Comptroller of the Currency
Administrator of National Banks

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CRA Decision #149
April 2012

March 9, 2012

Richard Kim, Esquire
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RE: Applications by Capital One, National Association, McLean, Virginia, and Capital One Bank (USA), National Association, Glen Allen, Virginia, for prior approval to acquire substantially all of the assets and assume certain liabilities of HSBC Bank Nevada, Las Vegas, NV (the "Applications").
Application Control Numbers: 2011-NE-02-0028 and 2011-NE-02-0029

Dear Mr. Kim:

The Office of the Comptroller of the Currency ("OCC") hereby approves the Applications by Capital One, National Association, McLean, Virginia ("CONA"), and Capital One Bank (USA), National Association, Glen Allen, Virginia ("COBNA"), to acquire substantially all of the assets and assume certain liabilities of HSBC Bank Nevada, Las Vegas, Nevada ("HSBC Nevada"). These approvals are granted after a thorough review of the Applications, other materials you have supplied, and other information available to the OCC, including commitments and representations made in the Applications and by the banks' representatives during the application process.

I. Introduction

CONA and COBNA (together referred to as "Applicants" or "Capital One") are subsidiaries of Capital One Financial Corporation, McLean, Virginia ("COFC"). CONA and COBNA expect to acquire up to approximately $30 billion in credit card assets from HSBC Nevada. Applicants' initial consummation may not include a small number of private label and/or co-brand partners that are still under negotiations.[1]

[1] In connection with this approval, the OCC will allow the banks to continue negotiations for assignment of merchant accounts for a period of six (6) months after initial consummation, with final consummation expected within thirty (30) days thereafter.

II. Legal Authority for the Transaction

National banks are authorized to purchase the assets and assume the liabilities ("P&A") of other depository institutions as an activity incidental to the business of banking under the authority of 12 U.S.C. § 24 (Seventh).[2] This transaction involves two national banks in Virginia engaging in a P&A transaction with a national bank in Nevada. CONA or COBNA will not acquire any branches in a new state as part of this transaction and, as such, no issue of branch acquisition or retention is raised under the Riegle-Neal Act, 12 U.S.C. § 1831u(d)(1).

Where all or substantially all of the assets of a depository institution are being acquired, the transaction must be reviewed for compliance with the Bank Merger Act, 12 U.S.C. § 1828(c)(2),[3] as well as 12 C.F.R. § 5.33 and applicable OCC policy. Since the acquisition will result in the purchase by CONA and COBNA of substantially all of the assets of HSBC Nevada, applications under the Bank Merger Act to the OCC are required.

The transaction must also be reviewed in context of the OCC's responsibilities under the Community Reinvestment Act ("CRA"), codified at 12 U.S.C. § 2903(a)(2) and 12 U.S.C. § 2902(3)(E).

As discussed below, the OCC has determined that the P&A satisfies relevant legal and policy requirements.

A. Bank Merger Act

Pursuant to the Bank Merger Act, the OCC generally may not approve a P&A that would substantially lessen competition. The Bank Merger Act also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, the convenience and needs of the community to be served, and the risk of the transaction to the stability of the United States banking or financial system. 12 U.S.C. § 1828(c)(5) (as amended by section 604(f) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank")). The OCC must also consider the effectiveness of the banks in combating money laundering activities. 12 U.S.C. § 1828(c)(11). Lastly, the OCC may not approve any interstate merger transaction that results in the resulting insured depository institution controlling more than 10 percent of the total amount of deposits of insured depository institutions in the United States. 12 U.S.C. § 1828(c)(13).

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[2] *See*, *e.g.*, *City National Bank of Huron v. Fuller*, 52 F.2nd 870, 872 (8th Cir. 1931); *In re Cleveland Savings Society*, 192 N.E. 2d 518, 523-24 (Ohio Com. Pl. 1961). *See also* 12 U.S.C. § 1828 (c)(2) (P&A transactions included among transactions requiring review under the Bank Merger Act).

[3] "No insured depository institution shall…*acquire the assets of…* any other insured depository institution except with the prior written approval of the responsible agency."

1. Competitive Analysis

CONA and COBNA are two of roughly 5000-plus institutions that offer credit cards in a highly competitive market. The proposed acquisition would not result in significantly lessening the number of competitors offering credit cards. The U.S. Department of Justice reviewed the proposed acquisition and concluded that there would be no significant adverse effect on competition.

2. Financial and Managerial Resources

CONA and COBNA are expected to remain in satisfactory condition following the HSBC Nevada acquisition. Both banks are expected to remain well-capitalized and well-managed following the acquisition. The future prospects of the resulting institutions are favorable.

3. Convenience and Needs

The proposed P&A transaction will not have an adverse impact on the convenience and needs of the community. The P&A will not result in a reduction in products or services to the general public. HSBC Nevada is selling the credit card assets as part of its plan to exit this line of business. CONA's and COBNA's acquisition of HSBC Nevada's credit card business will allow consumers to have continued access to approved credit under the respective card programs. There will be no change to CONA's or COBNA's assessment areas. The P&A transaction does not include any retail deposits or retail branches. CONA and COBNA do not intend to discontinue any existing products or services as a result of this acquisition.

4. Banks' Effectiveness in Combating Money Laundering

We considered this factor and based on our supervisory knowledge of the Applicants, determined no material weaknesses existed that would preclude approval of this transaction.

5. The Risk to the Stability of the U.S. Banking System

Section 604(f) of Dodd-Frank requires the OCC to consider, when reviewing transactions under the Bank Merger Act, the risk to the stability of the United States banking or financial system.

