 4. Liquidation.

(a) Upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, holders of Series B Preferred Stock are entitled to receive out of assets of the Corporation available for distribution to stockholders, after satisfaction of liabilities to creditors and subject to the rights of holders of any securities ranking senior to Series B Preferred Stock, before any distribution of assets is made to holders of Common Stock or any Series B Junior Securities, a liquidating distribution in the amount of the liquidation preference of \$1,000 per share plus any declared and unpaid dividends, without accumulation of any undeclared dividends. Holders of Series B Preferred Stock will not be entitled to any other amounts from the Corporation after they have received their full liquidating distribution.

(b) In any such distribution, if the assets of the Corporation are not sufficient to pay the liquidation preferences plus declared and unpaid dividends in full to all holders of Series B Preferred Stock and all holders of any Series B Parity Securities, the amounts paid to the holders of Series B Preferred Stock and to the holders of all Series B Parity Securities will be paid *pro rata* in accordance with the respective aggregate liquidating distribution owed to those holders. If the liquidation preference plus declared and unpaid dividends has been paid in full to all holders of Series B Preferred Stock and any Series B Parity Securities, the holders of the Corporation's Series B Junior Securities shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

(c) For purposes of this section, the merger or consolidation of the Corporation with any other entity, including a merger or consolidation in which the holders of Series B Preferred Stock receive cash, securities or property for their shares, or the sale, lease or exchange of all or substantially all of the assets of the Corporation for cash, securities or other property, shall not constitute a liquidation, dissolution or winding up of the Corporation.

Section 5. Redemption.

(a) Series B Preferred Stock is not subject to any mandatory redemption, sinking fund or other similar provisions. Series B Preferred Stock is not redeemable prior to September 1, 2017. On and after that date, Series B Preferred Stock will be redeemable at the option of the Corporation, in whole or in part, on any Series B Dividend Payment Date, at a redemption price equal to \$1,000 per share, plus any declared and unpaid dividends. Holders of Series B Preferred Stock will have no right to require the redemption or repurchase of Series B Preferred Stock. Notwithstanding the foregoing, within 90 days following the occurrence of a Regulatory Capital Treatment Event, the Corporation, at its option, may redeem, at any time, all (but not less than all) of the shares of the Series B Preferred Stock at the time outstanding, at a redemption price equal to \$1,000 per share, plus any declared and unpaid dividends, upon notice given as provided in Subsection (b) below.

(b) If shares of Series B Preferred Stock are to be redeemed, the notice of redemption shall be given by first class mail to the holders of record of Series B Preferred Stock to be redeemed, mailed not less than 30 days nor more than 60 days prior to the date fixed for redemption thereof (provided that, if the depository shares representing Series B Preferred Stock are held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC). Each notice of redemption will include a statement setting forth: (1) the redemption date; (2) the number of shares of Series B Preferred Stock to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where the certificates evidencing shares of Series B Preferred Stock are to be surrendered for payment of the redemption price. On and after the redemption date, dividends will cease to accrue on shares of Series B Preferred Stock, and such shares of Series B Preferred Stock shall no longer be deemed outstanding and all rights of the holders of such shares will terminate, except the right to receive the redemption price plus any declared and unpaid dividends.

(c) In case of any redemption of only part of the shares of Series B Preferred Stock at the time outstanding, the shares to be redeemed shall be selected either *pro rata*, by lot or in such other manner as the Corporation may determine to be equitable.

(d) Any redemption of the Preferred Stock is subject to our receipt of any required prior approval by the Board of Governors of the Federal Reserve System and to the satisfaction of any conditions set forth in the capital guidelines or regulations of the Board of Governors of the Federal Reserve System applicable to redemption of the Preferred Stock.

Section 6. Voting Rights.

(a) Except as provided below or as expressly required by law, the holders of shares of Series B Preferred Stock shall have no voting power, and no right to vote on any matter at any time, either as a separate series or class or together with any other series or class of shares of capital stock, and shall not be entitled to call a meeting of such holders for any purpose, nor shall they be entitled to participate in any meeting of the holders of the Common Stock.

(b) So long as any shares of Series B Preferred Stock remain outstanding, the affirmative vote or consent of the holders of at least two-thirds of all of the shares of Series B Preferred Stock at the time outstanding, voting separately as a class, shall be required to: (1) authorize or increase the authorized amount of, or issue shares of any class or series of stock ranking senior to the Series B Preferred Stock with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up of the Corporation, or issue any obligation or security convertible into or evidencing the right to purchase, any class or series of stock ranking senior to Series B Preferred Stock with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up of the Corporation; (2) amend the provisions of the Corporation's restated certificate of incorporation, as amended, so as to adversely affect the powers, preferences, privileges or rights of Series B Preferred Stock, taken as a whole, provided, however, that any increase in the amount of the authorized or issued shares of Series B Preferred Stock or authorized Common Stock or Preferred Stock or the creation and issuance, or an increase in the authorized or issued amount, of other series of Preferred Stock ranking equally with or junior to Series B Preferred Stock with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) or the distribution of assets upon liquidation, dissolution or winding up of the Corporation will not be deemed to adversely affect the powers, preferences, privileges or rights of Series B Preferred Stock; and (3) consummate a binding share-exchange or reclassification involving the Series B Preferred Stock, or a merger or consolidation of the Corporation with or into another entity unless (i) the shares of the Series B Preferred Stock remain outstanding or are converted into or exchanged for preference securities of the new surviving entity and (ii) the shares of the remaining Series B Preferred Stock or new preferred securities have terms that are not materially less favorable than the Series B Preferred Stock. The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Series B Preferred Stock shall have been redeemed.

(c) If the Corporation fails to pay, or declare and set apart for payment, dividends on outstanding shares of the Series B Preferred Stock for six quarterly dividend periods, whether or not consecutive, the number of directors on the Board shall be increased by two at the

Corporation's first annual meeting of the shareholders held thereafter, and at such meeting and at each subsequent annual meeting until continuous noncumulative dividends for at least one year on all outstanding shares of Series B Preferred Stock entitled thereto shall have been paid, or declared and set apart for payment, in full, the holders of shares of Series B Preferred Stock shall have the right, voting as a class with holders of any other equally ranked series of Preferred Stock that have similar voting rights, to elect such two additional members of the Corporation's Board to hold office for a term of one year. Upon such payment, or such declaration and setting apart for payment, in full, the terms of the two additional directors so elected shall forthwith terminate, and the number of directors shall be reduced by two, and such voting right of the holders of shares of Preferred Stock shall cease, subject to increase in the number of directors as described above and to re-vesting of such voting right in the event of each and every additional failure in the payment of dividends for six quarterly dividend periods, whether or not consecutive, as described above.

Section 7. Conversion Rights. The holders of shares of Series B Preferred Stock shall not have any rights to convert such shares into shares of any other class or series of securities of the Corporation.

Section 8. Preemptive Rights. The holders of shares of Series B Preferred Stock will have no preemptive rights with respect to any shares of the Corporation's capital stock or any of its other securities convertible into or carrying rights or options to purchase any such capital stock.

Section 9. Certificates. The Corporation may at its option issue shares of Series B Preferred Stock without certificates.

Section 10. Transfer Agent. The duly appointed transfer agent for the Series B Preferred Stock shall be Computershare Trust Company, N.A. The Corporation may, in its sole discretion, remove the transfer agent in accordance with the agreement between the Corporation and the transfer agent; provided that the Corporation shall appoint a successor transfer agent who shall accept such appointment prior to the effectiveness of such removal. Upon any such removal or appointment, the Corporation shall send notice thereof by first-class mail, postage prepaid, to the holders of the Series B Preferred Stock.

Section 11. Registrar. The duly appointed registrar for the Series B Preferred Stock shall be Computershare Trust Company, N.A. The Corporation may, in its sole discretion, remove the registrar in accordance with the agreement between the Corporation and the registrar; provided that the Corporation shall appoint a successor registrar who shall accept such appointment prior to the effectiveness of such removal.

DEPOSIT AGREEMENT

among

CAPITAL ONE FINANCIAL CORPORATION,
COMPUTERSHARE TRUST COMPANY, N.A., as Depositary,
COMPUTERSHARE INC.

and

THE HOLDERS FROM TIME TO TIME OF
THE DEPOSITARY RECEIPTS DESCRIBED HEREIN

Dated as of August 20, 2012

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DEPOSIT AGREEMENT dated as of August 20, 2012, among (i) Capital One Financial Corporation, a Delaware corporation, (ii) Computershare Trust Company, N.A., (iii) Computershare Inc. and (iv) the Holders from time to time of the Receipts described herein.

WHEREAS, it is desired to provide, as hereinafter set forth in this Deposit Agreement, for the deposit of shares of Series B Preferred Stock of the Corporation from time to time with the Depository for the purposes set forth in this Deposit Agreement and for the issuance hereunder of Receipts evidencing Depository Shares in respect of the Series B Preferred Stock so deposited; and

WHEREAS, the Receipts are to be substantially in the form of Exhibit A annexed hereto, with appropriate insertions, modifications and omissions, as hereinafter provided in this Deposit Agreement;

NOW, THEREFORE, in consideration of the premises, the parties hereto agree as follows:

ARTICLE I DEFINED TERMS

Section 1.1 Definitions.

