

601 North Church St
Wilmington, DE 19801

20145 Office Circle, Unit 1
Georgetown, DE 19947



Delaware Community Reinvestment Action Council, Inc.

*Our mission is to ensure equitable treatment
and equal access to credit and capital for the
underserved populations and communities
throughout Delaware through advocacy,
education, legislation, and outreach.*

TESTIMONY OF RASHMI RANGAN,
EXECUTIVE DIRECTOR, DELAWARE COMMUNITY REINVESTMENT
ACTION COUNCIL, INC.,

AT THE PUBLIC HEARING

HELD BY THE STATE BANK COMMISSIONER

AT 10:00 A.M. ON THURSDAY, OCTOBER 27, 2011,

IN THE THIRD FLOOR CONFERENCE ROOM OF THE CARVEL STATE
OFFICE BUILDING,

820 NORTH FRENCH STREET, WILMINGTON, DELAWARE 19801,

TO CONSIDER THE APPLICATION

BY CAPITAL ONE FINANCIAL CORPORATION TO ACQUIRE ING
BANK, FSB

On behalf of the Delaware Community Reinvestment Action Council, Inc., I want to thank you Commissioner Glen for this opportunity to present our testimony on the application by Capital One Financial Corporation to acquire ING Bank, FSB.

This is a far-reaching corporate transaction. The “too big to fail” banks have visited misery upon my community. Public anguish is on display in our villages, towns, and cities across the nation as “occupy wall street” movement gains momentum. These times demand more from all of us, especially the applicant, Capital One.

My name is Rashmi Rangan. Today, my testimony will focus on four criteria that you must consider in this public hearing to determine whether the acquisition “will serve the public convenience and advantage.” Mr. Commissioner, the statutory language requires you to consider these criteria, but does not preclude consideration of other factors which may be relevant to a determination of the “public convenience and advantage.” The specific language “but not by way of limitation” and the statute read as a whole, confers broad power and discretion upon you to determine what constitutes “public convenience and advantage.”¹

Today, we want to persuade you to condition the approval of this application on a cooperative agreement. Absent this agreement, we remind you that you have the authority to deny the merger.

We now turn to the four articulated factors.

WHETHER THE ACQUISITION WILL, BASED UPON THE MANAGERIAL AND FINANCIAL RESOURCES, FINANCIAL HISTORY AND BUSINESS PLAN OF THE APPLICANT, ADVERSELY AFFECT THE SAFE AND SOUND OPERATION OF THE BANK OR ANY OTHER DELAWARE BANK OWNED OR CONTROLLED BY THE TARGET DELAWARE BANK;

Capital One is pursuing a risky business model.

1. More than 75 percent of its profits come from Credit cards. Other larger banks limit their income from one source to about 30%.
2. Using ING deposits to buy HSBC’s credit card portfolio will allow Capital One to control 32% of the entire credit card asset-backed securities market. Primary investors in these securities are pension funds, insurance companies, and the existing too-big-to-fail banks.
 - a. Right before it failed, Countrywide’s market share of the mortgage backed securities was about 13%.
 - b. In 2010, Advanta Bank was one of the largest banks to fail. Its failure has been attributed to over-reliance on a single product (credit cards) and significant credit card securitization activity.

Diversification is not in their long-term business-plan. Capital One has made it clear that they intend to replace ING Direct assets with additional credit card and auto assets.

¹ *Coastal Barge Corp. v. Coastal Zone Indus. Control Bd., Del. Supr., 492 A.2d 1242 (1985).*

WHETHER THE ACQUISITION WILL ADVERSELY AFFECT THE QUANTITY OR QUALITY OF BANKING SERVICES AVAILABLE TO 1 OR MORE COMMUNITIES SERVED BY THE BANK PRIOR TO THE ACQUISITION;

Among other things, we are concerned that Capital One's current overdraft practices of continuing to charge high overdraft fees on debit card, point of sale and ATM transactions, and posting transactions in order from largest to smallest, which maximizes overdraft fees will obliterate a sensible overdraft practice of ING Direct.

WHETHER, AS A RESULT OF A PRIOR OR SIMULTANEOUS ACQUISITION OF ANOTHER BANK, THE ACQUISITION WILL RESULT IN AN UNDUE CONCENTRATION OF RESOURCES OR A SUBSTANTIAL LESSENING OF COMPETITION IN DELAWARE;

According to the testimony presented by Senior Vice President Chris Cole of Independent Community Bankers of America at a public hearing coordinated by the Federal Reserve Board:

1. When the playing field is level, community banks can also have the opportunity to acquire deposits of institutions such as ING.
2. When Community Banks acquire such deposits, there is a greater likelihood of increased small business lending.
3. "Not only are the large banks getting larger, their funding advantage over community banks, which has been estimated to be approximately 50 basis points, appears to be getting even larger," said Chris Cole.

WHETHER THE ACQUISITION WILL FOSTER ECONOMIC DEVELOPMENT AND THE FINANCING OF BUSINESS ENTERPRISES TO THE END THAT EMPLOYMENT OPPORTUNITIES WILL EITHER BE INCREASED OR, WHERE THERE IS A PROSPECT FOR A REDUCTION, RETAINED.

Capital One has made public statements about its growth plans for 2012 and 2013 that include creating additional jobs in Delaware and with help from Delaware they intend to add 500 high-quality new jobs over and above ING Direct and HSBC's current Delaware workforce. We thank Capital One and the state for this meaningful commitment. But we need more.