The OCC generally look to the following factors when applying this standard: (a) whether the proposed transaction would result in a material increase in risks to financial system stability due to an increase in size of the combining firms; (b) whether the transaction would result in a reduction in the availability of substitute providers for the services offered by the combining firms; (c) whether the transaction would materially increase the extent of the interconnectedness of the financial system; (d) whether the transaction would materially increase the extent to which the combining firms contribute to the complexity of the financial system; (e) whether the transaction would materially increase the extent of cross-border activities of the combining firms; and (f) the relative degree of difficulty of resolving the combined firm. Applying these standards, as discussed below, we conclude that the proposed P&A transaction does not pose a risk to the U.S. banking or financial system.

a. Size

After consummation of the proposed transaction, neither the size of CONA or COBNA would pose material increase in risks to the financial stability of the United States financial or banking system. CONA's and COBNA's pro-forma total assets increase by 16 percent to approximately $154 billion and 17 percent to approximately $83 billion, respectively. However, the increases result in CONA remaining in 14th place and COBNA moving up one place to 25th in total assets.[4]

Federal law establishes statutory limits of 10 percent of nationwide deposits and 10 percent of nationwide liabilities on proposed combinations of banking institutions. No deposits except for a *de minimis* amount of credit balances are being acquired by CONA or COBNA. After consummation, their combined market share for deposits and liabilities would remain unchanged at 1.35 percent of the total amount of deposits of insured depository institutions in the United States,[5] and far below the 10 percent limit.

b. Substitutability

CONA and COBNA offer traditional financial services and credit card products. These products and services are offered by numerous other banks, thrifts, and financial service providers. Given the number of substitute providers that could offer these products and services, it does not appear that there would be a disruption in availability of credit in the United States financial system should CONA or COBNA become distressed.

c. Interconnectedness

CONA and COBNA does not currently, and will not following the HSBC Nevada acquisition, engage in any business activities or participate in markets in a manner that in the event of financial distress would cause significant risks to other institutions.

d. Complexity

CONA and COBNA engage primarily in traditional banking activities. These activities, on a standalone or on a combined basis, do not present unique or substantial complexities.

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[4] Asset size rankings based on Call Report data for all Federal Deposit Insurance Corporation ("FDIC") insured institutions as of December 31, 2011.

[5] Calculated using "Statistics on Depository Institutions" database available on FDIC website, www.fdic.gov.

e. Cross-Border Activity

COBNA operates one branch in Canada that has authority to provide credit card loans and through Capital One (Europe) plc, an indirect subsidiary located in the United Kingdom, offers credit cards and installment loans in the UK. The assets in these foreign operations account for 4.6% of COFC's consolidated assets. The HSBC Nevada credit card portfolio being acquired does not include any cross border accounts and as such, would not contribute to an increase in cross border exposure after the acquisition.

f. Resolution

The size, operations, activities and complexity of CONA and COBNA on a standalone and combined basis will not be fundamentally different than their current operations and the Applicants' limited expansion as a result of the P&A does not alter the relative degree of difficulty of resolving CONA and COBNA subsequent to this acquisition.

Accordingly, the OCC finds the proposed P&A to be consistent with the requirements of, and relevant considerations under, the Bank Merger Act.

B. Community Reinvestment Act

The CRA requires the OCC to take into account the records of the institutions' performance in helping to meet the credit needs of their communities, including low- and moderate-income ("LMI") neighborhoods when evaluating applications under the Bank Merger Act.[6] The OCC considered the CRA performance evaluation of each institution involved in the transaction.

1. CONA and COBNA

Public performance evaluations ("PEs") for CONA and COBNA, dated April 4, 2011, were issued by the OCC.[7] CONA received an overall "Outstanding" rating under performance tests applicable to large banks, while COBNA was assigned an overall "Satisfactory" rating under standards applicable to banks designated as limited purpose.[8]

Among the major factors supporting the "Outstanding" CONA rating were: (i) an excellent level of community development investments responsive to assessment area ("AA") needs; (ii) community development lending reflecting a significant positive impact; (iii) an excellent

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[6] 12 U.S.C. §§ 2903(a)(2) and 2902(3)(E); 12 CFR § 25.29(a)(3).

[7] PEs issued by the OCC may be found at http://www.occ.treas.gov/tools-forms/tools/compliance-bsa/cra-perf-eval-search.html.

[8] A limited purpose bank is defined as a bank that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a limited purpose bank is in effect.

distribution of loans among geographies of different income levels; (iv) leadership and the use of an innovative method of investing in Low-Income Housing Tax Credits ("LIHTCs"); (v) an adequate distribution of loans among borrowers of different incomes; and (vi) a branch and delivery system that is accessible to geographies and individuals of different income levels. CONA's overall CRA rating is a blend of CONA's multi-state metropolitan area ("MMA") and state ratings. However, performance ratings in the New York-Northern New Jersey-Long Island ("NY-NJ-LI") MMA, the Washington, D.C., MMA, and the state of Louisiana were weighted more heavily because the vast majority of the bank's deposits (90 percent), as well as the lending volume and branch locations, were most heavily concentrated in those areas.

Among the major factors supporting COBNA's "Satisfactory" rating were: (i) a high level of qualified investments, community development services, and community development lending; (ii) extensive use of innovative qualified investments, community development services, and community development loans; and (iii) excellent responsiveness to community development needs in the assessment area. As discussed in section C.6.b., during a review of COBNA's credit card program, OCC examiners became aware of issues relating to credit card disclosures that resulted in a violation of law. The violation caused COBNA's overall CRA rating to be reduced from "Outstanding" to "Satisfactory."

2. HSBC Nevada

HSBC Nevada's most recent PE, dated March 29, 2010, and issued by the OCC, assigned the bank an "Outstanding" rating. The OCC evaluated HSBC Nevada's performance against goals established in the strategic plan developed by the bank and approved by the OCC in 2007. Major factors supporting the "Outstanding" rating were: (i) substantially meeting or exceeding its goals for each year during the evaluation period and (ii) effectively working with the community groups that support community development investments and services targeting affordable housing, education, and community services for LMI individuals. No evidence of discriminatory or other illegal credit practices was noted in the PE.

