Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

April 20, 2007

CRA Decision #139
May 2007

Andres L. Navarrete
Managing VP and Chief Counsel - Regulatory
Capital One Financial Corporation
1680 Capital One Drive
McLean, VA 22102

Re: Applications to convert Capital One, F.S.B., McLean, Virginia, to a national bank; merge the converted bank and North Fork Bank, Mattituck, New York, into Capital One, National Association, New Orleans, Louisiana: and for Capital One National Association to receive a material non-cash contribution from its holding company, Capital One Financial Corporation
Application Control Nos: 2006-NE-01-018, 02-014, 12-0319

Dear Mr. Navarrete:

This letter is in response to the above applications filed to effect an internal reorganization of various Capital One Financial Corporation ("COFC")[1] depository institution subsidiaries and certain affiliates. Based on a thorough review of all information available, including commitments and representations made in the applications and by representatives of the applicants, the OCC conditionally approves the following for the reasons and subject to the requirements set forth below.

(1) Application by Capital One, F.S.B. ("COFSB"),[2] McLean, Virginia, to convert to a national bank charter with the title of COFSB, National Association ("COFSBNA");

(2) Application to merge COFSBNA, McLean, Virginia, and North Fork Bank ("NFB"),[3] Mattituck, New York, with and into Capital One, National Association,[4] New Orleans,

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[1] COFC is a bank holding company and a financial holding company.

[2] Deposits in COFSB, a subsidiary of COFC, are insured by the Federal Deposit Insurance Corporation ("FDIC").

[3] NFB is a New York-chartered, non-member bank, the deposits of which are insured by the FDIC. It was acquired by COFC on December 1, 2006, when NFB's holding company, North Fork Bancorporation, Inc., was acquired by COFC. As a result of that holding company merger, COFC also owns Superior Savings of New England, National Association, Branford, Connecticut ("Superior"). COFC also owns Capital One Bank, ("COB"), a Virginia-chartered state bank. Neither Superior nor COB is involved in the applications before the OCC.

[4] CONA is the former Hibernia National Bank and was acquired by COFC in 2005.

Louisiana ("CONA"). The resulting bank will be named Capital One, National Association (the "Resulting Bank");

(3) Designation by the Resulting Bank of a main office to be located at the present site of the main office of COFSB in McLean, Virginia,[5] and retention by the Resulting Bank of the main offices and branches of CONA and NFB as branches;

(4) Material non-cash contribution by COFC to the capital surplus of CONA of the common stock of Capital One Auto Finance, Inc. ("COAF"), Plano, Texas, a nonbank subsidiary of COFC; and

(5) Retention as operating subsidiaries, statutory subsidiaries, or financial subsidiaries, as appropriate, of the subsidiaries as described herein.

Legal Authority

The conversion of COFSB to a national banking association is legally authorized under 12 C.F.R. § 5.24 of the regulations of the Comptroller of the Currency ("OCC") and § 552.2-7 of the Office of Thrift Supervision ("OTS") regulations.[6] The OCC has determined that approval is consistent with the requirements for approval of a conversion as set forth in OCC regulations.[7]

The subsequent mergers of COFSBNA and NFB into CONA are legally authorized as interstate merger transactions under the Riegle-Neal Act (the "Act").[8] In this regard, the OCC has determined that, with respect to both mergers, the Act's age requirements applicable to the target banks, filing requirements, and requirements as to the capital adequacy of the banks involved in the merger, and management capabilities of the Resulting Bank are satisfied.[9] In addition, as authorized by the Act, the OCC approves the designation of the main office of COFSBNA as the

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[5] The main office of COFSB will become the main office of COFSBNA following the charter conversion.

[6] We note that prior to the conversion, COFSB would transfer a number of assets and liabilities to COB and pay a cash dividend to COFC. These transactions require the approval or non-objection of either the Board of Governors of the Federal Reserve System ("FRB") or the OTS, or both.

[7] 12 C.F.R. §§ 5.13(b) and 5.24(d). The OTS has informed COFSB that it has no objection to the conversion. COFC also has filed, or will shortly file, an application with the FRB, or a request for a waiver of the application, under the Bank Holding Company Act with respect to the conversion of COFSB to a bank charter.