The following definitions shall for all purposes, unless otherwise indicated, apply to the respective terms used in this Deposit Agreement:

“Certificate of Designations” shall mean the relevant Certificate of Designations with respect to Series B Preferred Stock filed with the Secretary of State of the State of Delaware establishing the Series B Preferred Stock as a series of preferred stock of the Corporation.

“Computershare” shall mean Computershare Inc.

“Corporation” shall mean Capital One Financial Corporation, a Delaware corporation, and its successors.

“Deposit Agreement” shall mean this Deposit Agreement, as amended, modified or supplemented from time to time in accordance with the terms hereof.

“Depository” shall mean, collectively, Computershare Trust Company, N.A. and Computershare, and any successor as Depository hereunder.

“Depository Shares” shall mean the depository shares, each representing 1/40th of one share of the Series B Preferred Stock, and the same proportionate interest in any and all other property received by the Depository in respect of such share of Series B Preferred Stock and held under this Deposit Agreement, all as evidenced by the Receipts issued hereunder. Subject to the terms of this Deposit Agreement, each owner of a Depository Share is entitled, proportionately, to all the rights, preferences and privileges of the Series B Preferred Stock represented by such Depository Share (including the dividend, voting, redemption and liquidation rights contained in the Certificate of Designations).

“Depository’s Agent” shall mean an agent appointed by the Depository pursuant to Section 7.5.

“Depository’s Office” shall mean the principal office of the Depository at which at any particular time its depository receipt business shall be administered, which is currently in Canton, MA.

“DTC” shall mean The Depository Trust Company.

“Effective Date” shall mean the date first stated above.

“Exchange Event” shall mean with respect to any Global Registered Receipt:

- (1) (A) the Global Receipt Depository which is the Holder of such Global Registered Receipt or Receipts notifies the Corporation that it is no longer willing or able to properly discharge its responsibilities under any Letter of Representations or that it is no longer eligible or in good standing under the Securities Exchange Act of 1934, as amended, and (B) the Corporation has not appointed a qualified successor Global Receipt Depository within 90 calendar days after the Corporation received such notice, or

(2) the Corporation in its sole discretion notifies the Depository in writing that the Receipts or portion thereof issued or issuable in the form of one or more Global Registered Receipts shall no longer be represented by such Global Receipt or Receipts.

“Global Receipt Depository” shall mean, with respect to any Receipt issued hereunder, DTC or such other entity designated as Global Receipt Depository by the Corporation in or pursuant to this Deposit Agreement, which entity must be, to the extent required by any applicable law or regulation, a clearing agency registered under the Securities Exchange Act of 1934, as amended.

“Global Registered Receipts” means a global registered Receipt, in definitive or book-entry form, registered in the name of a nominee of DTC.

“Letter of Representations” means any applicable agreement among the Corporation, the Depository and a Global Receipt Depository with respect to such Global Receipt Depository’s rights and obligations with respect to any Global Registered Receipts, as the same may be amended, supplemented, restated or otherwise modified from time to time and any successor agreement thereto.

“Officer’s Certificate” shall mean a certificate in substantially the form set forth as Exhibit B hereto, which is signed by an officer of the Corporation and which shall include the terms and conditions of the Series B Preferred Stock to be issued by the Corporation and deposited with the Depository from time to time in accordance with the terms hereof.

“Receipt” shall mean one of the depository receipts issued hereunder, substantially in the form set forth as Exhibit A hereto, whether in definitive or temporary form, and evidencing the number of Depository Shares with respect to the Series B Preferred Stock held of record by the Record Holder of such Depository Shares.

“Record Holder” or “Holder” as applied to a Receipt shall mean the person in whose name such Receipt is registered on the books of the Depository maintained for such purpose.

“Redemption Date” shall have the meaning set forth in Section 2.8.

“Registrar” shall mean the Depository or such other successor bank or trust company which shall be appointed by the Corporation to register ownership and transfers of Receipts as herein provided; and if a successor Registrar shall be so appointed, references herein to “the books” of or maintained by the Depository shall be deemed, as applicable, to refer as well to the register maintained by such Registrar for such purpose.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Series B Preferred Stock” shall mean the shares of the Corporation’s Fixed Rate Non-Cumulative Perpetual Preferred Stock Series B, with a liquidation preference of \$1,000 per share, designated in the Certificate of Designations and described in the Officer’s Certificate delivered pursuant to Section 2.2 hereof.

ARTICLE II

FORM OF RECEIPTS, DEPOSIT OF SERIES B PREFERRED STOCK, EXECUTION AND DELIVERY, TRANSFER, SURRENDER AND REDEMPTION OF RECEIPTS

Section 2.1 Form and Transfer of Receipts.

The definitive Receipts shall be substantially in the form set forth in Exhibit A annexed to this Agreement, with appropriate insertions, modifications and omissions, as hereinafter provided and shall be engraved or otherwise prepared so as to comply with applicable rules of NYSE Euronext or its successor. Pending the preparation of definitive Receipts, the Depositary, upon the written order of the Corporation, delivered in compliance with Section 2.2, shall execute and deliver temporary Receipts which may be printed, lithographed, typewritten, mimeographed or otherwise substantially of the tenor of the definitive Receipts in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the persons executing such Receipts may determine, as evidenced by their execution of such Receipts. If temporary Receipts are issued, the Corporation and the Depositary will cause definitive Receipts to be prepared without unreasonable delay. After the preparation of definitive Receipts, the temporary Receipts shall be exchangeable for definitive Receipts upon surrender of the temporary Receipts at an office described in the penultimate paragraph of Section 2.2, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Receipts, the Depositary shall execute and deliver in exchange therefor definitive Receipts representing the same number of Depositary Shares as represented by the surrendered temporary Receipt or Receipts. Such exchange shall be made at the Corporation's expense and without any charge therefor. Until so exchanged, the temporary Receipts shall in all respects be entitled to the same benefits under this Agreement as definitive Receipts.

Receipts shall be executed by the Depositary by the manual or facsimile signature of a duly authorized officer of the Depositary. No Receipt shall be entitled to any benefits under this Deposit Agreement or be valid or obligatory for any purpose unless it shall have been executed manually or by facsimile signature by a duly authorized officer of the Depositary or, if a Registrar for the Receipts (other than the Depositary) shall have been appointed, by manual or facsimile signature of a duly authorized officer of the Depositary and countersigned by manual or facsimile signature by a duly authorized officer of such Registrar. The Depositary shall record on its books each Receipt so signed and delivered as hereinafter provided.

Receipts shall be in denominations of any number of whole Depositary Shares. All receipts shall be dated the date of their issuance.

Receipts may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Deposit Agreement all as may be required by the Depositary and approved by the Corporation or required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange upon which the Series B Preferred Stock, the Depositary Shares or the Receipts may be listed or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Receipts are subject.

Title to Depositary Shares evidenced by a Receipt which is properly endorsed or accompanied by a properly executed instrument of transfer, shall be transferable by delivery with the same effect as in the case of a negotiable instrument in accordance with the Depositary's procedures; provided, however, that until transfer of any particular Receipt shall be registered on the books of the Depositary as provided in Section 2.3, the Depositary may, notwithstanding any notice to the contrary, treat the Record Holder thereof at such time as the absolute owner thereof for the purpose of determining the person entitled to distributions of dividends or other distributions or to any notice provided for in this Deposit Agreement and for all other purposes.

The Corporation shall provide an opinion of counsel to the Depositary at the Effective Date in form and substance reasonably satisfactory to the Depositary.

Section 2.2 Deposit of Series B Preferred Stock; Execution and Delivery of Receipts in Respect Thereof.

Subject to the terms and conditions of this Deposit Agreement, the Corporation may from time to time deposit shares of Series B Preferred Stock under this Deposit Agreement by delivering to the Depository, including via electronic book-entry, such shares of Series B Preferred Stock to be deposited, properly endorsed or accompanied, if applicable and required by the Depository, by a duly executed instrument of transfer or endorsement, in form satisfactory to the Depository, together with all such certifications as may be required by the Depository in accordance with the provisions of this Deposit Agreement and an executed Officer's Certificate attaching the Certificate of Designations and all other information required to be set forth therein, and together with a written order of the Corporation directing the Depository to execute and deliver to, or upon the written order of, the person or persons stated in such order a Receipt or Receipts evidencing in the aggregate the number of Depository Shares representing such deposited Series B Preferred Stock. Each Officer's Certificate delivered to the Depository in accordance with the terms of this Deposit Agreement shall be deemed to be incorporated into this Deposit Agreement and shall be binding on the Corporation, the Depository and the Holders of Receipts to which such Officer's Certificate relates.

The Series B Preferred Stock that is deposited shall be held by the Depository at the Depository's Office or at such other place or places as the Depository shall determine. The Depository shall not lend any Series B Preferred Stock deposited hereunder.

Upon receipt by the Depository of Series B Preferred Stock deposited in accordance with the provisions of this Section, together with the other documents required as above specified, and upon recordation of the Series B Preferred Stock on the books of the Corporation (or its duly appointed transfer agent) in the name of the Depository or its nominee, the Depository, subject to the terms and conditions of this Deposit Agreement, shall execute and deliver to or upon the order of the person or persons named in the written order delivered to the Depository referred to in the first paragraph of this Section, a Receipt or Receipts evidencing in the aggregate the number of Depository Shares representing the Series B Preferred Stock so deposited and registered in such name or names as may be requested by such person or persons. The Depository shall execute and deliver such Receipt or Receipts at the Depository's Office or such other offices, if any, as the Depository may designate. Delivery at other offices shall be at the risk and expense of the person requesting such delivery.