C. Public Comments

The OCC received over 300 letters from the public[9] expressing concerns related to the Applications, which closely resembled comments received by that the Board of Governors of the Federal Reserve System ("FRB")[10] on a bank holding company acquisition application for COFC to acquire ING Bank, fsb, which the FRB approved on February 14, 2012. Generally, the CRA-related concerns primarily focused on Capital One's performance record, which was alleged to

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[9] The OCC received a comment letter from Governor Daugaard, U.S. Senators Johnson and Thune, and Representative Noem of South Dakota supporting the P&A on the basis that it will be beneficial to the state.

[10] *See* Board of Governors of the Federal Reserve System, Capital One Financial Corporation, McLean, Virginia: Order Approving the Acquisition of a Savings Association and Nonbanking Subsidiaries (Feb. 14, 2012) (hereinafter "FRB Order") at 28-36.

be inadequate relating to home mortgage loans to LMI individuals and small business lending; the banks' failure to meet community needs; and the $180 billion community investment commitment COFC pledged during the public meetings conducted by the FRB during October 2011. In addition, related to fair lending and other consumer protection laws, numerous commenters expressed concerns regarding Capital One's alleged abusive and illegal debt collection practices. Commenters also raised concerns about Capital One's lending to minorities, particularly in relation to home mortgage lending. The commenters' concerns are addressed below. Bank representations noted throughout this section were made on behalf of CONA, COBNA, and COFC.

1. Home Mortgage Lending to LMI Borrowers and in LMI Communities

Many commenters expressed concern that Capital One's mortgage lending to LMI borrowers and in LMI communities has failed to meet community credit needs, most notably in New York and California. Other comment letters alleged that there has been a significant decrease in affordable home mortgage lending. Additionally, several commenters asserted that Capital One's mortgage lending has declined over the years in comparison to other lenders.

a. CRA Performance Evaluations

As summarized above, CONA received an overall "Outstanding" rating, with an "Outstanding" on the lending test. COBNA received an overall "Satisfactory" rating; however, because of its limited purpose bank designation, the examination focused on the bank's community development activities, which are discussed in section C.3.b. As such, the discussion in this section focuses primarily on CONA's PE.

Among the key factors contributing to CONA's "Outstanding" lending test rating were overall good lending activity with an excellent distribution of all loans among geographies of different income levels and an adequate distribution of all loans among borrowers of different income levels. The PE provided the context for the 2007 through 2010 examination period by observing that it included economic volatility, a suffering housing market, and a financial crisis that has been described as being the worst since the Great Depression.

With regard to home mortgage lending to LMI borrowers and in LMI geographies in New York, a review of lending reportable under the Home Mortgage Disclosure Act ("HMDA") by CONA in the NY-NJ-LI MMA was performed, which included a full-scope review of the bank's NYC Metro AA, as it accounts for the largest percentage of deposits, loans, and branches in the MMA. The bank's performance under the lending test in the MMA was rated "Outstanding." Key factors contributing to this rating included excellent lending activity, an excellent distribution of loans by income level of geography, and an adequate distribution of loans among borrowers of different income levels.

In the NYC Metro AA, there was very strong competition for home mortgage lending. Even though home mortgage lending was not its primary focus in this particular AA, the geographic distribution of home mortgage loans in the NYC AA was still considered to be excellent, with the percentage of the bank's loans for each of the home mortgage products (*i.e.*, home purchase, home improvement, and refinancing) in LMI geographies exceeding the percentage of owner-occupied housing in those areas. The distribution of home mortgage loans by income level of borrower in the AA was considered good. This conclusion considered the impact that the economic downturn has had on housing, the high cost of housing, the fact that the majority of housing is rental, and the household poverty level in the AA.

With regard to lending in the Washington, D.C., MMA, the bank's performance under the lending test was rated "High Satisfactory," with an excellent geographic distribution of home purchase loans. The percentage of home purchase loans made in low-income geographies exceeded, and in moderate-income geographies was nearly equal to, the percentage of owner-occupied housing in those geographies. CONA had good distribution of home mortgage loans by borrower income, given the high cost of housing in the MMA, which contributed to an affordability gap between the median income in the AA and the median home price. The PE noted that the bank's performance in the Washington, D.C., AA during the evaluation period was affected by the merger with Chevy Chase Bank ("CCB") in 2009, which significantly expanded CONA's assessment area in the Washington, D.C., MMA from 173 census tracts to 797 census tracts.

In the state of Louisiana, the bank's performance under the lending test was rated "Outstanding," with a good geographic and borrower income distribution of home mortgage loans. The PE took into consideration that the bank's assessment areas in the state of Louisiana were significantly affected by the devastating effects of Hurricane Katrina and Rita in 2005, which resulted in drastic population shifts in the state of Louisiana, particularly the New Orleans area.

b. Other Concerns and Representations

With regard to the state of California, many commenters alleged that the credit needs of LMI borrowers in the state are "ignored" by Capital One; however, Capital One does not currently operate any branches in California. The Applications were evaluated under the current CRA regulatory requirements, which focus on meeting the credit needs of the communities within a bank's assessment areas.

COFC has represented that it is firmly committed to working with LMI individuals and communities.[11] As part of its business strategy, it has sought to avoid aggressive originations of mortgages outside of its branch footprint, and as a result, Capital One's current mortgage origination activities are modest in scale overall. COFC also indicated that commenters accurately noted that Capital One reduced its mortgage lending during the period from 2007 to 2009 – the timeframe during which the financial crisis was at its worst – but that this reduction

[11] COFC's Response to Matters Raised by Commenters on the Application by CONA and COBNA for Prior Approval to Acquire Substantially All of the Assets of HSBC Bank Nevada, National Association, dated January 20, 2012, incorporated by reference the three comprehensive responses to the FRB filed in connection with the ING Bank, fsb, application. The OCC, thus, also has relied on the information in those responses in approving the Application.

was almost entirely attributable to the decision to terminate the overly-risky legacy mortgage lending business at North Fork Bank and CCB established prior to being acquired by COFC. COFC represents that Capital One continues to engage in core mortgage lending activities, with a focus on direct mortgage lending within its footprint.