[8] 12 U.S.C. §§ 215a-1 and 1831u(a).

[9] 12 U.S.C. § 1831u(a)(5), (b)(1) and (b)(4). The Act's concentration limits and expanded CRA requirements are not applicable to these transactions because they are among affiliated banks. As will be subsequently discussed, approval of the mergers is also consistent with the factors set forth in the Bank Merger Act and with the record of compliance of the parties to the conversion and mergers with the Community Reinvestment Act ("CRA").

main office of the Resulting Bank and the retention of the main offices and branches of CONA and NFB as branch offices of the Resulting Bank. [10]

Finally, CONA also has applied for a material non-cash contribution to capital surplus as a result of the contribution by COFC of the stock of COAF to be held by the Resulting Bank. This application was submitted by CONA and is approved by the OCC under 12 C.F.R. § 5.46(g)(1)(i)(C) and (i).[11]

Bank Merger Act

The OCC reviewed the proposed merger transactions under the criteria of the Bank Merger Act,[12] and applicable OCC regulations and policies. Among other matters, we found that the proposed transactions would not have any anticompetitive effects.[13] The OCC considered the financial and managerial resources of the banks, their future prospects, and the convenience and needs of the communities to be served. In addition, the Bank Merger Act requires the OCC to consider ". . . the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities . . ." [14] The OCC considered these factors and found them to be consistent with approval under the statutory provisions.

Community Reinvestment Act

The Community Reinvestment Act requires the OCC to take into account the records of the institutions proposing to engage in a conversion or a merger in helping to meet the credit needs of the community, including low- and moderate-income ("LMI") neighborhoods, when evaluating conversion and merger applications.[15] The OCC considers the CRA Performance Evaluation ("PE") of each institution involved in the transaction. A review of the records of these applicants, and other information available to the OCC as a result of its regulatory responsibilities, revealed no evidence indicating that the applicants' records of helping to meet the credit needs of their communities, including LMI neighborhoods, are less than satisfactory.

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[10] 12 U.S.C. §§ 36(d) and 1831u(d)(1). This includes several unopened branches that have been approved for NFB by the New York State Banking Department and the FDIC, which are at sites at which national banks may permissibly establish branches.

[11] We understand that in connection with this transaction, CONA is seeking an exemption order from the FRB with respect to the quantitative limits of Regulation W with respect to this transaction.

[12] 12 U.S.C. § 1828(c).

[13] As previously noted, COFSB and CONA are affiliates and CONA and NFB became affiliates on December 1, 2006.

[14] 12 U.S.C. § 1828(c)(11).

[15] 12 U.S.C. §§ 2903(a)(2) and 2902(3)(A) and (E); 12 C.F.R. § 25.29(a)(3) and (4).

CONA

CONA's predecessor, Hibernia National Bank, received an overall "Satisfactory" performance rating from the OCC in its PE dated January 12, 2004.[16] The bank received a "High Satisfactory" on the lending and investment tests and an "Outstanding" on the service test. The factors supporting this rating included an excellent lending volume, given the size and competition in the bank's primary markets, and the bank's home mortgage and business lending activity within its assessment area ("AA"). The PE concluded that the bank's overall geographic distribution of lending was good, as well as the distribution of loans to borrowers of different income levels. Examiners found that a significant number and dollar volume of community development loans were originated during the review. The innovative and flexible nature of the bank's loan products received favorable consideration. The PE also noted the bank's strong commitment to affordable housing efforts in its AAs. For example, CONA has placed affordable housing mortgage loan originators in certain markets in Texas and Louisiana. CONA also makes several special mortgage programs available, including a joint program with Fannie Mae to offer low down payment loans, a joint program with the United States Department of Agriculture that uses federal funds to assist in making mortgages with flexible terms and underwriting criteria available to LMI families, and a program designed to assist LMI home buyers who cannot qualify for traditional financing.