Section 2.3 Registration of Transfer of Receipts.

Subject to the terms and conditions of this Deposit Agreement, the Depository shall register on its books from time to time transfers of Receipts upon any surrender thereof by the Holder in person or by duly authorized attorney, properly endorsed or accompanied by a properly executed instrument of transfer which shall be affixed with the signature guarantee of a guarantor institution which is a participant in a signature guarantee program approved by the Securities Transfer Association. Thereupon, the Depository shall execute a new Receipt or Receipts evidencing the same aggregate number of Depository Shares as those evidenced by the Receipt or Receipts surrendered and deliver such new Receipt or Receipts to or upon the order of the person entitled thereto.

The Depository shall not be required (a) to issue, transfer or exchange any Receipts for a period beginning at the opening of business 15 days next preceding any selection of Depository Shares and Series B Preferred Stock to be redeemed and ending at the close of business on the day of the mailing of notice of redemption, or (b) to transfer or exchange for another Receipt any Receipt called or being called for redemption in whole or in part except as provided in [Section 2.8](#).

Section 2.4 Split-ups and Combinations of Receipts; Surrender of Receipts and Withdrawal of Series B Preferred Stock.

Upon surrender of a Receipt or Receipts at the Depository's Office or at such other offices as it may designate for the purpose of effecting a split-up or combination of such Receipt or Receipts, and subject to the terms and conditions of this Deposit Agreement, the Depository shall execute a new Receipt or Receipts in the authorized denomination or denominations requested, evidencing the aggregate number of Depository Shares evidenced by the Receipt or Receipts surrendered, and shall deliver such new Receipt or Receipts to or upon the order of the Holder of the Receipt or Receipts so surrendered.

Any Holder of a Receipt or Receipts may withdraw the number of whole shares of Series B Preferred Stock and all money and other property, if any, represented thereby by surrendering such Receipt or Receipts at the Depository's Office or at such other offices as the Depository may designate for such withdrawals. Thereafter, without unreasonable delay, the Depository shall deliver to such Holder, or to the person or persons designated by such Holder as hereinafter provided, the number of whole shares of Series B Preferred Stock and all money and other property, if any, represented by the Receipt or Receipts so surrendered for withdrawal, but Holders of such whole shares of Series B Preferred Stock will not thereafter be entitled to deposit such Series B Preferred Stock hereunder or to receive a Receipt evidencing Depository Shares therefor. If a Receipt delivered by the Holder to the Depository in connection with such withdrawal shall evidence a number of Depository Shares in excess of the number of Depository Shares representing the number of whole shares of Series B Preferred Stock, the Depository shall at the same time, in addition to such number of whole shares of Series B Preferred Stock and such money and other property, if any, to be so withdrawn, deliver to such Holder, or subject to Section 2.3 upon his order, a new Receipt evidencing such excess number of Depository Shares.

In no event will fractional shares of Series B Preferred Stock (or any cash payment in lieu thereof) be delivered by the Depository. Delivery of the Series B Preferred Stock and money and other property, if any, being withdrawn may be made by the delivery of such certificates, documents of title and other instruments as the Depository may deem appropriate.

If the Series B Preferred Stock and the money and other property, if any, being withdrawn are to be delivered to a person or persons other than the Record Holder of the related Receipt or Receipts being surrendered for withdrawal of such Series B Preferred Stock, such Holder shall execute and deliver to the Depository a written order so directing the Depository and the Depository may require that the Receipt or Receipts surrendered by such Holder for withdrawal of such shares of Series B Preferred Stock be properly endorsed in blank or accompanied by a properly executed instrument of transfer in blank.

Delivery of the Series B Preferred Stock and the money and other property, if any, represented by Receipts surrendered for withdrawal shall be made by the Depository at the Depository's Office, except that, at the request, risk and expense of the Holder surrendering such Receipt or Receipts and for the account of the Holder thereof, such delivery may be made at such other place as may be designated by such Holder.

Section 2.5 Limitations on Execution and Delivery, Transfer, Surrender and Exchange of Receipts.

As a condition precedent to the execution and delivery, registration of transfer, split-up, combination, surrender or exchange of any Receipt, the Depository, any of the Depository's Agents or the Corporation may require payment to it of a sum sufficient for the payment (or, in the event that the Depository or the Corporation shall have made such payment, the reimbursement to it) of any charges or expenses payable by the Holder of a Receipt pursuant to Section 5.7, may require the production of evidence satisfactory to it as to the identity and genuineness of any signature, and may also require compliance with such regulations, if any, as the Depository or the Corporation may establish consistent with the provisions of this Deposit Agreement and/or applicable law.

The deposit of the Series B Preferred Stock may be refused, the delivery of Receipts against Series B Preferred Stock may be suspended, the registration of transfer of Receipts may be refused and the registration of transfer, surrender or exchange of outstanding Receipts may be suspended (i) during any period when the register of stockholders of the Corporation is closed or (ii) if any such action is deemed necessary or advisable by the Depository, any of the Depository's Agents or the Corporation at any time or from time to time because of any requirement of law or of any government or governmental body or commission or under any provision of this Deposit Agreement.

Section 2.6 Lost Receipts, etc.

In case any Receipt shall be mutilated, destroyed, lost or stolen, the Depositary in its discretion may execute and deliver a Receipt of like form and tenor in exchange and substitution for such mutilated Receipt, or in lieu of and in substitution for such destroyed, lost or stolen Receipt, upon (i) the filing by the Holder thereof with the Depositary of evidence satisfactory to the Depositary of such destruction or loss or theft of such Receipt, of the authenticity thereof and of his or her ownership thereof and (ii) the Holder thereof furnishing the Depositary with an affidavit and a bond satisfactory to the Depositary. Applicants for such substitute Receipts shall also comply with such other reasonable regulations and pay such other reasonable charges as the Depositary may prescribe and as required by Section 8-405 of the Uniform Commercial Code.

Section 2.7 Cancellation and Destruction of Surrendered Receipts.

All Receipts surrendered to the Depositary or any Depositary's Agent shall be cancelled by the Depositary. Except as prohibited by applicable law or regulation, the Depositary is authorized and directed to destroy all Receipts so cancelled.

Section 2.8 Redemption of Series B Preferred Stock.

Whenever the Corporation shall be permitted and shall elect to redeem shares of Series B Preferred Stock in accordance with the terms of the Certificate of Designations (including on account of a Regulatory Capital Treatment Event, as described therein), it shall (unless otherwise agreed to in writing with the Depositary) give or cause to be given to the Depositary, not less than 30 days and not more than 60 days prior to the Redemption Date (as defined below), notice of such redemption, which shall state: (i) the Redemption Date; (ii) the number of shares of Series B Preferred Stock to be redeemed and, if less than all the shares of Series B Preferred Stock are to be redeemed, the number of such shares of Series B Preferred Stock held by the Depositary to be so redeemed; (iii) the redemption price; and (iv) the place or places where the certificates evidencing shares of Series B Preferred Stock, if any, are to be surrendered for payment of the redemption price. In case less than all the outstanding shares of Series B Preferred Stock are to be redeemed, the shares of Series B Preferred Stock to be so redeemed shall be selected either pro rata or by lot or in such other manner determined by the Corporation to be fair and equitable. On the date of such redemption, the Depositary shall redeem the number of Depositary Shares representing such Series B Preferred Stock, provided that the Corporation shall then have paid or caused to be paid in full to Computershare the redemption price of the Series B Preferred Stock to be redeemed, plus an amount equal to any declared and unpaid dividends thereon to the date fixed for redemption in accordance with the provisions of the Certificate of Designations. The Depositary shall mail notice of the Corporation's redemption of Series B Preferred Stock and the proposed simultaneous redemption of the number of Depositary Shares representing the Series B Preferred Stock to be redeemed by first-class mail, postage prepaid (or another reasonably acceptable transmission method), not less than 30 days and not more than 60 days prior to the date fixed for redemption of such Series B Preferred Stock and Depositary Shares (the "Redemption Date"), to the Record Holders of the Receipts evidencing the Depositary Shares to be so redeemed at their respective last addresses as they appear on the records of the Depositary; but neither failure to mail any such notice of redemption of Depositary Shares to one or more such Holders nor any defect in any notice of redemption of Depositary Shares to one or more such Holders shall affect the sufficiency of the proceedings for redemption as to the other Holders. In case less than all the outstanding Depositary Shares are to be redeemed, the Depositary Shares to be so redeemed shall be selected either pro rata or by lot or in such other manner determined by the Corporation to be fair and equitable.

Notice having been mailed or transmitted by the Depositary as aforesaid, from and after the Redemption Date (unless the Corporation shall have failed to provide the funds necessary to redeem the Series B Preferred Stock evidenced by the Depositary Shares called for redemption) (i) dividends on the shares of Series B Preferred Stock so called for Redemption shall cease to accrue from and after such date and all shares of Series B Preferred Stock called for redemption shall cease to be outstanding and any rights with respect to such shares shall cease and terminate (except for the right to receive the redemption price without interest), (ii) the Depositary Shares being redeemed from such proceeds shall be deemed no longer to be outstanding, (iii) all rights of the Holders of Receipts evidencing such Depositary Shares (except the right to receive the redemption price without interest) shall, to the extent of such Depositary Shares, cease and terminate, and (iv) upon surrender in accordance with such redemption notice of the Receipts evidencing any such Depositary Shares called for redemption (properly endorsed or assigned

for transfer, if the Depositary or applicable law shall so require), such Depositary Shares shall be redeemed by the Depositary at a redemption price per Depositary Share equal to 1/40th of the redemption price per share of Series B Preferred Stock so redeemed plus all money and other property, if any, represented by such Depositary Shares, including all amounts declared and paid by the Corporation in respect of dividends in accordance with the provisions of the Certificate of Designations.