More specifically, with respect to LMI communities, Capital One has a dedicated group, Community Development Finance ("CDF"), that originates specialized, high-impact mortgage loans to LMI borrowers. These are often labor-intensive loans, originated for Capital One's portfolio that may involve homebuyer counseling and leveraging of down payment assistance programs. The CDF group originated more than $2 billion in transactions during the 2007 through 2010 time period. Most of these transactions supported quality affordable rental housing for LMI households through loans and investments in LIHTC properties. The CDF group also modified a portfolio product of the former North Fork Bank to meet the evolving needs of LMI borrowers in the New York-New Jersey area.

In addition to the delivery of direct services to LMI clients, Capital One represents that it engages in several affordable housing policy initiatives, often in leadership roles. It is involved with the New York Mortgage Coalition, a nonprofit collaborative of financial institutions dedicated to helping LMI families achieve the dream of responsible and sustainable homeownership in New York and other nearby communities. It is also associated with the Restored Homes Housing Development Finance Corporation, a not-for-profit organization established to respond to the growing foreclosure crisis in New York City neighborhoods and the need to convert foreclosures into decent affordable housing. The bank represents that similar programs have also been established in other communities, including the Washington, D.C., MMA and the state of Louisiana.

2. Small Business Lending

Commenters expressed concern about Capital One's record of making loans to small businesses and alleged that high-cost credit cards were being offered as substitutes for traditional small business lending. Further, commenters noted that the number of Small Business Administration ("SBA")-backed loans made by Capital One has substantially declined since 2006.

a. CRA Performance Evaluations[12]

CONA's lending test rating was "Outstanding" in the NY-NJ-LI MMA. One of the bank's primary focus areas in this AA was small business lending. CONA ranked fourth, with nearly a six percent market share by number of loans, in originating small loans to businesses. The geographic distribution of small loans to businesses was excellent and the percentage of small loans to businesses made in both low- and moderate-income geographies exceeded the

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[12] As previously noted, COBNA's CRA performance was evaluated based on its community development investment and service activities. Thus, this section focuses on CONA's CRA performance.

percentage of businesses located within these geographies. The distribution of small loans to businesses of different sizes was adequate, with the percentage of loans made to businesses with revenues of $1 million or less much lower than the percentage of such businesses. However, it was difficult to accurately gauge the percentage of loans to small businesses because 60 percent of them did not report their revenue. Also, in this particular AA, the majority of the small business lending is through credit cards and legacy credit line products, for which business revenue is not considered in the underwriting process.

In the Washington, D.C., MMA and the state of Louisiana, CONA ranked ninth and fourth, respectively, in originating small loans to businesses. In both areas, other nationwide credit card marketers dominated the market. In the Washington, D.C., MMA, the geographic distribution of small loans to businesses was good, considering the change in demographics of the AA following the merger of CCB.[13] In the state of Louisiana, the geographic distribution of small loans to businesses was excellent. The distribution of small loans to businesses of different sizes was adequate in both the Washington D.C., MMA and the state of Louisiana. As in the NY-NJ-LI MMA, the majority of small loans to businesses in both the Washington, D.C., MMA and the state of Louisiana were made through credit cards, for which business revenue generally was not considered in the underwriting.

b. Representations

COFC has represented that Capital One is fully committed to meeting the lending needs of small businesses. COFC acknowledged reducing SBA-backed lending during the financial crisis in states where Capital One does not have a branch presence in order to tighten credit in response to the riskier economy. However, COFC represents that SBA loans are only one way that Capital One accomplishes the goals of meeting small business lending needs and that, despite challenges facing the industry, small business loans (187,075, totaling $2.9 billion) rose 19 percent in 2010 from 2009 levels. The average loan size was approximately $15,000 and 98 percent of all small business loans were for $100,000 or less.

COFC also represented that, contrary to assertions that unsuccessful applicants for traditional small business loans are steered into business credit cards, applicants for non-card small business loans are not marketed small business credit cards if declined for traditional loans. COFC asserts that Capital One's small business lending portfolio is comparable to and slightly larger than its small business credit card portfolio. As of June 30, 2011, COFC owned $5.0 billion in outstanding non-card small business loans and $4.8 billion in assets in its small business credit card portfolio. Small business loans and business credit cards are also marketed and offered through separate business channels by Capital One. COFC represented that Capital One's small business credit cards provide a flexible and efficient means of managing business expenditures. COFC further represented that, after the passage of the Credit Card Accountability Responsibility and Disclosure Act of 2009 ("Credit CARD Act" or "Act"),[14] it voluntarily

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[13] Prior to the merger with CCB, the PE noted that there were very few businesses located in the one low-income geography in COBNA's AA.
[14] Pub. Law 111-24, 123 Stat. 1734 (May 22, 2009).

applied many of the Act's protections to its small business credit card customers, even though the Act did not apply to them.

3. Meeting Community Needs Through Community Development Activities

Numerous commenters expressed concern that Capital One has failed to meet community credit needs through their community development lending, qualified investments, and community development services, and that Capital One's claims of increased community development financing are unfounded. COFC responded that community development lending did decrease by 31 percent from $772 million in 2008 to $541 million in 2009; however, community development lending in 2008 had increased by 222 percent over 2007 levels. Further, COFC reported $1.135 billion in community development loans in 2010 by Capital One, an increase of 114 percent over 2009 levels.

a. CONA's Performance Evaluation

CONA's PE focused on community development activity primarily in three markets – the NY-NJ-LI MMA (specifically in the NYC Metro AA), the Washington, D.C., MMA, and the state of Louisiana (specifically, in New Orleans.) Overall, CONA received an "Outstanding" rating on the investment test, with an excellent level of community development investments responsive to AA needs. In the larger assessment areas, the bank took a leadership role in investments that involved multiple partners. A majority of the investments served significant community development needs. In addition, it is noted that community development lending had a significantly positive impact on the bank's lending test and that CONA had an excellent level of community development services that were responsive to the needs of the bank's AAs.

