

## Testimony of AARON DORFMAN, EXECUTIVE DIRECTOR of the NATIONAL COMMITTEE FOR RESPONSIVE PHILANTHROPY (NCRP)

Federal Reserve Board of Governors  
San Francisco, Calif. Public Meeting  
October 5, 2011



### Introduction

Thank you for the opportunity to speak to you today about Capital One's proposed acquisition of ING Direct. I am AARON DORFMAN, EXECUTIVE DIRECTOR of the NATIONAL COMMITTEE FOR RESPONSIVE PHILANTHROPY (NCRP), located in WASHINGTON, D.C.

### Organization & Mission Statement

NCRP promotes philanthropy that serves the public good, is responsive to people and communities with the least wealth and opportunity, and is held accountable to the highest standards of integrity and openness.

### Philanthropic Expertise

For 35 years, NCRP has served as the nation's only independent watchdog for the philanthropic sector. NCRP conducts original research on the nonprofit sector, presents on relevant issues at conferences, builds coalitions and fosters dialogue that advocates for philanthropic leaders to better serve communities and strengthen our democracy.

### Serious Concerns about the Philanthropy Associated With This Proposed Acquisition

NCRP has serious concerns about the philanthropic track record of Capital One. We have reason to doubt the claims being made by Capital One regarding the public benefit of its philanthropic promises associated with this proposed acquisition.

In response to The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, Federal Reserve Governor Daniel Tarullo said, "It appears we have been instructed to add an increased systemic risk to the list of adverse effects that could result from the merger and then determine whether the benefits to the public of the acquisition outweigh these adverse effects..."<sup>i</sup> Predictably, therefore, Capital One made philanthropy – a promise of \$450 million over 10 years – a centerpiece for its legal argument that the proposed acquisition will produce public benefits that outweigh adverse effects.<sup>ii</sup> **NCRP has no confidence that the (1) actual quantity, (2) quality or (3) distribution of this philanthropic commitment will create public benefit to outweigh adverse risks of the acquisition.**

Capital One has a track record of giving at levels far lower than its peers,<sup>iii</sup> and there is no mechanism in place to hold them accountable. The public has no reasonable assurance that Capital One will make good on its stated intent to give approximately \$45 million per year for 10 years. From 2005, when Capital One began acquiring other banks, to 2009, Capital One gave an average of less than \$5 million per year. During that same time period, it decreased its annual giving each year.<sup>iv</sup> This is not the norm; NCRP's 2007 report on foundations of financial institutions showed that after acquisitions, financial institutions historically *increased* their philanthropic giving.<sup>v</sup> Furthermore, according to a 2010 report, the median annual giving for the

U.S. financial sector is 0.11 percent of revenue.<sup>vi</sup> However, Capital One ranks well below the median, giving only 0.024 percent of revenue.<sup>vii</sup> More responsible institutions give at higher levels; PNC Bank, for example, gave 0.195 percent, during the same time period.<sup>viii</sup>

During a September 27, 2011 testimony before the Federal Reserve in Chicago, a Capital One representative commented on their community investment initiative that includes the promised \$450 million in philanthropic grants. She said, “At some point in time, we may change what we have included in the commitment. We will just have to see how it goes.”<sup>ix</sup> Subsequently, in response to the public “skepticism” about Capital One actually delivering on a commitment that “lacked enforceability,” a second Capital One representative said, “As time changes, you know, if the economy does get better, we will find that we will over-deliver as opposed to under-deliver on the commitment.”<sup>x</sup> Put differently, if the economy does not improve, it is likely that Capital One will under-deliver on the commitment.

The quality of giving by Capital One also ranks below that of similar financial institutions. NCRP encourages all foundations to meet several benchmarks, including providing at least 50 percent of grant dollars for the benefit of underserved communities and at least 25 percent of grant dollars for high impact strategies.<sup>xi</sup> From 2006-2008, Capital One’s giving for underserved communities was only 36.25 percent, and its giving for high impact strategies was only 6.19 percent.<sup>xii</sup> Other financial institutions perform much better. Citigroup, for example, exceeded NCRP’s recommendations and gave 50.77 percent and 29.58 percent for each metric, respectively.<sup>xiii</sup>

Finally, Capital One’s motivation for charity proves questionable, based on the geographic distribution of its grants. Although Capital One does business and advertises in all 50 states, its last two publically available 990 forms show that only three grant recipients were headquartered outside the 5 states of Texas, Louisiana, New York, New Jersey and Virginia, as well as Washington, D.C.<sup>xiv</sup> Capital One has focused 99 percent of its giving in those states where it has banks, and where it therefore receives CRA credit for its giving. It has chosen not to give elsewhere, suggesting that its giving has been based primarily on self-interest.<sup>xv</sup>

It seems unlikely that this acquisition will suddenly transform the culture of the institution into one that truly values investing in pressing needs facing many American communities.

## Conclusion

Based on NCRP’s assessment of Capital One’s philanthropic track record, we urge the Federal Reserve to be highly skeptical of the public benefit that will result from philanthropy associated with this proposed acquisition. Anyone can make promises, but past actions are a far better predictor of future behavior.

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<sup>i</sup> Security and Exchange Commission: <http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>.

Alan Zibel, “Fred Tarullo: Big Bank Mergers Still Possible,” *Deal Journal (The Wall Street Journal)*, <http://blogs.wsj.com/deals/2011/09/15/feds-tarullo-big-bank-mergers-still-possible/>.

<sup>ii</sup> Language from Capital One’s public statement describes the portion of money the claim to designate to philanthropy during their proposed 10-year period: “Grants to support critical community services... \$450 million.” <http://www.capitalone.com/media/doc/global/broadman-testimony.pdf>.