If fewer than all of the Depositary Shares evidenced by a Receipt are called for redemption, the Depositary or Computershare, as appropriate, will deliver to the Holder of such Receipt upon its surrender to the Depositary, together with the redemption payment, a new Receipt evidencing the Depositary Shares evidenced by such prior Receipt and not called for redemption. In any such case, the Corporation shall redeem Depositary Shares only in increments of 10 Depositary Shares and any multiple thereof.

Section 2.9 Bank Accounts.

The Corporation acknowledges that the bank accounts maintained by Computershare in connection with the services provided under this Deposit Agreement will be in Computershare's name and that Computershare may receive investment earnings in connection with the investment at Computershare's risk and for its benefit of funds held in those accounts from time to time. Neither the Corporation nor the Holders will receive interest on any deposits.

Section 2.10 Receipts Issuable in Global Registered Form.

If the Corporation shall determine in a writing delivered to the Depositary that the Receipts are to be issued in whole or in part in the form of one or more Global Registered Receipts, then the Depositary shall, in accordance with the other provisions of this Deposit Agreement, execute and deliver one or more Global Registered Receipts evidencing the Receipts of such Series, which (i) shall represent, and shall be denominated in an amount equal to the aggregate principal amount of, the Receipts to be represented by such Global Registered Receipt or Receipts and (ii) shall be registered in the name of the Global Receipt Depository therefor or its nominee.

Notwithstanding any other provision of this Deposit Agreement to the contrary, unless otherwise provided in the Global Registered Receipt, a Global Registered Receipt may only be transferred in whole and only by the applicable Global Receipt Depository for such Global Registered Receipt to a nominee of such Global Receipt Depository, or by a nominee of such Global Receipt Depository to such Global Receipt Depository or another nominee of such Global Receipt Depository, or by such Global Receipt Depository or any such nominee to a successor Global Receipt Depository for such Global Registered Receipt selected or approved by the Corporation or to a nominee of such successor Global Receipt Depository. Except as provided below, owners solely of beneficial interests in a Global Registered Receipt shall not be entitled to receive physical delivery of the Receipts represented by such Global Registered Receipt. Neither any such beneficial owner nor any direct or indirect participant of a Global Receipt Depository shall have any rights under this Deposit Agreement with respect to any Global Registered Receipt held on their behalf by a Global Receipt Depository and such Global Receipt Depository may be treated by the Corporation, the Depositary and any director, officer, employee or agent of the Corporation or the Depositary as the holder of such Global Registered Receipt for all purposes whatsoever. Unless and until definitive Receipts are delivered to the owners of the beneficial interests in a Global Registered Receipt, (1) the applicable Global Receipt Depository will make book-entry transfers among its participants and receive and transmit all payments and distributions in respect of the Global Registered Receipts to such participants, in each case, in accordance with its applicable procedures and arrangements, and (2) whenever any notice, payment or other communication to the holders of Global Registered Receipts is required under this Deposit Agreement, the Corporation and the Depositary or Computershare, as appropriate, shall give all such notices, payments and communications specified herein to be given to such holders to the applicable Global Receipt Depository.

If an Exchange Event has occurred with respect to any Global Registered Receipt, then, in any such event, the Depositary shall, upon receipt of a written order from the Corporation for the execution and delivery of individual definitive registered Receipts in exchange for such Global Registered Receipt, shall execute and deliver, individual definitive registered Receipts, in authorized denominations and of like tenor and terms in an aggregate principal amount equal to the principal amount of the Global Registered Receipt in exchange for such Global Registered Receipt.

Definitive registered Receipts issued in exchange for a Global Registered Receipt pursuant to Section 2.10 shall be registered in such names and in such authorized denominations as the Global Receipt Depository for such Global Registered Receipt, pursuant to instructions from its participants, shall instruct the Depository in writing. The Depository shall deliver such Receipts to the persons in whose names such Receipts are so registered.

Notwithstanding anything to the contrary in this Deposit Agreement, should the Corporation determine that the Receipts should be issued as a Global Registered Receipt, the parties hereto shall comply with the terms of any Letter of Representations.

ARTICLE III CERTAIN OBLIGATIONS OF HOLDERS OF RECEIPTS AND THE CORPORATION

Section 3.1 Filing Proofs, Certificates and Other Information.

Any Holder of a Receipt may be required from time to time to file such proof of residence, or other matters or other information, to execute such certificates and to make such representations and warranties as the Depository or the Corporation may reasonably deem necessary or proper. The Depository or the Corporation may withhold the delivery, or delay the registration of transfer or redemption, of any Receipt or the withdrawal of the Series B Preferred Stock represented by the Depository Shares and evidenced by a Receipt or the distribution of any dividend or other distribution or the sale of any rights or of the proceeds thereof until such proof or other information is filed or such certificates are executed or such representations and warranties are made.

Section 3.2 Payment of Taxes or Other Governmental Charges.

Holders of Receipts shall be obligated to make payments to the Depository of certain charges and expenses, as provided in Section 5.7. Registration of transfer of any Receipt or any withdrawal of Series B Preferred Stock and all money or other property, if any, represented by the Depository Shares evidenced by such Receipt may be refused until any such payment due is made, and any dividends, interest payments or other distributions may be withheld or any part of or all the Series B Preferred Stock or other property represented by the Depository Shares evidenced by such Receipt and not theretofore sold may be sold for the account of the Holder thereof (after attempting by reasonable means to notify such Holder prior to such sale), and such dividends, interest payments or other distributions or the proceeds of any such sale may be applied to any payment of such charges or expenses, the Holder of such Receipt remaining liable for any deficiency.

Section 3.3 Warranty as to Series B Preferred Stock.

The Corporation hereby represents and warrants that the Series B Preferred Stock, when issued, will be duly authorized, validly issued, fully paid and nonassessable (subject to 12 U.S.C. § 55). Such representation and warranty shall survive the deposit of the Series B Preferred Stock and the issuance of the related Receipts.

Section 3.4 Warranty as to Receipts.

The Corporation hereby represents and warrants that the Receipts, when issued, will represent legal and valid interests in the Series B Preferred Stock. Such representation and warranty shall survive the deposit of the Series B Preferred Stock and the issuance of the Receipts.

ARTICLE IV THE DEPOSITED SECURITIES; NOTICES

Section 4.1 Cash Distributions.

Whenever Computershare shall receive any cash dividend or other cash distribution on the Series B Preferred Stock, Computershare shall, subject to Sections 3.1 and 3.2, distribute to Record Holders of Receipts on the record date fixed pursuant to Section 4.4 such amounts of such dividend or distribution as are, as nearly as practicable, in proportion to the respective numbers of Depository Shares evidenced by the Receipts held by such

Holders; provided, however, that in case the Corporation or Computershare shall be required to withhold and shall withhold from any cash dividend or other cash distribution in respect of the Series B Preferred Stock an amount on account of taxes, the amount made available for distribution or distributed in respect of Depository Shares shall be reduced accordingly. Computershare shall distribute or make available for distribution, as the case may be, only such amount, however, as can be distributed without attributing to any Holder of Receipts a fraction of one cent. Each Holder of a Receipt shall provide the Depository with its certified tax identification number on a properly completed Form W-8 or W-9, as may be applicable. Each Holder of a Receipt acknowledges that, in the event of non-compliance with the preceding sentence, the Internal Revenue Code of 1986, as amended, may require withholding by the Corporation or Computershare of a portion of any of the distributions to be made hereunder.

Section 4.2 Distributions Other than Cash, Rights, Preferences or Privileges.

Whenever the Depository shall receive any distribution other than cash, rights, preferences or privileges upon the Series B Preferred Stock, the Depository shall, at the direction of the Corporation, subject to Sections 3.1 and 3.2, distribute to Record Holders of Receipts on the record date fixed pursuant to Section 4.4 such amounts of the securities or property received by it as are, as nearly as practicable, in proportion to the respective numbers of Depository Shares evidenced by such Receipts held by such Holders, in any manner that the Depository may deem equitable and practicable for accomplishing such distribution. If in the opinion of the Depository such distribution cannot be made proportionately among such Record Holders in accordance with the direction of the Corporation, or if for any other reason (including any requirement that the Corporation or the Depository withhold an amount on account of taxes) the Depository deems, after consultation with the Corporation, such distribution not to be feasible, the Depository may, with the approval of the Corporation, adopt such method as it deems equitable and practicable for the purpose of effecting such distribution, including the sale (at public or private sale) of the securities or property thus received, or any part thereof, in a commercially reasonable manner. The net proceeds of any such sale shall, subject to Sections 3.1 and 3.2, be distributed or made available for distribution, as the case may be, by Computershare to Record Holders of Receipts as provided by Section 4.1 in the case of a distribution received in cash. The Corporation shall not make any distribution of such securities or property to the Depository and the Depository shall not make any distribution of such securities or property to the Holders of Receipts unless the Corporation shall have provided an opinion of counsel stating that such securities or property have been registered under the Securities Act or do not need to be registered in connection with such distributions.