The level of community development investments was good. Additionally, service delivery systems were found to be accessible to all geographies and individuals of different income levels in Louisiana, and readily accessible in Texas. The PE found that community development services were excellent and addressed identified needs in the community. Finally, the PE noted no evidence of illegal discrimination or other illegal credit practices

In its application to the OCC dated July 10, 2006, CONA represented that since the last examination, it had originated more than $300 million in community development loans in its Louisiana and Texas markets for purposes such as affordable housing, urban and rural renewal, hurricane relief, and multifamily projects. CONA had also committed to make an additional $34 million in qualified investments, and made $1.8 million in community development grants since the last examination. Additionally, CONA noted its activities in assisting communities affected by Hurricane Katrina, including charitable contributions and assistance to customers in the form of payment deferrals, waiver of fees, and lines of credit and other loan products.

COFSB

COFSB received an overall "Outstanding" CRA performance rating from the OTS in its PE dated July 18, 2005.[17] COFSB is a federal savings bank that does not operate any branches, but

[16] The evaluation period was from October 18, 1999, through January 12, 2004, except for the lending test, for which the evaluation period was from January 1, 2000, through December 31, 2002.

[17] The evaluation period was from April 1, 2003, to June 30, 2005, except for the review of retail lending, which was for the period from January 1, 2003, to March 31, 2005.

offers loan and deposit products nationally through the mail, newspapers, telephone call centers, and an Internet web site. COFSB entered the mortgage business in 2003, and its HMDA-reportable lending represented an insignificant percentage of overall lending during the evaluation period.

COFSB received a "High Satisfactory" rating under the lending and service tests and an "Outstanding" rating under the investment test. Considering the nationwide scope of COFSB's lending and deposit operations, lending volume within the COFSB's AA was considered reasonable. Distribution of loans by borrower income level was favorable for the products reviewed. The percentage of consumer installment loans made to LMI borrowers in the institution's AA exceeded the percentage of LMI families residing in that area. The PE favorably noted the institution's special installment loan product offered within the AA, featuring loan terms attractive to LMI borrowers.

Distribution of loans in LMI census tracts was considered reasonable. The level of community development lending was considered adequate, and these loans provided innovative and creative financing for community development financial institutions, affordable housing initiatives, and community development organizations.

COFSB's qualified investments were considered very high in comparison to its size and available resources. Qualified investments included purchases of qualified mortgage-backed securities and low-income-housing tax credits, investments in small business investment corporations, and deposits in community development fund initiatives during the evaluation period. Additionally, examiners noted that COFSB provided a significant level of grants and contributions to community development organizations. The PE also noted a relatively high level of community development services to numerous nonprofit organizations, service of members of senior management in leadership positions with a number of organizations providing affordable housing and other social services to LMI individuals, and the participation of COFSB personnel in financial literacy programs for LMI individuals.

NFB

The FDIC assigned NFB an overall "Outstanding" rating in its most recent CRA PE dated January 23, 2006. The evaluation period was from August 20, 2002, through January 23, 2006. The FDIC's PE included an assessment of the mortgage lending activities of NFB's subsidiary, GPMF. In 2004, North Fork Bancorporation, NFB's former holding company, merged with GreenPoint Financial Corporation, the parent company of Green Point Bank and its wholly-owned subsidiary, GPMF.

The FDIC's PE stated that the bank's level of lending activity reflected excellent responsiveness and willingness to meet the credit needs of its AA, and its level of lending to LMI geographies of its AA was excellent. It also determined that the bank had established or implemented the use of loan products designed to meet the varied needs and qualifications of its customer base, and demonstrated a good record of lending to retail borrowers of different incomes and business customers of different sizes.

The FDIC's PE noted that the bank has been a leader in originating community development loans. Outstanding community development loans and commitments totaled $2.0 billion and represented 5.3% of total loans ($37.4 billion) and 3.5% of total assets ($57 billion) as of December 31, 2005. The bank's FDIC PE noted that the bank had used innovative and flexible lending practices to serve the needs of its AA. Examples of flexible products offered include the North Fork Bank Affordable Mortgage Program, which makes flexible terms and subsidies available for LMI applicants, a joint program with Fannie Mae to assist borrowers who otherwise would not qualify for financing, and a joint program with the State of New York Mortgage Association to provide low interest rate loans to LMI first time home buyers.