In the NY-NJ-LI MMA, the bank's investment test rating was "Outstanding" and its performance in the NYC Metro AA was considered excellent. CONA made 643 current and prior period investments and grants totaling $541.6 million in this AA. Of the 625 qualified investments made during the evaluation period, 66 investments, totaling $476.5 million, provided 7,054 units of affordable housing. In addition, the bank made a $13 million investment in its affiliate, Capital One National Community Development Corporation ("CONCDC"), of which $7 million directly benefited this AA and $2 million benefitted a broader statewide area with potential to benefit one or more of CONA's AAs. CONCDC focuses on economic development and assists in the creation, development, and expansion of small businesses across the bank's footprint. The bank also provided $10.6 million in grants, which were made to a variety of community development organizations, projects, and funds that support affordable housing or community services for primarily LMI households, small business development, or revitalization and stabilization of LMI geographies.

During the assessment period, CONA originated 300 community development loans totaling $1.1 billion in the NYC Metro AA for affordable housing, revitalization or stabilization of LMI geographies, and funding for organizations providing community services targeting LMI individuals and families. In addition, the bank issued eight letters of credit totaling $124 million and two leases totaling $11 million in the NYC Metro AA that had a community development purpose.

Within the NYC Metro AA, the bank also provided an excellent level of community development services. Employees were involved with 188 different organizations that provided affordable housing, community services, and economic development.

CONA's investment test performance in the Washington, D.C., MMA was rated "Outstanding." The PE indicates that the bank had an excellent level of qualified investments and grants, exhibited an excellent responsiveness to the community development needs in the Washington, D.C., AA, and made extensive use of innovative investments to support community development initiatives. The bank made 250 current and prior period investments and grants totaling $168.3 million in this AA. Of these, 17 investments totaling $105.8 million provided 1,684 units of affordable housing. The bank's $13.0 million investment in CONCDC, noted above, provided $528 thousand in direct benefit to the Washington, D.C., AA. Finally, the bank made 214 grants totaling $6.9 million to a variety of community development organizations, projects, and funds that support affordable housing or community services for LMI individuals or economic development.

Within the Washington, D.C., MMA, the PE found that community development lending, which was responsive to the needs of the MMA, had a positive impact on the lending test. CONA originated 12 loans with a community development purpose, totaling $143 million, in the Washington, D.C., AA. Eight of the community development loans totaling $71 million supported the creation or rehabilitation of 831 affordable housing units, which is a critical need in the AA.

Community development services provided in the Washington D.C., AA were responsive to needs identified relative to affordable housing, financing and technical assistance for small business, job training, services for unbanked and under-banked populations, and community revitalization.

CONA's investment test rating was "Outstanding" in the state of Louisiana, with an excellent level of community development investments.[15] CONA made 221 current and prior period investments and grants totaling $192.1 million in the New Orleans AA. Of these, 19 investments, totaling $177.1 million, provided 1,913 units of affordable housing. The bank also made 196 grants totaling $4 million to organizations, projects, and funds that support affordable housing or community services targeting primarily LMI people, economic development, or revitalization and stabilization of LMI geographies. CONA also has been involved in making LIHTC investments to finance the development of affordable and mixed-income multi-family properties.

Community development lending had a significant positive impact on the lending test in the New Orleans AA. CONA originated or renewed 38 loans and lines of credit totaling $338 million.

[15] The evaluation of the bank's performance in Louisiana focused on the New Orleans AA because that is the area in which the bank's deposit taking, lending, and branching were concentrated.

These included $73 million in loans that supported the creation or rehabilitation of 1,047 units of affordable housing. The level of community development services in the New Orleans AA was good and the services were responsive to AA needs. Bank associates were involved with 216 different organizations.

b. COBNA’s Performance Evaluation

COBNA’s primary assessment area included all of Henrico County and the City of Richmond, Virginia. The assessment area is part of the Richmond Metropolitan Statistical Area (“MSA”). As a limited purpose bank, COBNA has developed a community development strategy focusing first on opportunities within its AA, then within the state of Virginia, the surrounding states, the northeast region, and finally national opportunities. Since there were only a limited number of qualified investment and community development opportunities within the AA during the review period, COBNA focused on community development opportunities in the Gulf Coast region following hurricanes Katrina and Rita.

Overall, examiners concluded that COBNA demonstrated a high level and extensive use of qualified investments, and community development services. COBNA demonstrated excellent responsiveness to the community development needs of the AA, even though COBNA did not originate any community development loans in its AA during the evaluation period. However, because COBNA otherwise adequately addressed the needs of its AA through investments, grants, and community development services, $226 million in community development loans made outside the AA were considered. These loans created or rehabilitated over 600 affordable housing units across three states.

COBNA also provided $92.7 million in current and prior period qualified investments in the AA. An additional $434 million in qualified investments were provided outside the AA. The bank invested $25.5 million in five LIHTC developments, creating 654 units of affordable housing for LMI persons in the AA. In addition, COBNA invested $160 million in various LIHTC developments statewide.

Employees provided their services to 36 community development organizations and programs that benefit LMI individuals, families, and communities in the AA and 17 organizations outside the AA. Bank employee activities included involvement on boards and committees of affordable housing and community service organizations, often serving in leadership roles, delivering financial literacy seminars, credit counseling, and providing other financial services. During the examination period, bank personnel provided approximately 5,000 hours of participation, with approximately 90 percent of the hours provided within COBNA’s AA.

c. Summary

In summary, the PEs concluded that both COBNA and CONA are meeting the needs of their communities through community development lending, qualified investments, and community development services. The banks have partnered with other lenders to finance projects in areas hard hit by natural disasters as well as areas of the country struggling in the current recession.

