

The Federal Reserve Board considers many factors in its evaluation of merger applications, including the convenience and needs of communities affected and the systemic risk the combined institution will pose to the financial system. Woodstock Institute opposes this merger on the grounds that Capital One has an inadequate past record of meeting community financial needs. We also believe that the combined financial institution, as the fifth largest bank by deposits with a vulnerable portfolio heavily concentrated in credit cards, would pose significant risk to the financial system. If the Federal Reserve Board moves forward and approves this application despite our strong objections, we believe that the following recommendations should be required as conditions of approval.

Capital One and ING Direct do not have satisfactory records of meeting convenience and needs of communities

1. **Capital One's CRA performance evaluation is over five years old and its current exam is not yet completed.** The Federal Reserve Board should first complete the current exam and allow public comment on it before considering this application. Capital One's last-minute pledge to invest \$180 billion over 10 years, consisting primarily of credit cards and auto loans to low- and moderate-income people, is not sufficient to demonstrate a record of meeting community needs.

Recommendation: We urge the Federal Reserve Board to require Capital One to provide local, quantifiable mortgage, financial services, and small business lending commitments in all metro areas, states, or rural counties where it has a credit card lending, mortgage lending, or deposit market share of 0.5 percent as a condition of approval.

2. **Capital One did not continue the community reinvestment commitments made by Chevy Chase, which they acquired in 2009.** Under a settlement reached with the U.S. Department of Justice in 1994 for failing to offer services in communities of color, Chevy Chase agreed to take all reasonable steps to obtain a market share of mortgage loans in predominately African American communities that is comparable to its market share in white communities. According to an analysis by the National Community Reinvestment Coalition, Capital One has not achieved comparable market share in many of its markets, including the Washington D.C. metro area.

Recommendation: The Federal Reserve Board should require, as a condition of approval, that Capital One adopt and meet local, quantifiable lending goals to improve the combined institution's market share of originated mortgage loans in low-wealth communities and communities of color.

3. **Capital One's credit card practices and its ability to directly market credit products to ING Direct customers should be evaluated during the determination of public benefit.** Several state attorneys general have instigated investigations of Capital One's credit card practices, including deceptive or misleading statements regarding rate variability. Fee disclosures, rate changes, and pricing concerns represent a large portion of credit card-related consumer complaints against Capital One. The large, existing pool of ING Direct customers represent a sizable new pool of consumers likely to be targeted by Capital One with these problematic credit card products.

Recommendation: The Federal Reserve Board, as a conditional of approval, should require Capital One to immediately correct all unfair, deceptive, and abusive credit card practices.

- 4. Allegations regarding Capital One's overdraft policies and any changes to the ING Direct overdraft policy have not been thoroughly reviewed.** Capital One's allegedly improper overdraft practices provide sufficient reason to withhold the Board's approval of the merger until they are investigated further and, if necessary, improved. The recent legal challenges against Capital One, if true, reveal troubling patterns and practices that harm its longstanding customers, and would harm newly acquired customers from mergers with other banks. This is of particular concern since Capital One's acquisition of ING Direct may result in an elimination of ING Direct's pro-consumer, no-fee, 11.5 percent flat interest rate overdraft policy. The Federal Reserve Board should not act on this application until the proposed overdraft policies at the combined institutions are determined to have no negative effects on ING Direct customers.

Recommendation: The Federal Reserve Board should require, as a condition of approval, that Capital One continue to use the ING Direct overdraft policy.

- 5. There are unresolved legal challenges related to Capital One's default servicing procedures.** A recent suit filed by the National Community Reinvestment Coalition alleges that Capital One failed to respond to an application for a HAMP loan modification which resulted in a denied modification request. The Federal Reserve Board should not act on this application until Capital One can resolve these allegations and change its default servicing procedures to ensure a timely response to loan modification requests.

Recommendation: The Federal Reserve Board should require, as a condition of approval, that Capital One adopt and enforce best practices for mortgage servicing, consistent with those recommended by the National Consumer Law Center in its May 12, 2011 testimony before the Senate Subcommittee on Housing, Transportation, and Community Development.

- 6. In 2010, Capital One implemented a policy that cut off Federal Housing Administration (FHA) loans to borrowers with credit scores between 580-620 even though FHA fully guarantees these loans.** Capital One's policy would have a disparate impact in African American communities in the Chicago region, where 54 percent of individuals have credit scores of less than 620. The bank's last-minute pledge to provide FHA loans to all qualified borrowers is not sufficient to demonstrate a past record of meeting community needs.

Recommendation: The Federal Reserve Board should require, as a condition of approval, that Capital One actively participate in all government guaranteed loan programs, including, FHA, VA, RHS, and SBA programs.

- 7. Capital One and ING Direct currently have minimal CRA obligations as a result of a limited branch presence.** Both banks carry out a substantial portion of their business throughout the country, but have a minimal branch network. Capital One has credit card customers in Illinois and ING Direct receives deposits from Illinois customers, but neither bank designates the Chicago region or Illinois as assessment area. We urge the Federal Reserve Board to adopt meaningful modernization of the rules implementing the Community Reinvestment Act, including changes to the rules designating assessment areas, before considering approval of this or any application that would allow financial institutions to expand without clear community reinvestment obligations.

Recommendation: The Federal Reserve Board should require Capital One, as a condition of approval, to meet lending, investment, and financial services obligations in all areas in which it has a market share of 0.5 percent or more.

Theoretical public benefits of approval do not mitigate “too-big-too-fail” concerns or systemic risk to the financial system

8. **The application does not present any clear public benefit of a combined institution.** Federal Reserve Board Governor Daniel Tarullo commented on this standard for the growth of firms like Capital One: “The regulatory structure for SIFIs [Systemically Important Financial Institutions] should discourage systemically consequential growth or mergers unless the benefits to society are clearly significant.” More products and more ATMs are not “clearly significant” public benefits. Instead, they amount to little more than the natural consequences of merging any two previously distinct financial institutions. And, often after a merger, the combined entity closes branches.

Recommendation: The Federal Reserve Board should make a determination of public benefit in advance of the approval of this application.

9. **Capital One’s proposed acquisition would make Capital One the fifth largest bank in the United States by deposits, but, to date, the application has not been reviewed thoroughly for systemic risk implications.** The Financial Stability Oversight Council (FSOC) should review this acquisition and identify the systemic importance of the proposed combined financial institution and its impact on the stability of the financial system. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the FSOC has the power to hold hearings and open a public comment period. The Federal Reserve Board should not act on this application until the FSOC completes its review.

Recommendation: The Federal Reserve Board should require, as a condition of approval, that Capital One establish a strong “living will” and other policies to mitigate systemic risk.

10. **Capital One is heavily concentrated in credit cards and the combined institution will do little to diversify its portfolio.** Capital One derives 75 percent of its income from credit cards, a vulnerable income source during economic downturns when revolving credit lines shrink and charge-offs increase. No other bank in the top five relies on any one product for more than 32 percent of its income.

Recommendation: The Federal Reserve Board should require Capital One, as a condition of approval, to significantly diversify its portfolio to ensure that it is not overexposed to credit card risk.

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Woodstock Institute is a leading nonprofit research and policy organization in the areas of fair lending, wealth creation, and financial systems reform. Woodstock Institute works locally and nationally to create a financial system in which lower-wealth persons and communities of color can safely borrow, save, and build wealth so that they can achieve economic security and community prosperity.