The FDIC PE noted an excellent level of qualified community development investments and grants. Additionally, FDIC examiners found NFB to be a leader in providing services to its AA. The FDIC PE stated that retail banking services were accessible to essentially all segments of the bank's AA, including LMI geographies. FDIC examiners noted that the bank actively organized and participated in programs to provide education and community development services to residents of its AA, particularly the LMI population. The FDIC PE stated that no substantive violations of the antidiscrimination laws and regulations were identified.

<u>Public Comments</u>

The OCC did not receive any comment letters from the public on the applications. However, during the review of the application to merge COFC and North Fork Bancorporation, Inc., the FRB received four comment letters expressing various concerns with the merger.[18] While the OCC did not directly receive these comments, we carefully considered the concerns raised as they relate to institutions involved in this transaction, and they are summarized and addressed below.[19] The OCC also has carefully considered the recent agreement entered between the

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[18] The FRB approved the holding company merger effective November 8, 2006. Federal Reserve System, Capital One Financial Corp., McLean, Va., *Order Approving the Merger of Bank Holding Companies* (Nov. 8, 2006).

One commenter requested that the FRB hold a hearing on the application. The FRB's Order stated that Section 3 of the Bank Holding Company Act does not require the FRB to hold a public hearing on an application unless the appropriate supervisory authority for any of the banks to be acquired makes a timely written recommendation of denial of the application. The FRB did not receive such a recommendation from any supervisory authority.

Under its rules, the FRB also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to provide an opportunity for testimony or other presentations. The FRB determined that the commenter had had ample opportunity to submit comments on the proposal and had failed to demonstrate why written comments would not be adequate. Accordingly, the FRB denied the request for a public hearing or meeting. *Id.* at p. 20, n. 41.

[19] One commenter expressed concern about investigations of the Minnesota and West Virginia Attorneys General into COFC entities' credit card lending activities. COFSB has represented that its credit card accounts will be transferred to COB, a Virginia-chartered member bank whose primary business consists of issuing credit cards and accepting retail deposits. COB is not a party to the transactions for which the applicants seek approval from the OCC. In any event, the Minnesota Attorney General's investigation was resolved with a Consent Judgment dated February 13, 2006. At the present time, the West Virginia Attorney General does not have an action pending against a COFC entity challenging credit card lending activities. To the extent issues are raised by state authorities

Attorney General of the State of New York and GreenPoint Mortgage Funding, Inc. ("GPMF"), a subsidiary of NFB.

Lending Disparities and Loan Pricing

Two commenters expressed concern about apparent disparities relating to loan denials and higher-cost lending based on their review of Home Mortgage Disclosure Act ("HMDA") data.[20] One commenter alleged, based on 2004 HMDA data, that COFSB, NFB, and GPMF, made higher-cost loans more frequently to African Americans and Hispanics than to non-minority borrowers nationwide. Another commenter alleged, based on 2005 HMDA data, that a relatively high percentage of COFSB's home mortgage loans to African Americans were higher-cost loans. Additionally, this commenter asserted that GPMF made higher-cost loans nationwide more frequently to African Americans than to non-minorities. This commenter also asserted that NFB extended an insufficient number of home mortgage loans to African American and Hispanic borrowers in light of the demographic profile of its lending areas. Finally, the commenter asserted that on a combined basis in the New York City Metropolitan Statistical Area ("MSA"), GPMF and NFB made higher-cost loans more frequently to African Americans than to non-minorities.

In its responses dated June 2006 to the FRB, COFC noted the relatively small data sample for COFSB for 2004 and 2005. COFC also defended GPMF's record of HMDA lending to African Americans and Latinos.

In a document entitled "Assurance of Discontinuance Pursuant to Executive Law Section 63(15)" ("Assurance of Discontinuance") entered on March 26, 2007 between the Attorney General of the State of New York ("OAG") and GPMF, GPMF has agreed to take a number of actions with respect to its residential mortgage lending activities conducted through brokers in the State of New York.

In addition, all the lending activities of CONA and its subsidiaries will be subject to ongoing fair lending supervisory oversight by the OCC. COFC represented that NFB's fair lending program will be incorporated into COFC's enterprise-wide fair lending compliance program. After consummation of the transaction, COFC will perform an assessment to determine best practices from both organizations, and the resulting fair lending program will include monitoring, training, controls, and governance.