Both have provided investments and grants to assist their AAs in supporting affordable housing or community services for LMI individuals, economic development, or revitalization and stabilization of LMI geographies. In addition, their employees served their communities by volunteering with organizations that are responsive to identified needs within the AA.

4. Record of Meeting Community Needs through Branch/Delivery Systems

Some commenters noted concerns with Capital One not consistently meeting the needs of LMI borrowers through branch and alternative delivery systems in their market areas and asserted that the banks' branches have been established primarily in affluent neighborhoods.

a. Performance Evaluation

The CONA PE rated the service test as "High Satisfactory" and indicated that the bank's branches are accessible to geographies and individuals of different income levels given consideration of bordering branches in middle- and upper-income geographies.[16]

For example, with regard to the NY-NJ-LI MMA, CONA's performance under the service test was rated "High Satisfactory." The distribution of the bank's branches was considered good. The PE noted that delivery systems are accessible to all portions of the NYC Metro AA. Several of CONA's branches were not located in LMI census tracts but were accessible to, and served, LMI populations and geographies. Besides being within walking distance of these LMI geographies, many branches were located in areas with accessibility by subway, bus, or ferry. Also, many of these branches were located in busy business districts where people work, or in commercial strip malls where local residents shop. Eighty-seven branches in middle- and upper-income geographies were located within one mile of a moderate-income geography and 47 of these branches were located within one mile of a low-income geography.

The PE found that CONA's alternative delivery systems enhanced the bank's overall delivery of services to its AA and were effective at serving customers living in LMI geographies in the AA. Specifically, 41 percent of customers living in LMI geographies in the AA used an ATM during a six-month period analyzed by the bank, compared to 30 percent of customers living in non-LMI geographies in the same time period. In addition, 18 percent of customers living in LMI geographies in the AA used online banking and 28 percent used bank-by-phone (compared to 19 percent and 26 percent, respectively, of customers living in non-LMI geographies in the AA) during the six-month period. CONA's hours and services offered throughout the AA do not vary in a way that inconveniences certain portions of the AA, particularly LMI geographies and individuals. CONA's business hours are generally 8:30 a.m. to 5:30 p.m. Most branches are open on Saturday and six branches are open on Sunday.

[16] Because COBNA is a limited purpose bank evaluated under the community development test, retail branches and delivery systems were not evaluated. Thus, this section focuses on CONA's branching and delivery systems.

b. Representations

COFC represents that it has a strong record of providing branch and alternative delivery systems to LMI communities. It indicates that 202 (21 percent) of the bank's 977 branches are located in LMI areas. The bank further represents that it has aggressively expanded branch locations in LMI areas following previous acquisitions. During the period 2007 to 2010, COFC opened 33 branches in LMI areas, with 19 of these established in Louisiana and Texas following the Hibernia acquisition. The bank also represents that it has expanded innovative branching strategies have been implemented to address the needs of LMI communities, including operating three student-run branches in high schools serving students from primarily LMI families in NY and NJ, and has expanded the program to include a new student-run branch in Prince Georges County, Maryland. Three branches have also been established in New York City as part of the New York State Banking Development District Program, which encourages banks to establish branches in neighborhoods deemed underserved by the state.

5. CRA Commitment

At the public meeting convened by the Board of Governors of the Federal Reserve System in Washington, D.C. on September 20, 2011, COFC announced a ten-year public commitment for $180 billion in new community development lending and investments, as well as increased lending and services to LMI borrowers. Some of the comment letters questioned the sincerity of this commitment, indicating that it "reflects little more than business as usual."

It is noted that this is a voluntary commitment made by COFC. Preliminarily, the CRA does not require banks to enter into commitments or agreements with any organization.[17] Moreover, the CRA does not require a bank to engage in any particular type of lending, investment, or service. CRA performance for large banks is based on an overall assessment under the lending, investment, and service tests.[18] COFC has posted the commitment to its corporate website and it indicates therein that the "commitment will begin in 2012 and annual reports of our performance will be available on the COFC corporate website." COFC has also made representations in its public comment responses that provide additional detail regarding this commitment as follows: LMI home mortgages and home equity lending of $28.5 billion; small business and small farm lending of $22.5 billion; affordable housing development and commercial revitalization of $25 billion; LMI consumer lending, including auto loans, credit cards and other consumer loans of $104 billion; and grants to support critical community services including housing, economic development, and financial education of $450 million.

6. Compliance with Fair Lending and Other Consumer Protection Laws

Public comments have alleged that Capital One engaged in discriminatory practices, particularly in relation to home mortgage lending. Numerous public comment letters have also made

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[17] Question and Answer §__.29(b)-2, 75 Fed. Reg. 11,642, 11,666 (Mar. 11, 2010).

[18] 12 C.F.R. §§ 25.21 to 25.24.

allegations that Capital One, and in a more general nature, HSBC Nevada, have engaged in unlawful and abusive debt collection practices.

a. Impact on CRA Rating

The results of the OCC's evaluation of a bank's CRA performance may be adversely affected by evidence of discriminatory or other illegal credit practices. The OCC may lower an institutions overall CRA rating if evidence of discrimination or illegal credit practices by the bank are found in any geography, or in any assessment area by any affiliate whose loans were considered as part of the bank's lending performance.

The CONA PE indicated that CONA's 2011 CRA rating was not impacted by fair lending issues noted at the former CCB prior to its acquisition by COFC. The underlying issues were initially self-identified by COFC fair lending bank associates shortly after CCB was acquired by COFC but before the merger into CONA in 2009. Based on an analysis performed as part of the CRA evaluation, it was determined that CONA took appropriate actions to address the identified issues.

The COBNA PE found no indication that the bank had engaged in lending discrimination. However, COBNA's CRA rating was impacted by other illegal credit practices in which the bank engaged in during a portion of the period covered by the evaluation. The practices related to credit card disclosures for a specific add-on product offered between 2004 and 2010. COBNA self-identified this issue in early 2010 and, under auspices of OCC supervision, provided restitution to affected consumers. COBNA's compliance and monitoring programs have been enhanced and new reporting has been developed and implemented for management's oversight of sales and servicing of the product. This area will continue to be monitored by the OCC.