DCRAC URGES CAPITAL ONE TO ENTER INTO A COOPERATIVE AGREEMENT

"The Commissioner may require as a condition of such approval that the out-of-state bank holding company, enter into a cooperative agreement binding ... to assure that the acquisition serves the public convenience and advantage." *5 Del. C. sec. 844(c)*.

Capital One has announced a 10-year commitment totaling over \$180 billion in new community development lending and investments, as well as increased lending and services to LMI borrowers.

- Low and moderate income home mortgages and home equity lending 28.5 billion;

- Small business and small farm lending for 22.5 billion;
- Affordable housing development and commercial revitalization for 25 billion;
- Low-mod income consumer lending, including auto loans, credit cards and other consumer loans for 104 billion;
- Grants to support critical community services, including housing, economic development and financial education for 450 million.

Against this commitment, Capital One should dedicate \$18 million a year (0.001% of the annual pledged commitment) for specific community reinvestment lending, investment, and service to the lower-income and traditionally underserved communities in Delaware.

Capital One should provide an annual report to the community relative to its CRA activities in the state of Delaware.

Capital One should commit to building the capacity of CRA relevant non-profit community where none exists and enhance capacity where capacity exists to make Delaware a strong community.

Capital One should commit to investing its human resources in Delaware through a pro bono panel of professional experts; technical resources in Delaware through its marketing and information technology expertise; charitable resources in Delaware through its Foundation and creation of a Social Purpose Investment Trust Fund to leverage additional donors; and innovation to serve the credit needs of the Delaware Community.

These should not be difficult commitments to make if we are to take Capital One at its words. Attached to my testimony is a CRA proposal that we desire to work on with Capital One. Before I conclude, I want to thank Capital One's CRA team for their recent visit with us to learn about our community.

IN CONCLUSION

This is not the first time that before you is a merger of such proportions as to have lasting economic implications. We urge you to keep the record open until a cooperative agreement can be reached before you rule on this application. If a cooperative agreement cannot be reached, we ask that you deny this proposal. Thank you.

CAPITAL ONE'S COMMITMENT TO DELAWARE SHOULD BE MORE SPECIFIC

Capital One will dedicate \$18 million a year (0.001% of the annual pledged commitment) for specific community reinvestment lending, investment, and service to the lower-income and traditionally underserved communities in Delaware.

Capital One will provide an annual report to the community relative to its CRA activities in the state of Delaware. These reports should allow for an evaluation of the extent to which Capital One has offered low-cost accounts designed to meet the account needs of low-income individuals. These reports should set out the number of low-income account holders at Capital One, as a percentage of total accounts and as a percentage of new accounts over the previous six months.

Capital One will commit to building the capacity of CRA relevant non-profit community where none exists and enhance capacity where capacity exists to make Delaware a strong community.

Capital One will commit to investing its human resources in Delaware through a pro bono panel of professional experts; technical resources in Delaware through its marketing and information technology expertise; charitable resources in Delaware through its Foundation and creation of a Social Purpose Investment Trust Fund to leverage additional donors; and innovation to serve the credit needs of the Delaware Community.

Capital One will set a goal of 5% of all new banking access points to be established in low-income neighborhoods.

Capital One will build a complaint resolution process that works.

Capital One will set up a Financial Support Service Center in the ShopRite Christiana Crossing location. It would be staffed during many of the odd hours that ShopRite is open. There would be full time Capital One employees assigned to the store and the Delaware non-profits would have someone at the center. It would handle and facilitate any and all credit issues and inquiries. It would not so much be about providing financial assistance as it would be about helping applicants get access to processes, whether mortgage, credit card, auto loan, small bus loan, bankruptcy, etc. There should be strict record keeping and reporting on a monthly basis. Each month a team of involved leaders from DCRAC and Capital One would evaluate the data for who is using the center and tailor a longer term plan for assistance to meet the need. DCRAC would take complaints about process to the next level, e.g. about a financial institution to its regulator, about a mortgage modification to Freddie/Fannie, etc. Capital One with its location near Fannie and Freddie Headquarters could also assist with access. Capital One will get publicity for setting up this Center and earmarking \$2 million to fund it for 2 years.

As the low income community credit union expands and grows, Capital One will partner with the Stepping Stones Community FCU to issue a credit card/debit card. The advantage to such a card is that Stepping Stones customers would have access to a huge array of ATMs for cash, etc. It would also allow Stepping Stones to far exceed its client growth projections.

Capital One will support micro and small business start-ups and bring them into the financial mainstream and support business training and technical assistance programs through charitable grants, corporate volunteers, professional development scholarships, and donated program space. Capital One will institutionalize Second Look Program where public-private partnerships result in co-lending to a bank client that does not meet the bank's underwriting criteria, invite Delaware CDFIs and similar institutions to borrow up to \$750,000 at very favorable below market rate terms that includes a several-year payment moratorium, be a leader in developing Energy Efficiency Loan Pool Network.

Capital One will facilitate the transformation of former "mobile home parks" sitting on rented land into resident-owned cooperative communities. Capital One will make portfolio lending products, developed for low- and moderate-income first-time homebuyers, and/or households purchasing in a low- or moderate-income census tract available in Delaware—A below market rate product, with a generous closing cost assistance grant. Capital One will be involved in financing of affordable housing development by providing affordable construction financing. Capital One will be a major private equity partner, make Low Income Housing Tax Credit investments and provide Letter of Credit to finance construction to the established nonprofit community engaged in such work.