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concerning lending practices of any COFC entity affected by the applications under consideration, the OCC will seek to coordinate, as appropriate, with relevant state authorities.

[20] Denial and pricing disparities are evaluated in fair lending examinations. However, it is important to note that HMDA data alone are not adequate to provide a basis for concluding that a bank is engaged in lending discrimination or to indicate whether its level of lending is sufficient. HMDA data do not take into consideration borrower creditworthiness, housing prices, credit scores, and other factors relevant to each credit decision, nor do they fully reflect the range of a bank's lending activities or efforts. The OCC carefully examines HMDA data for national banks, and their subsidiaries, and incorporates the results of its analysis into its supervisory strategy for examinations.

Relationships with Certain Third Parties

Two commenters criticized the lending relationships of NFB and COFC with nontraditional providers of financial services. NFB indicated that it does not have relationships with payday lenders. NFB does provide banking services to check cashers in New York, New Jersey, and Connecticut. These entities are required to be licensed by the states and are subject to state regulations. COFC stated that its only dealings with these businesses are in the ordinary course of extending credit, to the extent consistent with applicable regulations.

NFB's Record of Serving LMI Communities in New Jersey

One commenter expressed concern regarding NFB's record of serving LMI communities in New Jersey and its alleged lack of community development loans for non-profit organizations in that state.[21] However, the bank's recent CRA PE, prepared by the FDIC, considered CRA performance in the New Jersey AA and assigned an Outstanding rating overall and in the lending, investment, and service categories.

In sum, we have closely reviewed the comments submitted in connection with the holding company merger, and we find that they are not inconsistent with approval of the pending applications. Moreover, the applicants' records of performance under the CRA are consistent with approval.

Retention of subsidiaries[22]

The Resulting Bank will retain as financial, operating, and statutory subsidiaries a number of entities that COFSB[23] and NFB[24] currently own. Moreover, as noted, COFC also will contribute

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[21] Another commenter made specific recommendations for community development lending and investments and charitable contributions after the merger. The CRA, however, does not require a bank to engage in any particular type of lending or investment, nor does it require a bank to sustain a particular level of lending or investments. CRA performance for large banks is based on an overall assessment under the lending, investment, and service tests. *See* 12 C.F.R. §§ 25.21 to 25.24.

One commenter criticized COFC for refusing to make a lending commitment specific to New Jersey. The CRA does not require banks to enter commitments or agreements with any organization. 66 Fed. Reg. 36,620, 36,640 (2001) (Question and Answer No. 2, § 29(b)).

[22] Unless otherwise stated, we understand that all of the subsidiaries are wholly owned by COFSB, COAF, or NFB.

[23] COFSB has represented (1) that it will transfer, prior to converting to a national association, Capital One Funding Small Business, LLC, to COB; and (2) that Capital One Financing LLC is dormant and will be dissolved following consummation of the proposed transactions.

[24] CONA has represented that prior to consummation of the merger into CONA, NFB will transfer its interest in GreenPoint Business Processing Services Private Limited to COFC. CONA also has represented that it expects to complete the sale of NFB subsidiary CBMC, Inc., a state-licensed check casher in New York, to an unrelated party shortly after consummation of the proposed transactions.

the stock of COAF to the Resulting Bank, which will hold this entity as an operating subsidiary.[25] In addition, current subsidiaries of COAF will continue to be owned by COAF and, thus, will become operating subsidiaries of the Resulting Bank. CONA has represented that all operating subsidiaries that it will acquire as a result of these transactions will be operated in accordance with OCC regulations and policies contained in guidance issued by the OCC.[26]