Section 4.3 Subscription Rights, Preferences or Privileges.

If the Corporation shall at any time offer or cause to be offered to the persons in whose names the Series B Preferred Stock is recorded on the books of the Corporation any rights, preferences or privileges to subscribe for or to purchase any securities or any rights, preferences or privileges of any other nature, such rights, preferences or privileges shall in each such instance be made available by the Depository to the Record Holders of Receipts in such manner as the Company shall instruct the Depository in writing, either by the issue to such Record Holders of warrants representing such rights, preferences or privileges or by such other method as may be approved by the Depository in its discretion with the approval of the Corporation; provided, however, that (i) if at the time of issue or offer of any such rights, preferences or privileges the Depository determines that it is not lawful or (after consultation with the Corporation) not feasible to make such rights, preferences or privileges available to Holders of Receipts by the issue of warrants or otherwise, or (ii) if and to the extent so instructed by Holders of Receipts who do not desire to exercise such rights, preferences or privileges, then the Depository, in its discretion (with approval of the Corporation, in any case where the Depository has determined that it is not feasible to make such rights, preferences or privileges available), may, if applicable laws or the terms of such rights, preferences or privileges permit such transfer, sell such rights, preferences or privileges at public or private sale, at such place or places and upon such terms as it may deem proper. The net proceeds of any such sale shall, subject to Sections 3.1 and 3.2, be distributed by the Depository to the Record Holders of Receipts entitled thereto as provided by Section 4.1 in the case of a distribution received in cash.

The Corporation shall notify the Depository whether registration under the Securities Act of the securities to which any rights, preferences or privileges relate is required in order for Holders of Receipts to be offered or sold the securities to which such rights, preferences or privileges relate, and the Corporation agrees with the Depository that it will file promptly a registration statement pursuant to the Securities Act with respect to such rights, preferences or privileges and securities and use its best efforts and take all steps available to it to cause such

registration statement to become effective sufficiently in advance of the expiration of such rights, preferences or privileges to enable such Holders to exercise such rights, preferences or privileges. In no event shall the Depositary make available to the Holders of Receipts any right, preference or privilege to subscribe for or to purchase any securities unless and until such registration statement shall have become effective, or the Corporation shall have provided to the Depositary an opinion of counsel to the effect that the offering and sale of such securities to the Holders are exempt from registration under the provisions of the Securities Act.

The Corporation shall notify the Depositary whether any other action under the laws of any jurisdiction or any governmental or administrative authorization, consent or permit is required in order for such rights, preferences or privileges to be made available to Holders of Receipts, and the Corporation agrees with the Depositary that the Corporation will use its reasonable best efforts to take such action or obtain such authorization, consent or permit sufficiently in advance of the expiration of such rights, preferences or privileges to enable such Holders to exercise such rights, preferences or privileges.

Section 4.4 Notice of Dividends, etc.; Fixing Record Date for Holders of Receipts.

Whenever any cash dividend or other cash distribution shall become payable or any distribution other than cash shall be made, or if rights, preferences or privileges shall at any time be offered, with respect to the Series B Preferred Stock, or whenever the Depositary shall receive notice of any meeting at which holders of the Series B Preferred Stock are entitled to vote or of which holders of the Series B Preferred Stock are entitled to notice, or whenever the Depositary and the Corporation shall decide it is appropriate, the Depositary shall in each such instance fix a record date (which shall be the same date as the record date fixed by the Corporation with respect to or otherwise in accordance with the terms of the Series B Preferred Stock) for the determination of the Holders of Receipts who shall be entitled to receive such dividend, distribution, rights, preferences or privileges or the net proceeds of the sale thereof, or to give instructions for the exercise of voting rights at any such meeting, or who shall be entitled to notice of such meeting or for any other appropriate reasons.

Section 4.5 Voting Rights.

Subject to the provisions of the Certificate of Designations, upon receipt of notice of any meeting at which the holders of the Series B Preferred Stock are entitled to vote, the Depositary shall, as soon as practicable thereafter, mail to the Record Holders of Receipts a notice prepared by the Corporation which shall contain (i) such information as is contained in such notice of meeting and (ii) a statement that the Holders may, subject to any applicable restrictions, instruct the Depositary as to the exercise of the voting rights pertaining to the amount of Series B Preferred Stock represented by their respective Depositary Shares (including an express indication that instructions may be given to the Depositary to give a discretionary proxy to a person designated by the Corporation) and a brief statement as to the manner in which such instructions may be given. Upon the written request of the Holders of Receipts on the relevant record date, the Depositary shall endeavor insofar as practicable to vote or cause to be voted, in accordance with the instructions set forth in such requests, the maximum number of whole shares of Series B Preferred Stock represented by the Depositary Shares evidenced by all Receipts as to which any particular voting instructions are received. The Corporation hereby agrees to take all reasonable action which may be deemed necessary by the Depositary in order to enable the Depositary to vote such Series B Preferred Stock or cause such Series B Preferred Stock to be voted. In the absence of specific instructions from the Holder of a Receipt, the Depositary will not vote (but, at its discretion, may appear at any meeting with respect to such Series B Preferred Stock unless directed to the contrary by the Holders of all the Receipts) to the extent of the Series B Preferred Stock represented by the Depositary Shares evidenced by such Receipt.

Section 4.6 Changes Affecting Deposited Securities and Reclassifications, Recapitalizations, etc.

Upon any change in par or stated value, split-up, combination or any other reclassification of the Series B Preferred Stock, subject to the provisions of the Certificate of Designations, or upon any recapitalization, reorganization, merger or consolidation affecting the Corporation or to which it is a party, the Depositary may in its discretion with the approval of, and shall upon the instructions of, the Corporation, and (in either case) in such manner as the Depositary may deem equitable, (i) make such adjustments as are certified by the Corporation in the fraction of an interest represented by one Depositary Share in one share of Series B Preferred Stock and in the ratio of the redemption price per Depositary Share to the redemption price per share of Series B Preferred Stock, in each

case as may be necessary fully to reflect the effects of such change in par or stated value, split-up, combination or other reclassification of the Series B Preferred Stock, or of such recapitalization, reorganization, merger or consolidation and (ii) treat any securities which shall be received by the Depositary in exchange for or upon conversion of or in respect of the Series B Preferred Stock as new deposited securities so received in exchange for or upon conversion of or in respect of such Series B Preferred Stock. In any such case the Depositary may in its discretion, with the approval of the Corporation, execute and deliver additional Receipts or may call for the surrender of all outstanding Receipts to be exchanged for new Receipts specifically describing such new deposited securities. Anything to the contrary herein notwithstanding, Holders of Receipts shall have the right from and after the effective date of any such change in par or stated value, split-up, combination or other reclassification of the Series B Preferred Stock or any such recapitalization, reorganization, merger or consolidation to surrender such Receipts to the Depositary with instructions to convert, exchange or surrender the Series B Preferred Stock represented thereby only into or for, as the case may be, the kind and amount of shares and other securities and property and cash into which the Series B Preferred Stock represented by such Receipts might have been converted or for which such Series B Preferred Stock might have been exchanged or surrendered immediately prior to the effective date of such transaction.

Section 4.7 Delivery of Reports.

The Depositary shall furnish to Holders of Receipts any reports and communications received from the Corporation which is received by the Depositary and which the Corporation is required to furnish to the holders of the Series B Preferred Stock.

Section 4.8 Lists of Receipt Holders.

Reasonably promptly upon request from time to time by the Corporation, at the sole expense of the Corporation, the Depositary shall furnish to it a list, as of the most recent practicable date, of the names, addresses and holdings of Depositary Shares of all registered Holders of Receipts.

ARTICLE V

THE DEPOSITARY, THE DEPOSITARY'S AGENTS, THE REGISTRAR AND THE CORPORATION

Section 5.1 Maintenance of Offices, Agencies and Transfer Books by the Depositary; Registrar.

Upon execution of this Deposit Agreement, the Depositary shall maintain at the Depositary's Office, facilities for the execution and delivery, registration and registration of transfer, surrender and exchange of Receipts, and at the offices of the Depositary's Agents, if any, facilities for the delivery, registration of transfer, surrender and exchange of Receipts, all in accordance with the provisions of this Deposit Agreement.

The Depositary shall keep books at the Depositary's Office for the registration and registration of transfer of Receipts, which books at all reasonable times shall be open for inspection by the Record Holders of Receipts; provided that any such Holder requesting to exercise such right shall certify to the Depositary that such inspection shall be for a proper purpose reasonably related to such Holder's interest as an owner of Depositary Shares evidenced by the Receipts.

The Depositary may close such books, at any time or from time to time, when deemed expedient by it in connection with the performance of its duties hereunder.

The Depositary may, with the approval of the Corporation, appoint a Registrar for registration of the Receipts or the Depositary Shares evidenced thereby. If the Receipts or the Depositary Shares evidenced thereby or the Series B Preferred Stock represented by such Depositary Shares shall be listed on one or more national securities exchanges, the Depositary will appoint a Registrar (acceptable to the Corporation) for registration of the Receipts or Depositary Shares in accordance with any requirements of such exchange. Such Registrar (which may be the Depositary if so permitted by the requirements of any such exchange) may be removed and a substitute registrar appointed by the Depositary upon the request or with the approval of the Corporation. If the Receipts, Depositary

Shares or Series B Preferred Stock are listed on one or more other securities exchanges, the Depositary will, at the request of the Corporation, arrange such facilities for the delivery, registration or registration of transfer, surrender and exchange of the Receipts, Depositary Shares or Series B Preferred Stock as may be required by law or applicable securities exchange regulation.