The HSBC Nevada PE notes that no evidence of discriminatory or other illegal credit practices inconsistent with helping to meet the community credit needs was noted. Several commenters alleged that HSBC Nevada engages in abusive debt collection practices which are especially detrimental to low-income individuals and communities. COFC represented that HSBC Nevada has an effective enterprise-wide compliance program, which includes oversight of all aspects of credit card origination, servicing and collection activities and operations. COFC also represented that HSBC Nevada is committed to providing its customers with a high level of service which includes the prompt and thorough investigation, resolution, and timely response to customer inquiries and complaints.

b. Fair Lending

After the CRA evaluation period, but prior to the issuance of the CONA PE, a fair lending-related complaint was filed by the National Community Reinvestment Coalition against CONA. Specifically, it was alleged that Capital One required a minimum FICO credit score for FHA loans of 620, rather than the minimum threshold of 580 established by the FHA for such loans, and that Capital One's policy had a discriminatory impact. The complaint remains under investigation by the Department of Housing and Urban Development and the OCC will continue to monitor its status and potential impact to CONA. COFC has indicated that it is preparing to offer FHA loans to borrowers with FICO scores of between 580 and 620, with appropriate protections to minimize the risk of the borrower's default, by developing the servicing and reporting platforms necessary to sell such loans directly to the Government National Mortgage Association.

OCC examiners have also reviewed the FRB's conclusions from a HMDA analysis that was performed in connection with FRB approval of COFC's acquisition of ING Bank, fsb. The FRB investigated commenters' claims that Capital One (and ING Bank, fsb) denied the home mortgage loan applications of minority borrowers more frequently than those of nonminority applicants in certain MSAs.[19] With regard to CONA, the FRB found that "[t]he HMDA data indicate that, with the exception of certain areas outside CONA's branch footprint, the percentage of CONA's applications from and originations to minority borrowers, LMI borrowers, and borrowers in predominantly LMI areas generally exceeded the percentage for lenders in the aggregate. In addition, the data indicate that CONA did not exhibit a higher denial rate for minority applicants relative to its denial rate for nonminority applicants ("denial disparity ratio"), as compared with the denial disparity ratio for minority and nonminority applicants of lenders in the aggregate. The HMDA data do not suggest that Capital One excluded any racial, ethnic, economic, or geographic segment of the population within its branch footprint."[20] COFC represents that it has implemented a comprehensive fair lending compliance risk management program with various measures and safeguards to help ensure compliance with fair lending, as well as other consumer compliance laws and regulations. COFC further represents that its data analysis program uses industry best practices and includes extensive use of regression analysis and file review. COFC represents that it conducts thorough fair lending data analyses on applications for mortgages, auto loans, credit cards, unsecured lending and other products. These analyses look for differences in loan underwriting and pricing, as well as demographic and geographic distribution.

Some commenters alleged that Capital One's failure to participate in certain loan modification programs, such as the Hardest Hit Fund ("HHF") Program, has had a discriminatory impact on minorities and LMI borrowers. In fact, Capital One participates in the Home Affordable Mortgage Program ("HAMP"), and also offers a proprietary mortgage modification program similar to HAMP. More borrowers are eligible for mortgage modifications under Capital One's

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[19] Denial and pricing disparities are of concern to the OCC and are evaluated in fair lending examinations. However, HMDA data alone is 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 does not take into consideration borrower creditworthiness, housing prices, collateral values, credit scores, and other factors relevant to each credit decision, nor does it fully reflect the range of the bank's lending activities or efforts.

[20] FRB Order at 22-23. The FRB Order also noted that, "[i]n a small number of markets outside Capital One's branch footprint, including California and the Chicago MSA, the data indicate that CONA's percentage of HMDA applications from and originations to minority borrowers was lower than for lenders in the aggregate in 2008 and 2009." *Id.* at 23. The FRB Order also noted that California and the Chicago MSA accounted for a relatively small proportion of CONA's application volume in 2008 and 2009, consistent with Capital One's strategy to make mortgage loans primarily within its branch footprint. *Id.*

proprietary program than under HAMP due to different underwriting and other criteria, including a higher balance limit. Capital One also enrolled in the HHF Program offered by the housing finance agencies of Oregon, Maryland, Florida, and Washington, D.C., after receiving requests on behalf of borrowers.

c. Other Concerns Raised by Commenters

Numerous commenters have alleged that Capital One and HSBC Nevada have engaged in unlawful and abusive debt collection practices, including selling past-due debts to collection agencies that employ illegal or unethical collection practices; attempting to seize funds from legally protected sources; intentionally delaying pursuing collections to increase finance charges, fees, and interest; and pursuing debts that have either been discharged in bankruptcy or previously pursued and dismissed with prejudice. COFC represents, and OCC examiners have verified, that it does not engage in such debt collection practices and that it has policies in place that: do not allow for the sale of any accounts with a disputed status; require the return of protected funds that have been inadvertently garnished or otherwise seized; provide for the timely resolution of outstanding customer debts and avoidance of litigation to the extent possible; and do not allow for the collection of debts discharged in bankruptcy.[21]

COFC recently settled, without admitting liability, claims that it violated West Virginia's Consumer Credit and Protection Act between 2001 and 2005 by offering a payment protection plan to those ineligible for benefits and encouraging customers to enter into debt repayment plans. In connection with this settlement, COFC agreed to provide $13.5 million for debt forgiveness, debt relief, and consumer education for West Virginia consumers. Since the time period covered by this lawsuit, COFC has enhanced its compliance risk-management practices and discontinued one of the lines of business that was the focus of the lawsuit.