The following operating subsidiaries to be acquired by the Resulting Bank are engaged in lending or leasing activities, which are permissible activities for an operating subsidiary of a national bank:[27] Capital One Home Loans, LLC, Overland Park, Kansas (home equity loans, home equity lines of credit, and first mortgage loans) and its immediate parent Capital One Home Loans Holding Inc., McLean, Virginia; GreenPoint Mortgage Funding, Inc. ("GPMF") (making and servicing mortgage loans), and its immediate parent, Headlands Mortgage Company, both of Novato, California; All Points Capital Corporation and All Points Public Funding LLC, both of Melville, New York (leasing and financing of equipment in accordance with 12 C.F.R. Part 23); North Fork Business Capital Corporation, Melville, New York (commercial lending); North Fork New Markets Credit Corporation, Melville, New York (loans to low-income businesses that qualify for certain tax treatment under the Internal Revenue Code); NFB Funding, Inc., Melville, New York (indirect automobile lending); NFB Maritime, Inc., Fort Lauderdale, Florida (financing yacht purchases).[28]

The following operating subsidiaries are engaged in activities related to lending that are permissible for an operating subsidiary of a national bank:[29] Capital One Settlement Services, LLC, Overland Park, Kansas (provides loan closing services to Capital One Home Loans, LLC[30]) and its immediate parent Capital One Home Loans Holding Inc.; GreenPoint Mortgage Securities, Inc., Novato, California, Capital One Amortizing Loan Funding, LLC, and Capital One Installment Loan Funding LLC, both of McLean, Virginia (each engaged in acquiring and securitizing mortgage loans); GreenPoint Credit, LLC, San Diego, California (formerly originated, serviced, and securitized manufactured housing loans, but now only holds various

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[25] COAF conducts an indirect and direct automobile finance business, purchasing retail installment contracts secured by automobiles and other motor vehicles from dealers, and lending money directly to consumers to purchase motor vehicles, fund lease buy-outs or refinance the purchase of motor vehicles. These activities are permissible for an operating subsidiary of a national bank. 12 C.F.R. § 5.34(e)(5)(v)(C) and (D). CONA has represented that prior to consummation of the proposed transactions, COAF has or will transfer its minority investments in DealerTrack and Zag.com to COFC.

[26] 12 C.F.R. § 5.34(e)(5)(iv).

[27] 12 C.F.R. § 5.35(e)(5)(v)(C) (lending) and (M) (leasing).

[28] Based on CONA's representations with respect to the operation of the subsidiaries engaged in lending, including COAF, the OCC concludes that the offices of these subsidiaries do not constitute branches subject to the limitations of 12 U.S.C. § 36, because they neither receive deposits, pay withdrawals, or disburse loan proceeds.

[29] 12 C.F.R. § 5.34(e)(5)(v)(A) (holding assets), (e)(5)(v)(B) (providing services to the parent bank or its affiliates); (e)(5)(v)(D) (purchasing, selling, servicing, and warehousing loans or other extensions of credit).

[30] *See*, *supra*, note 28.

assets and liabilities on its books); Marin Conveyancing Corporation, Novato, California (trustee for deeds of trust in Arizona, California, and Nevada and, in that capacity, handles foreclosures for GPMF in those states); Home Fed Realty Corporation and Reliance Preferred Funding Corporation, both of Branford, Connecticut, and TC Preferred Funding, Inc., Melville, New York (each structured as a real estate investment trust that holds loans secured principally by residential, multifamily, and commercial mortgages);[31] Onyx Acceptance Corporation, Foothill Ranch, California (purchases automobile retail installment contracts from automobile dealers); Capital One Acquired Auto Portfolio Funding, LLC, Glen Allen, Virginia, Capital One Auto Receivables, LLC, McLean, Virginia, and Onyx Acceptance Financial Corporation, Foothill Ranch, California (each securitizes loans and installment sales contracts for automobile and other motor vehicle purchases); Capital One Auto Loan Facility, LLC, Glen Allen, Virginia (warehouses loans and installment sales contracts for automobiles and other motor vehicles); New Moon LLC, Plano, Texas, and Cazador, LLC, Glen Allen, Virginia (each acquires nonprime automobile loans from COAF and then sells the loans to third parties receiving "back-end" payments if performance of the loans exceeds a specified threshold); and GreenPoint Insurance Corporation, San Diego, California (no longer engaged in insurance activities, but holds mortgage assets).