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Also: National Community Reinvestment Coalition, "Get The Facts! The Capital One/ING Acquisition Poses a Systemic Risk to the Market,"

[http://www.ncrc.org/images/stories/pdf/news\\_news/fact%20sheet\\_capitalone\\_systemic%20risk.pdf](http://www.ncrc.org/images/stories/pdf/news_news/fact%20sheet_capitalone_systemic%20risk.pdf).

<sup>iii</sup> See the information on Capital One Foundation at the Foundation Center's Foundation Finder:

<http://dynamodata.fdncenter.org/990s/990search/ffindershow.cgi?id=GREE260>.

<sup>iv</sup> National Community Reinvestment Coalition, op. cit.

Also, Capital One acquired Hibernia Bank in 2005, North Fork Bank in 2006 and Chevy Chase Bank in 2009. See National Community Reinvestment Coalition, "Get the Facts! Capital One's Business Practices Raise Concerns About Its Corporate Governance,"

[http://www.ncrc.org/images/stories/pdf/news\\_news/fact%20sheet\\_capitalone\\_corporatebackground.pdf](http://www.ncrc.org/images/stories/pdf/news_news/fact%20sheet_capitalone_corporatebackground.pdf).

See the information on Capital One Foundation at The Foundation Center's Foundation Finder:

<http://dynamodata.fdncenter.org/990s/990search/ffindershow.cgi?id=GREE260>.

During the 5-year recorded period since Capital One began acquiring intuitions (2005-2009), Capital One's total annual giving decreased: \$5,903,400 (2005), \$5,347,679 (2006), \$5,301,112 (2007), \$4,276,538 (2008) and \$3,946,475 (2009).

<sup>v</sup> Becky Sherblom, *Banking on Philanthropy: Impact of Bank Mergers on Charitable Giving* (Washington, D.C.: NCRP, June 2007), [http://www.ncrp.org/files/NCRP\\_BankMergers\\_final.pdf](http://www.ncrp.org/files/NCRP_BankMergers_final.pdf).

<sup>vi</sup> The Committee Encouraging Corporate Philanthropy, "Giving in Numbers, 2010 Edition" (New York: CECF), p. 7 [http://www.corporatephilanthropy.org/pdfs/giving\\_in\\_numbers/GivinginNumbers2010.pdf](http://www.corporatephilanthropy.org/pdfs/giving_in_numbers/GivinginNumbers2010.pdf).

<sup>vii</sup> US Securities and Exchange Commission, Capital One's Revenue (2010: Most Updated Data)

<http://www.sec.gov/Archives/edgar/data/927628/000114036111012916/form10k.htm>.

See also the information on Capital One Foundation at The Foundation Center's Foundation Finder (2009: Most Updated Data)

<http://dynamodata.fdncenter.org/990s/990search/ffindershow.cgi?id=GREE260>.

<sup>viii</sup> US Securities and Exchange Commission, PNC Bank's Revenue (2010: Most Updated Data),

<http://www.sec.gov/Archives/edgar/data/713676/000119312511051725/d10k.htm>.

See also the information on The PNC Foundation's Total Annual Giving at The Foundation Center's Foundation Finder (2009: Most Updated Data),

<http://dynamodata.fdncenter.org/990s/990search/ffindershow.cgi?id=PITT004>.

<sup>ix</sup> Capital One testimony in Chicago, Ill. on September 27, 2011 (34 minutes and 20 seconds into the video) <http://www.youtube.com/watch?v=CMDYNVZ-EI>.

<sup>x</sup> Ibid, (37 minutes into the video).

<sup>xi</sup> NCRP's "Criteria for Philanthropy at Its Best," <http://www.ncrp.org/paib>.

NCRP encourages foundation to define marginalized communities for themselves, but internally tracks 11 marginalized communities: (1) the economically disadvantaged, (2) racial or ethnic minorities, (3) women and girls, (4) people with HIV/AIDS, (5) people with disabilities, (6) aging, elderly and senior citizens, (7) immigrants and refugees, (8) crime and abuse victims, (9) offenders and ex-offenders, (10) single parents and (11) LGBTQ citizens. NCRP defines high-impact strategies as forms of advocacy, community organizing and/or civic engagement (not just direct service giving).

In NCRP's seven-part series of research reports, "Strengthening Democracy, Increasing Opportunities," NCRP found that for every \$1 of philanthropic investment, nonprofits in the sample groups create a

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staggering \$89-\$150 return-on-investment. More at <http://www.ncrp.org/campaigns-research-policy/communities/gcip>.

<sup>xii</sup> NCRP Analysis of Foundation Center data on Capital One:

Total Annual Giving: \$3,946,476 (Foundation Center yr. ended 9.30.09)  
Marginalized Communities: 36.25 percent (2006-2008)  
High Impact Strategies/Social Justice Giving (Advocacy, Organizing and/or Civic Engagement: 6.19 percent (2006-2008)

<sup>xiii</sup> NCRP Analysis of Foundation Center data on Citigroup:

Total Giving: \$63,573,500 (Foundation Center yr. ended 12.31.10)  
Marginalized Communities: 50.77 percent (2006-2008)  
High Impact Strategies/Social Justice Giving (Advocacy, Organizing and/or Civic Engagement: 29.58 percent (2006-2008)

<sup>xiv</sup> See also the information on Capital One Foundation at The Foundation Center's Foundation Finder, <http://dynamodata.fdncenter.org/990s/990search/ffindershow.cgi?id=GREE260>.

<sup>xv</sup> Ibid.

Also, National Community Reinvestment Coalition: "Get the Facts! Capital One's Business Practices Raise Concerns About Its Corporate Governance," op. cit.