A number of commenters contended that Capital One charges high fees and rates on its subprime credit cards. COFC represents that it does not issue "high fee" cards, as defined by the Credit CARD Act. Capital One noted that it provides a range of credit card products to consumers. For example, the Journey card is specifically designed for those new to credit and carries a modest initial credit line, no annual fee, no overlimit fees, and online financial education targeted at helping consumers to improve their credit. Another of Capital One's primary offerings to persons with FICO scores below 600 carries no annual fees. Capital One also offers a "Credit Steps" program, which provides for responsible and automatic credit-line increases with consistent on-time payments. In addition, Capital One has policies that limit an individual customer to a maximum of two unsecured, general purpose credit cards.

Commenters also expressed concern about Capital One's secured credit card program, citing a survey of 13 card issuers. Like the majority of these issuers, Capital One does not offer interest

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[21] COFC noted that, in 2007, it identified an error in the review process intended to identify debts that had been discharged in bankruptcy in order to exclude them from the collection process. COFC resolved this issue, ceased its relationship with its prior bankruptcy servicer, and invested substantial resources in new systems and safeguards to ensure against any potential future reoccurrence.

on customers' deposits held as security for the credit card. The same survey noted that Capital One has the lowest minimum security deposit ($49) and offers, for borrowers with better credit histories, a partially secured line of credit. Although Capital One does not offer an automatic graduation to an unsecured credit card (as only 5 of the 13 card issuers surveyed do), Capital One does review customers' performance and offers qualified secured card holders who make their first six monthly payments on time a credit limit increase without requiring additional security.

Commenters also alleged that Capital One's overdraft protection practices are unfair. Capital One has adopted policies and procedures regarding the payment of overdrafts consistent with the requirements of Regulation E.[22] Beyond the regulatory requirements, Capital One provides its customers the choice to opt out of having any overdrafts covered, regardless of whether the transaction is an electronic or check-based transaction. In addition, Capital One has implemented daily limits on the number of overdraft fees charged to an individual customer and a threshold total overdraft amount below which overdraft fees are not assessed. A line of credit linked to the customers' checking accounts is also available to the bank's retail deposit customers.

d. Summary

The OCC has reviewed and considered fair lending and other compliance information as part of its assessment of the merits of Capital One's applications. Capital One's mortgage lending programs include fair lending policies and product guides, testing of the integrity of its HMDA data, and fair lending training for employees. In addition, Capital One has adopted a process for evaluating new laws and regulations for applicability to its mortgage lending operations. Capital one also conducts ongoing reviews to ensure that the terms and marketing of its credit card and other products are appropriate and comply with applicable laws and regulations. Comprehensive oversight will continue with respect to the merged entity.[23]

D. Request for an Extension of the Comment Period and for Public Hearings

A majority of the comment letters received by the OCC requested that the public comment period be extended and that the OCC conduct public hearings. On November 21, 2011, the public comment period was extended through December 19, 2011, resulting in a comment period spanning 89 days. Regarding the request for public hearings, the general standard the OCC applies to determine whether to hold a public hearing is found at 12 C.F.R. § 5.11(b), which provides:

> The OCC generally grants a hearing request only if the OCC determines that written submissions would be insufficient or that a hearing would otherwise benefit the decision-

[22] 12 C.F.R. Part 1005, implementing the Electronic Fund Transfer Act.

[23] On July 21, 2011, the Bureau of Consumer Financial Protection assumed exclusive examination and primary enforcement authority over CONA and COBNA for Federal consumer compliance law issues. The OCC remains the prudential regulator of both banks. 12 U.S.C. § 5515.

> making process. The OCC also may order a hearing if it concludes that a hearing would be in the public interest.

After careful consideration, the OCC determined not to hold public hearings. The OCC received extensive and detailed comments and is not aware of any reason why the written comments submitted would be insufficient or why a public hearing would be in the public interest. The OCC has thoroughly reviewed all of the written comments submitted, including any received after the close of the extension to the public comment period and up to the date of this letter.[24]

Accordingly, upon review of the records of the banks involved in the transaction, the Applications and submitted materials, the public comments and responses, representations made by the Applicants, supervisory materials and other information available to the OCC as a result of its regulatory responsibilities, CONA's and COBNA's records of helping to meet the credit needs of their communities are consistent with approval of the Applications.

III. Conclusion

For the reasons set forth above, and subject to the commitments and representations made in the Applications and by representatives of the Applicants, the OCC approves CONA's and COBNA's applications to acquire substantially all of the assets and assume certain liabilities of HSBC Nevada.

IV. Consummation Requirements

As a reminder, the Northeastern District Licensing Office must be advised in writing ten (10) days in advance of the desired effective date for the transaction so that the OCC may issue the necessary certification letter. Prior to each consummation, CONA and COBNA must provide to the OCC Northeastern District Licensing Office updated pro-forma financials reflecting the amount of the acquisition and the impact of the acquisition to the balance sheet and risk based capital ratios. The OCC will issue a letter certifying consummation of the transaction upon receipt of an executed purchase agreement.

If the P&A transaction has not been consummated within twelve months from the approval date, the approval will automatically terminate unless the OCC grants an extension of the time period.

This approval, 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 United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory,

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[24] In September and October 2011, the FRB held three separate public meetings in Chicago, Washington D.C., and San Francisco in connection with the BHCA application submitted by Capital One Financial Corporation to acquire ING Bank, fsb. OCC representatives attended all three public meetings and the concerns raised at those meetings were closely interrelated with those noted in the written public comments received by the OCC in conjunction with the Applications.

and examination authorities under applicable law and regulations. The OCC may modify, suspend or rescind this decision if a material change in the information on which the OCC relied occurs prior to the date of the transaction to which this decision pertains. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

If you have questions regarding this letter, please contact Licensing Analyst Wai-Fan Chang at (212) 790-4055. Please reference the Application control numbers in any correspondence.

Sincerely,

Stephen A. Lybarger

Stephen A. Lybarger
Deputy Comptroller for Licensing