The following operating subsidiaries provide services to the bank and affiliates that are not related to lending but which are permissible for an operating subsidiary of a national bank:[32] NFB Payroll Services Ltd., Melville, New York (payroll services for NFB and its affiliates); Compass Food Service Corporation and GPM Food Services Corporation, both of Melville, New York (manage, respectively, food services for employees at North Fork's principal offices in Melville, and GPMF's principal offices in Novato, California); New Commercial Bank of New York LLC (NCBNY), New York, New York (handles outstanding legal and tax matters that arose from NFB's acquisition in 2001 of Commercial Bank of New York, a non-depository trust company, which was then merged into NFB; NCBNY does not operate under a banking charter); North Fork Financial Advisors, LLC, Melville, New York (does not provide products or services to the public, but facilitates advertising by NFB Investment Services Corporation, NFB's affiliated broker-dealer, and NFB Agency Corporation, NFB's affiliated insurance agency).

The following subsidiaries, which hold bank-permissible assets and assets acquired through foreclosure, also may be retained by the Resulting Bank as operating subsidiaries:[33] Jamsab Realty Company, Melville, New York (holds bank-eligible, tax-exempt municipal bonds and

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[31] RJH Holdings Inc., Melville, New York ("RJH"), is an intermediary holding company that holds two of NFB's real estate investment trusts – Home Fed Realty Corporation and Reliance Preferred Funding Corporation. Retention of RJH and its holdings is permissible under the same authority that applies to the REITs. RJH also holds Jamsab Realty Corporation, a passive investment company discussed subsequently in this letter. RJH's retention of this holding is under the same authority to be discussed in connection with Jamsab.

[32] 12 C.F.R. § 5.34(e)(5)(v)(B).

[33] Holding of assets permissible for the parent bank and assets acquired though foreclosure are permissible activities for a national bank operating subsidiary. 12 C.F.R. § 5.34(e)(5)(v)(A).

certain trust-preferred investments);[34] Clare-Elm Corporation, Cutchco Corporation, and NFB Development Corporation, each of which is located in Melville, New York (each holds property acquired through foreclosure).

Following consummation of the proposed mergers, the Resulting Bank also may retain as operating subsidiaries AFP II Investment Corp. (AFP Investment), and AFP Funding II, LP (AFP Funding), both of McLean, Virginia. AFP Investment is the sole general partner of AFP Funding, owning a 0.1 percent equity interest. It engages in no other activities. AFP Funding is a Delaware limited partnership. COAF is the sole limited partner with an equity interest of 99.9 percent. AFP Funding securitizes loans and installment sales contracts for automobile and other motor vehicle purchases. These activities, as well as the ownership interests held by AFP Investment and COAF, are permissible for an operating subsidiary of a national bank.[35]

Following consummation of the merger transactions, the Resulting Bank also may retain the following statutory subsidiaries:

North Hill Ventures II, L.P., Boston, Massachusetts (NHV), is a small business investment company licensed by the Small Business Administration in 2002. COFSB owns 49.13 percent of NHV as a limited partner.[36] NHV invests in information technology and software companies with a specific focus on financial services and direct-to-consumer marketing businesses that require capital to sustain or accelerate growth. National banks are permitted to purchase ownership interests in small business investment companies.[37]

Cutchco Corporation, 290 Main Street LLC, and 3090 Ocean Avenue Realty Corporation, each of Melville, New York, each owns real property used by branches of NFB. To the extent any such holding would not be permissible for the Resulting Bank, the Bank must conform the holding or divest it as provided under OCC regulations.[38]

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[34] Jamsab also is the holding company for AllPoints Capital Corporation, AllPoints Public Funding LLC, and TC Preferred Funding Inc. Each of these has been discussed previously, and Jamsab has the same authority to engage in those activities as do those entities.

[35] 12 C.F.R. § 5.34(e)(5)(v)(D) (purchasing, selling, servicing and warehousing loans or other extensions of credit). In addition, national bank operating subsidiaries may hold general partnership interests and limited partnership interests in a limited partnership. OCC Corporate Decision 2004-16 (September 10, 2004). Moreover, a limited partnership in which all of the general and limited partnership interests are owned directly or indirectly by a national bank is considered to be an operating subsidiary of the national bank. *Id.*

[36] COFSB's state bank affiliate, COB, also holds a 49.13 percent ownership interest. North Hill Ventures GP, LLC (NHVGP) owns the remaining 1.74 percent interest and is the general partner. NHVGP is organized under Delaware law and is owned by current and former employees of a direct nonbank subsidiary of COFC.