Section 5.2 Prevention of or Delay in Performance by the Depositary, the Depositary's Agents, the Registrar or the Corporation.

Neither the Depositary nor any Depositary's Agent nor any Registrar nor the Corporation shall incur any liability to any Holder of a Receipt if by reason of any provision of any present or future law, or regulation thereunder, of the United States of America or of any other governmental authority or, in the case of the Depositary, the Depositary's Agent or the Registrar, by reason of any provision, present or future, of the Corporation's Restated Certificate of Incorporation, as amended (including the Certificate of Designations), or by reason of any act of God or war or other circumstance beyond the control of the relevant party, the Depositary, the Depositary's Agent, the Registrar or the Corporation shall be prevented or forbidden from, or subjected to any penalty on account of, doing or performing any act or thing which the terms of this Deposit Agreement provide shall be done or performed; nor shall the Depositary, any Depositary's Agent, any Registrar or the Corporation incur liability to any Holder of a Receipt (i) by reason of any nonperformance or delay, caused as aforesaid, in the performance of any act or thing which the terms of this Deposit Agreement shall provide shall or may be done or performed, or (ii) by reason of any exercise of, or failure to exercise, any discretion provided for in this Deposit Agreement except as otherwise explicitly set forth in this Deposit Agreement.

Section 5.3 Obligations of the Depositary, the Depositary's Agents, the Registrar and the Corporation.

Neither the Depositary nor any Depositary's Agent nor any Registrar nor the Corporation assumes any obligation or shall be subject to any liability under this Deposit Agreement to Holders of Receipts other than for its gross negligence, willful misconduct or bad faith. Notwithstanding anything in this Deposit Agreement to the contrary, excluding the Depositary's gross negligence, willful misconduct or bad faith, the Depositary's aggregate liability under this Deposit Agreement with respect to, arising from or arising in connection with this Deposit Agreement, or from all services provided or omitted to be provided under this Deposit Agreement, whether in contract, tort, or otherwise, is limited to, and shall not exceed, the amounts paid hereunder by the Corporation to the Depositary as fees and charges, but not including reimbursable expenses.

Notwithstanding anything in this Deposit Agreement to the contrary, neither the Depositary, nor the Depositary's Agent nor any Registrar nor the Corporation shall be liable in any event for special, punitive, incidental, indirect or consequential losses or damages of any kind whatsoever (including but not limited to lost profits).

Neither the Depositary nor any Depositary's Agent nor any Registrar nor the Corporation shall be under any obligation to appear in, prosecute or defend any action, suit or other proceeding in respect of the Series B Preferred Stock, the Depositary Shares or the Receipts which in its opinion may involve it in expense or liability unless indemnity satisfactory to it against all expense and liability be furnished as often as may be required.

Neither the Depositary nor any Depositary's Agent nor any Registrar nor the Corporation shall be liable for any action or any failure to act by it in reliance upon the written advice of legal counsel or accountants, or information from any person presenting Series B Preferred Stock for deposit, any Holder of a Receipt or any other person believed by it in good faith to be competent to give such information. The Depositary, any Depositary's Agent, any Registrar and the Corporation may each rely and shall each be protected in acting upon or omitting to act upon any written notice, request, direction or other document believed by it to be genuine and to have been signed or presented by the proper party or parties.

The Depositary shall not be responsible for any failure to carry out any instruction to vote any of the shares of Series B Preferred Stock or for the manner or effect of any such vote made, as long as any such action or non-action is not taken in bad faith. The Depositary undertakes, and any Registrar shall be required to undertake, to perform such duties and only such duties as are specifically set forth in this Deposit Agreement, and no implied covenants or obligations shall be read into this Deposit Agreement against the Depositary or any Registrar.

The Depositary, the Depositary's Agents, and any Registrar may own and deal in any class of securities of the Corporation and its affiliates and in Receipts. The Depositary may also act as transfer agent or registrar of any of the securities of the Corporation and its affiliates.

The Depositary shall not be under any liability for interest on any monies at any time received by it pursuant to any of the provisions of this Deposit Agreement or of the Receipts, the Depositary Shares or the Series B Preferred Stock nor shall it be obligated to segregate such monies from other monies held by it, except as required by law. The Depositary shall not be responsible for advancing funds on behalf of the Corporation and shall have no duty or obligation to make any payments if it has not timely received sufficient funds to make timely payments.

In the event the Depositary believes any ambiguity or uncertainty exists hereunder or in any notice, instruction, direction, request or other communication, paper or document received by the Depositary hereunder, or in the administration of any of the provisions of this Deposit Agreement, the Depositary shall deem it necessary or desirable that a matter be proved or established prior to taking, omitting or suffering to take any action hereunder, the Depositary may, in its sole discretion upon written notice to the Corporation, refrain from taking any action and shall be fully protected and shall not be liable in any way to the Corporation, any Holders of Receipts or any other person or entity for refraining from taking such action, unless the Depositary receives written instructions or a certificate signed by the Corporation which eliminates such ambiguity or uncertainty to the satisfaction of the Depositary or which proves or establishes the applicable matter to the satisfaction of the Depositary.

From time to time, the Corporation may provide the Depositary with instructions concerning the services performed by the Depositary under this Deposit Agreement. In addition, at any time, the Depositary may apply to any officer of the Corporation for instruction, and may consult with legal counsel for the Depositary or the Corporation with respect to any matter arising in connection with the services to be performed by the Depositary under this Deposit Agreement. The Depositary and its agents and subcontractors shall not be liable and shall be indemnified by the Corporation for any action taken or omitted by the Depositary in reliance upon any Corporation instructions or upon the advice or opinion of such counsel. The Depositary shall not be held to have notice of any change of authority of any person, until receipt of written notice thereof from the Corporation.

Section 5.4 Resignation and Removal of the Depositary; Appointment of Successor Depositary.

The Depositary may at any time resign as Depositary hereunder by delivering notice of its election to do so to the Corporation, such resignation to take effect upon the appointment of a successor Depositary and its acceptance of such appointment as hereinafter provided.

The Depositary may at any time be removed by the Corporation by notice of such removal delivered to the Depositary, such removal to take effect upon the appointment of a successor Depositary hereunder and its acceptance of such appointment as hereinafter provided.

In case at any time the Depositary acting hereunder shall resign or be removed, the Corporation shall, within 60 days after the delivery of the notice of resignation or removal, as the case may be, appoint a successor Depositary, which shall be a bank or trust company having its principal office in the United States of America and having a combined capital and surplus, along with its affiliates, of at least \$50,000,000. If no successor Depositary shall have been so appointed and have accepted appointment within 60 days after delivery of such notice, the resigning or removed Depositary may petition any court of competent jurisdiction for the appointment of a successor Depositary. Every successor Depositary shall execute and deliver to its predecessor and to the Corporation an instrument in writing accepting its appointment hereunder, and thereupon such successor Depositary, without any further act or deed, shall become fully vested with all the rights, powers, duties and obligations of its predecessor and for all purposes shall be the Depositary under this Deposit Agreement, and such predecessor, upon payment of all sums due it and on the written request of the Corporation, shall promptly execute and deliver an instrument transferring to such successor all rights and powers of such predecessor hereunder, shall duly assign, transfer and deliver all right, title and interest in the Series B Preferred Stock and any moneys or property held hereunder to such successor, and shall deliver to such successor a list of the Record Holders of all outstanding Receipts and such records, books and other information in its possession relating thereto. Any successor Depositary shall promptly mail notice of its appointment to the Record Holders of Receipts at the Corporation's sole expense.

Any entity into or with which the Depositary may be merged, consolidated or converted shall be the successor of the Depositary without the execution or filing of any document or any further act, and notice thereof shall not be required hereunder. Such successor Depositary may authenticate the Receipts in the name of the predecessor Depositary or its own name as successor Depositary.

Section 5.5 Corporate Notices and Reports.

The Corporation agrees that it will deliver to the Depositary, and the Depositary will, promptly after receipt thereof, transmit to the Record Holders of Receipts, in each case at the addresses recorded in the Depositary's books, copies of all notices and reports (including without limitation financial statements) required by law, by the rules of any national securities exchange upon which the Series B Preferred Stock, the Depositary Shares or the Receipts are listed or by the Corporation's Restated Certificate of Incorporation, as amended (including the Certificate of Designations), to be furnished to the Record Holders of Receipts. Such transmission will be at the Corporation's expense and the Corporation will provide the Depositary with such number of copies of such documents as the Depositary may reasonably request. In addition, the Depositary will transmit to the Record Holders of Receipts at the Corporation's expense such other documents as may be requested by the Corporation. Unless otherwise required by law, the requirements set forth in this Section 5.5 may be satisfied by publicly filing or furnishing such information with or to the U.S. Securities and Exchange Commission.

Section 5.6 Indemnification by the Corporation.