[37] 12 C.F.R. § 7.1015; 15 U.S.C. § 682(b). Section 682(b) provides that national banks may invest in one or more small business investment companies, or in any entity established to invest solely in small business investment companies provided that the total amount of the bank's investment shall not exceed five percent of the capital and surplus of the bank. The Resulting Bank's investment in NHV will come within this limitation.

[38] 12 C.F.R. Part 34, Subpart E.

CONA also has provided the notices required by 12 C.F.R. § 5.39 for the Resulting Bank to retain as financial subsidiaries two wholly-owned subsidiaries of NFB following consummation of the transactions. These are: GreenPoint Agency Inc., San Diego, California, a state-licensed insurance agent and broker primarily engaged in the sale of forced placed insurance relating to GPMF's mortgage lending operations and which also engages in the sale of life and health insurance; and NFB Agency Corporation, Melville, New York, a state-licensed insurance agency primarily engaged in the sale of life and health insurance and annuities.

Consummation Guidance

Please refer to the Conversion and Business Combination Booklets for steps to complete the conversion and mergers.

These approvals are granted based on our understanding that other applicable regulatory approvals, non-objections or waivers with respect to the proposed transactions will have been received prior to the conversion and mergers, as appropriate.

These approvals also are subject to the following condition:

> CONA, the Resulting Bank, shall take all steps necessary to ensure that the commitments set forth in the April 4 and April 17, 2007, letters from Mr. Richard D. Fairbank, Chairman and Chief Executive Officer, of Capital One Financial Corporation to the OCC following the concurrence of the OCC, are fully adopted, timely implemented and adhered to thereafter.

This condition is a condition imposed in writing by the agency in connection with the granting of an application or other request within the meaning of 12 U.S.C. § 1818. As such, the condition is enforceable under 12 U.S.C. § 1818.

As a reminder, the Northeastern District Licensing unit must be advised in writing 10 days in advance of the desired effective date for the conversion and each merger so that the OCC may issue the necessary conversion authorization and merger certification letters.

The OCC will include branch authorizations, as appropriate, in the letters authorizing the conversion and certifying the consummation of the mergers. With respect to the conversion application, you are reminded that the following items must be satisfactorily addressed on or before the effective date of the conversion of COFSB:

1. The converting institution must ensure that all other required regulatory approvals, non-objections, or waivers have been received.
2. The converting institution must notify the OCC if the facts described in the filing materially change at any time prior to consummation of the conversion.
3. Upon completion of all steps required to convert to a national banking association, the converted bank must submit the "Conversion Completion Certification" (enclosed)

certifying that all of the steps required to convert COFSB to a national banking association have been completed.

When the institution has satisfactorily completed all of the above steps, the OCC will issue a "Conversion Completion Acknowledgment" officially authorizing the institution to commence business as a national banking association. At that time, you will receive the charter certificate.

With respect to the merger applications, please ensure that you have submitted the following prior to your desired consummation date:

1. CONA must ensure that all other required regulatory approvals, non-objections, or waivers have been received.
2. A Secretary's Certificate for each institution certifying that a majority of each bank's board of directors approved the merger.
3. An executed merger agreement and, if necessary, the Amended Articles of Association for the Resulting Bank.
4. A Secretary's Certificate from each institution certifying that the shareholder approvals have been obtained, if required.

If the transactions have not been consummated within six months from the approval date, the approvals will automatically terminate unless the OCC grants an extension of the time period.

These conditional approvals and the activities and communications by OCC employees in connection with the filing, do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the U.S., any agency or entity of the U.S., or any officer or employee of the U.S., and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the U.S.

A separate letter is enclosed requesting your feedback on how we handled your applications. We would appreciate your response so we may improve our service. If you have questions regarding this letter, please contact me at (202) 874-4050 or Senior Licensing Analyst Sandya Reddy at (212)790-4055. Please reference the application control number in any correspondence.

Sincerely,
/s/
Lawrence E. Beard
Deputy Comptroller for Licensing