Notwithstanding Section 5.3 to the contrary, the Corporation shall indemnify the Depositary, any Depositary's Agent and any Registrar (including each of their officers, directors, agents and employees) against, and hold each of them harmless from, any loss, damage, cost, penalty, liability or expense (including the reasonable costs and expenses of defending itself) which may arise out of acts performed, suffered or omitted to be taken in connection with this Deposit Agreement and the Receipts by the Depositary, any Registrar or any of their respective agents (including any Depositary's Agent) and any transactions or documents contemplated hereby, except for any liability arising out of gross negligence, willful misconduct or bad faith on the respective parts of any such person or persons. The obligations of the Corporation set forth in this Section 5.6 shall survive any succession of any Depositary, Registrar or Depositary's Agent.

Section 5.7 Fees, Charges and Expenses.

The Corporation agrees promptly to pay the Depositary the compensation to be agreed upon with the Corporation for all services rendered by the Depositary hereunder and to reimburse the Depositary for its reasonable out-of-pocket expenses (including reasonable counsel fees and expenses) incurred by the Depositary without gross negligence, willful misconduct or bad faith on its part (or on the part of any agent or Depositary's Agent) in connection with the services rendered by it (or such agent or Depositary's Agent) hereunder. The Corporation shall pay all charges of the Depositary in connection with the initial deposit of the Series B Preferred Stock and the initial issuance of the Depositary Shares, all withdrawals of shares of Series B Preferred Stock by owners of Depositary Shares, and any redemption or exchange of the Series B Preferred Stock at the option of the Corporation. The Corporation shall pay all transfer and other taxes and governmental charges arising solely from the existence of the depositary arrangements. All other transfer and other taxes and governmental charges shall be at the expense of Holders of Depositary Shares evidenced by Receipts. If, at the request of a Holder of Receipts, the Depositary incurs charges or expenses for which the Corporation is not otherwise liable hereunder, such Holder will be liable for such charges and expenses; provided, however, that the Depositary may, at its sole option, require a Holder of a Receipt to prepay the Depositary any charge or expense the Depositary has been asked to incur at the request of such Holder of Receipts. The Depositary shall present its statement for charges and expenses to the Corporation at such intervals as the Corporation and the Depositary may agree.

**ARTICLE VI
AMENDMENT AND TERMINATION**

Section 6.1 Amendment.

The form of the Receipts and any provisions of this Deposit Agreement may at any time and from time to time be amended by agreement between the Corporation and the Depositary in any respect which they may deem necessary or desirable; provided, however, that no such amendment which shall materially and adversely alter the rights of the Holders of Receipts shall be effective against the Holders of Receipts unless such amendment shall have been approved by the Holders of Receipts representing in the aggregate at least a two-thirds majority of the Depositary Shares then outstanding. Every Holder of an outstanding Receipt at the time any such amendment becomes effective shall be deemed, by continuing to hold such Receipt, to consent and agree to such amendment and to be bound by the Deposit Agreement as amended thereby. In no event shall any amendment impair the right, subject to the provisions of Sections 2.5 and 2.6 and Article III, of any owner of Depositary Shares to surrender any Receipt evidencing such Depositary Shares to the Depositary with instructions to deliver to the Holder the Series B Preferred Stock and all money and other property, if any, represented thereby, except in order to comply with mandatory provisions of applicable law or the rules and regulations of any governmental body, agency or commission, or applicable securities exchange.

Section 6.2 Termination.

This Deposit Agreement may be terminated by the Corporation or the Depositary only if (i) all outstanding Depositary Shares issued hereunder have been redeemed pursuant to Section 2.8, (ii) there shall have been made a final distribution in respect of the Series B Preferred Stock in connection with any liquidation, dissolution or winding up of the Corporation and such distribution shall have been distributed to the Holders of Receipts representing Depositary Shares pursuant to Section 4.1 or 4.2, as applicable or (iii) upon the consent of Holders of Receipts representing in the aggregate not less than two-thirds of the Depositary Shares outstanding.

Upon the termination of this Deposit Agreement, the Corporation shall be discharged from all obligations under this Deposit Agreement except for its obligations to the Depositary, any Depositary's Agent and any Registrar under Sections 5.6 and 5.7.

**ARTICLE VII
MISCELLANEOUS**

Section 7.1 Counterparts.

This Deposit Agreement may be executed in any number of counterparts, and by each of the parties hereto on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed an original, but all such counterparts taken together shall constitute one and the same instrument. A signature to this Deposit Agreement transmitted electronically shall have the same authority, effect, and enforceability as an original signature.

Section 7.2 Exclusive Benefit of Parties.

This Deposit Agreement is for the exclusive benefit of the parties hereto, and their respective successors hereunder, and shall not be deemed to give any legal or equitable right, remedy or claim to any other person whatsoever.

Section 7.3 Invalidity of Provisions.

In case any one or more of the provisions contained in this Deposit Agreement or in the Receipts should be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or therein shall in no way be affected, prejudiced or disturbed thereby.

Section 7.4 Notices.

Any and all notices to be given to the Corporation hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or overnight delivery service, or by telegram or facsimile transmission or electronic mail, confirmed by letter, addressed to the Corporation at:

Capital One Financial Corporation
1680 Capital One Drive
McLean, Virginia 22102
Attention: Senior Director of Capital Markets

or at any other addresses of which the Corporation shall have notified the Depository in writing.

Any and all notices to be given to the Depository hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or overnight delivery service, or by telegram or facsimile transmission or electronic mail, confirmed by letter, addressed to the Depository at:

Computershare Trust Company, N.A.
250 Royall Street
Canton, MA 02021
Attention: Client Services

or at any other addresses of which the Depository shall have notified the Corporation in writing.

Any and all notices to be given to any Record Holder of a Receipt hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or facsimile transmission or confirmed by letter, addressed to such Record Holder at the address of such Record Holder as it appears on the books of the Depository, or if such Holder shall have timely filed with the Depository a written request that notices intended for such Holder be mailed to some other address, at the address designated in such request.

Delivery of a notice sent by mail or by facsimile transmission shall be deemed to be effected at the time when a duly addressed letter containing the same (or a confirmation thereof in the case of a facsimile transmission) is deposited, postage prepaid, in a post office letter box. The Depository or the Corporation may, however, act upon any facsimile transmission received by it from the other or from any Holder of a Receipt, notwithstanding that such facsimile transmission shall not subsequently be confirmed by letter or as aforesaid.

Section 7.5 Depository's Agents.

The Depository may from time to time appoint Depository's Agents to act in any respect for the Depository for the purposes of this Deposit Agreement and may at any time appoint additional Depository's Agents and vary or terminate the appointment of such Depository's Agents. The Depository will promptly notify the Corporation of any such action.

Section 7.6 Appointment of Registrar, Dividend Disbursing Agent, Transfer Agent and Redemption Agent in Respect of Receipts.

The Corporation hereby appoints Computershare Trust Company, N.A. and Computershare Inc., in their respective capacities as transfer agent, Registrar, dividend disbursing agent and redemption agent in respect of the Receipts, and Computershare Trust Company, N.A. and Computershare Inc. hereby accept such respective appointments.

Section 7.7 Holders of Receipts Are Parties.

The Holders of Receipts from time to time shall be parties to this Deposit Agreement and shall be bound by all of the terms and conditions hereof and of the Receipts and of the Officer's Certificate by acceptance of delivery thereof.

Section 7.8 Governing Law.

This Deposit Agreement and the Receipts of each series and all rights hereunder and thereunder and provisions hereof and thereof shall be governed by, and construed in accordance with, the laws of the State of Delaware without giving effect to applicable conflicts of law principles.

Section 7.9 Inspection of Deposit Agreement.

Copies of this Deposit Agreement shall be filed with the Depository and the Depository's Agents and shall be open to inspection during business hours at the Depository's Office and the respective offices of the Depository's Agents, if any, by any Holder of a Receipt.

Section 7.10 Headings.

The headings of articles and sections in this Deposit Agreement and in the form of the Receipt set forth in Exhibit A hereto have been inserted for convenience only and are not to be regarded as a part of this Deposit Agreement or the Receipts or to have any bearing upon the meaning or interpretation of any provision contained herein or in the Receipts.

Section 7.11 Force Majeure.

Notwithstanding anything to the contrary contained herein, the Depository will not be liable for any delays or failures in performance resulting from acts beyond its reasonable control including, without limitation, acts of God, terrorist acts, shortage of supply, breakdowns or malfunctions, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, war, or civil unrest.

Section 7.12 Further Assurances.

The Corporation agrees that it will perform, acknowledge, and deliver or cause to be performed, acknowledged or delivered, all such further and other acts, documents, instruments and assurances as the Depository may reasonably require to perform the provisions of this Deposit Agreement.

Section 7.13 Confidentiality.

The Depository and the Corporation agree that all books, records, information and data pertaining to the business of the other party, including *inter alia*, personal, non-public Holder information and the fees for services, which are exchanged or received pursuant to the negotiation or the carrying out of this Deposit Agreement, shall remain confidential, and shall not be voluntarily disclosed to any other person, except as may be required by law or legal process.

[Remainder of page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, the Corporation and the Depositary have duly executed this Deposit Agreement as of the day and year first above set forth, and all Holders of Receipts shall become parties hereto by and upon acceptance by them of delivery of Receipts issued in accordance with the terms hereof.

CAPITAL ONE FINANCIAL CORPORATION

By: /s/ Amy D. Cook

Name: Amy D. Cook

Title: Assistant Secretary

COMPUTERSHARE TRUST COMPANY, N.A. and
COMPUTERSHARE INC. (on behalf of both entities)

By: /s/ Scott Harrigan

Name: Scott Harrigan

Title: Senior V.P.

[Signature Page to Deposit Agreement]

EXHIBIT A

[FORM OF FACE OF RECEIPT]

Unless this receipt is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Capital One Financial Corporation or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

DEPOSITARY SHARES
DEPOSITARY RECEIPT NO. FOR \$ DEPOSITARY SHARES,

EACH REPRESENTING 1/40th OF ONE SHARE OF
FIXED RATE NON-CUMULATIVE PERPETUAL PREFERRED STOCK, SERIES B
OF
CAPITAL ONE FINANCIAL CORPORATION
INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE
CUSIP
SEE REVERSE FOR CERTAIN DEFINITIONS

Dividend Payment Dates: Beginning , , each and until , and thereafter each , , , and .

COMPUTERSHARE TRUST COMPANY, N.A., as Depository (the "Depository"), hereby certifies that Cede & Co. is the registered owner of DEPOSITARY SHARES ("Depository Shares"), each Depository Share representing 1/40th of one share of Fixed Rate Non-Cumulative Perpetual Preferred Stock, Series B, liquidation preference \$1,000 per share, (the "Series B Preferred Stock"), of Capital One Financial Corporation, a Delaware corporation (the "Corporation"), on deposit with the Depository, subject to the terms and entitled to the benefits of the Deposit Agreement dated as of [], 2012 (the "Deposit Agreement"), among the Corporation, the Depository and the Holders from time to time of the Depository Receipts. By accepting this Depository Receipt, the Holder hereof becomes a party to and agrees to be bound by all the terms and conditions of the Deposit Agreement. This Depository Receipt shall not be valid or obligatory for any purpose or entitled to any benefits under the Deposit Agreement unless it shall have been executed by the Depository by the manual or facsimile signature of a duly authorized officer or, if executed in facsimile by the Depository, countersigned by a Registrar in respect of the Depository Receipts by the manual or facsimile signature of a duly authorized officer thereof.

Dated:

Computershare Trust Company, N.A.,
Depository

By: _____
Authorized Officer

CAPITAL ONE FINANCIAL CORPORATION

CAPITAL ONE FINANCIAL CORPORATION WILL FURNISH WITHOUT CHARGE TO EACH RECEIPTHOLDER WHO SO REQUESTS A COPY OF THE DEPOSIT AGREEMENT AND A COPY OR SUMMARY OF THE CERTIFICATE OF DESIGNATIONS OF FIXED RATE NON-CUMULATIVE PERPETUAL PREFERRED STOCK, SERIES B OF CAPITAL ONE FINANCIAL CORPORATION. ANY SUCH REQUEST IS TO BE ADDRESSED TO THE DEPOSITARY NAMED ON THE FACE

The Corporation will furnish without charge to each receiptholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof of the Corporation, and the qualifications, limitations or restrictions of such preferences and/or rights. Such request may be made to the Corporation or to the Registrar.

EXPLANATION OF ABBREVIATIONS

The following abbreviations when used in the form of ownership on the face of this certificate shall be construed as though they were written out in full according to applicable laws or regulations. Abbreviations in addition to those appearing below may be used.

<u>Abbreviation</u>	<u>Abbreviation</u>	<u>Abbreviation</u>	<u>Equivalent Word</u>
JT TEN	As joint tenants, with right of survivorship and not as tenants in common	TEN BY ENT	As tenants by the entireties
TEN IN COM	As tenants in common	UNIF GIFT MIN ACT	Uniform Gifts to Minors Act

<u>Abbreviation</u>	<u>Equivalent Word</u>	<u>Abbreviation</u>	<u>Equivalent Word</u>	<u>Abbreviation</u>	<u>Equivalent Word</u>
ADM	Administrator(s), Administratrix	EX	Executor(s), Executrix	PL	Public Law
AGMT	Agreement	FBO	For the benefit of	TR	(As) trustee(s), for, of
ART	Article	FDN	Foundation	U	Under
CH	Chapter	GDN	Guardian(s)	UA	Under Agreement
CUST	Custodian for	GDNSHP	Guardianship	UW	Under will of, Of will of, Under last will & testament
DEC	Declaration	MIN	Minor(s)		
EST	Estate, of Estate of	PAR	Paragraph		

For value received, hereby sell(s), assign(s) and transfer(s) unto

INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

PRINT OR TYPEWRITE NAME AND ADDRESS INCLUDING POSTAL ZIP CODE OF ASSIGNEE

Depository Shares represented by the within Depository Receipt, and do(es) hereby irrevocably constitute and appoint Attorney to transfer the said Depository Shares on the books of the within named Depository with full power of substitution in the premises.

Dated:

NOTICE: The signature to the assignment must correspond with the name as written upon the face of this Receipt in every particular, without alteration or enlargement or any change whatsoever.

SIGNATURE GUARANTEED

NOTICE: If applicable, the signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations, and credit unions with membership in an approved signature guarantee medallion program), pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934, as amended.

EXHIBIT B

I, [title] of Capital One Financial Corporation (the “Corporation”), hereby certify that pursuant to the terms of the Certificate of Designations, effective August [—], 2012, filed with the Secretary of State of the State of Delaware on August [—], 2012 (the “Certificate of Designations”), and pursuant to resolutions adopted by Board of Directors of the Corporation on January 30 and 31, 2011 and the resolutions of the Preferred Stock Committee of the Board of Directors of the Corporation (the “Preferred Stock Committee”) on August [—], 2012, the Corporation has established the Series B Preferred Stock which the Corporation desires to deposit with the Depository for the purposes of being subject to the terms and conditions of the Deposit Agreement, dated as of August [—], 2012, by and among the Corporation, Computershare Trust Company, N.A., Computershare Inc. and the Holders of Receipts issued thereunder from time to time (the “Deposit Agreement”). In connection therewith, the Board of Directors of the Corporation or a duly authorized committee thereof has authorized the terms and conditions with respect to the Series B Preferred Stock as described in the Certificate of Designations attached as Annex A hereto. Any terms of the Series B Preferred Stock that are not so described in the Certificate of Designations and any terms of the Receipts representing such Series B Preferred Stock that are not described in the Deposit Agreement are described below:

Aggregate number of shares of Series B Preferred Stock issued on the day hereof:

CUSIP Number for Receipt: [—]

Denomination of Depository Share per share of Series B Preferred Stock (if different than 1/40th of a share of Series B Preferred Stock):

Redemption Provisions (if different than as set forth in the Deposit Agreement):

Name of Global Receipt Depository: The Depository Trust Company

All capitalized terms used but not defined herein shall have such meaning as ascribed thereto in the Deposit Agreement.

This certificate is dated:

By: _____

Name: _____

Title: _____

Agreed and Accepted by Computershare Trust Company, N.A., as Depositary

By: _____

Name: _____

Title: _____

August 20, 2012

Capital One Financial Corporation
1680 Capital One Drive
McLean, Virginia 22102

Re: *Capital One Financial Corporation*
Registration Statement on Form S-3 (File No. 333-181047)

Ladies and Gentlemen:

We have examined the Registration Statement on Form S-3, File No. 333-181047, as amended (the "Registration Statement"), of Capital One Financial Corporation, a Delaware corporation (the "Company"), filed with the Securities and Exchange Commission (the "Commission") pursuant to the Securities Act of 1933, as amended (the "Securities Act"), in connection with the offering by the Company of up to 40,000,000 depository shares (the "Depository Shares"), each representing a 1/40th interest in a share of the Company's Fixed Rate Non-Cumulative Perpetual Preferred Stock, Series B, par value \$0.01 per share (the "Preferred Shares").

We have examined the originals, or photostatic or certified copies, of such records of the Company and certificates of officers of the Company and of public officials and such other documents as we have deemed relevant and necessary as the basis for the opinions set forth below. In our examination, we have assumed the genuineness of all signatures, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as copies.

Based upon the foregoing examination and in reliance thereon, and subject to the assumptions stated and in reliance on statements of fact contained in the documents that we have examined, we are of the opinion that when the Preferred Shares are issued to the Depository, as defined in the deposit agreement relating to the Depository Shares (the "Deposit Agreement"), in accordance with the terms of the Deposit Agreement, and the Depository Shares are issued to and paid for by the underwriters in accordance with the terms of the Underwriting Agreement dated as of August 13, 2012 (the "Underwriting Agreement"), among the Company and the underwriters named therein, the Preferred Shares will be validly issued, fully paid and non-assessable. Further, when:

- a. the Deposit Agreement has been duly executed and delivered by the Company and the Depository,
- b. the terms of the Depository Shares have been established in accordance with the Deposit Agreement, and

- c. the depositary receipts representing the Depositary Shares have been duly executed and countersigned (in the case of certificated Depositary Shares), registered and delivered in accordance with the Deposit Agreement and the Underwriting Agreement for the consideration provided therein,

the depositary receipts evidencing the Depositary Shares will be legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

We consent to the filing of this opinion as an exhibit to the Registration Statement, and we further consent to the use of our name under the captions “Validity of the Preferred Stock” and “Certain Legal Matters” in the Registration Statement and the prospectus that forms a part thereof. In giving these consents, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the Rules and Regulations of the Commission.

Very truly yours,

/s/ Gibson, Dunn & Crutcher LLP