

CAPITAL ONE FINANCIAL CORP
Form S-8
August 04, 2004

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

CAPITAL ONE FINANCIAL CORPORATION

(Exact name of registrant as specified in its charter)

DELAWARE
(State or other jurisdiction of
incorporation or organization)

54-171854
(I.R.S. Employer
Identification No.)

1680 Capital One Drive

McLean, Virginia 22102

(Address of Principal Executive Offices) (Zip Code)

CAPITAL ONE FINANCIAL CORPORATION 2004 STOCK INCENTIVE PLAN

(Full Title of the Plan)

Frank R. Borchert, III, Esq.

Senior Vice President, Deputy General Counsel and Assistant Secretary

1680 Capital One Drive

McLean, Virginia 22102

(Name and Address of Agent for Service)

(703) 720-1000

(Telephone Number, Including Area Code, of Agent for Service)

Copy to:

Mary E. Alcock, Esq.

Cleary, Gottlieb, Steen & Hamilton

One Liberty Plaza

New York, New York 10006

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered | Amount to be Registered | Proposed Maximum Offering Price Per Share | Proposed Maximum Aggregate Offering Price | Amount of Registration Fee |
|--|-------------------------------|---|---|----------------------------------|
| Common Stock, par value \$.01, including attached Rights (3) | 8,000,000 shares(1) | \$68.33(2) | \$546,640,000(2) | \$69,260(2) |

(1)

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Together with an indeterminate number of shares of common stock of Capital One Financial Corporation (the Common Stock) that may be necessary to adjust the number of shares available for issuance pursuant to the Capital One Financial Corporation 2004 Stock Incentive Plan (the Plan) as a result of stock splits, stock dividends or similar adjustments of the outstanding Common Stock of Capital One Financial Corporation (the Registrant).

- (2) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(h) under the Securities Act of 1933, as amended (the Securities Act) with respect to shares of Common Stock issuable pursuant to the Plan and based upon the average of the high and low prices of a share of Common Stock as reported on the New York Stock Exchange on July 28, 2004.
 - (3) The Rights are to acquire 1/100th of a share of the Registrant s Cumulative Participating Junior Preferred Stock. Until the occurrence of certain prescribed events, none of which has occurred as of the date of this Registration Statement, the Rights are not exercisable, are evidenced by the certificates representing the Registrant s Common Stock, and will be transferred along with, and only with, the Registrant s Common Stock.
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Part I

The information specified in Part I of Form S-8 is not required to be filed with the Securities and Exchange Commission (the Commission) either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Note 1 to Part I of Form S-8 and Rule 424 under the Securities Act. The information required in the Section 10(a) prospectus is included in the documents being maintained and delivered by the Registrant as required by Part I of Form S-8 and by Rule 428 under the Securities Act.

Part II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, heretofore filed by the Registrant with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act), are incorporated herein by reference:

- (a) The Registrant's Annual Report on Form 10-K, dated March 5, 2004, relating to the fiscal year ended December 31, 2003;
- (b) The Registrant's Current Reports on Form 8-K, filed with the Commission on July 21, 2004, June 10, 2004, May 17, 2004, May 11, 2004, April 21, 2004, March 9, 2004, February 10, 2004, January 29, 2004 and January 21, 2004;
- (c) The Registrant's Quarterly Report on Form 10-Q, filed with the Commission on May 7, 2004; and
- (d) The descriptions of the Registrant's Common Stock which are contained in the registration statements on Form 8-A dated October 17, 1994 and November 16, 1995 by the Registrant to register such securities under Section 12 of the Exchange Act, including any amendment or report filed for the purpose of updating such descriptions;
- (e) The description of the rights to purchase the Registrant's Cumulative Participating Junior Preferred Stock contained in the registration statement on Form 8-A dated November 16, 1995 by the Registrant to register such securities under Section 12 of the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act subsequent to the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing such documents. Any statement contained in a document incorporated or

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deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any

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subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Frank R. Borchert, III, Esq., Senior Vice President, Deputy General Counsel and Assistant Secretary of the Registrant, who has rendered the opinion attached hereto as Exhibit 5.1, may participate in the Plan and currently holds 1,824 shares of Common Stock, 31,340 shares of Common Stock subject to trading restrictions, vested options to purchase an additional 117,669 shares of Common Stock and unvested options to purchase an additional 28,061 shares of Common Stock.

Item 6. Indemnification of Directors and Officers.

Under Section 145 of the General Corporation Law of the State of Delaware (the "GCL"), a corporation may indemnify any person who was or is a party, or is threatened to be made a party, to any action, suit or proceeding, civil or criminal, administrative or investigative, by reason of the fact that he or she is or was a director or officer of such corporation against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interest of the corporation and, with respect to a criminal action or proceeding, such person had no reasonable cause to believe that his or her conduct was unlawful, except that, in the case of any action or suit by or in the right of the corporation, no indemnification is permitted if the person shall be adjudged liable to the corporation other than indemnification for such expenses as a court shall determine such person is fairly and reasonably entitled to.

Article XI of the Registrant's Restated Certificate of Incorporation and Section 6.7 of the Registrant's Amended and Restated Bylaws provide, in general, for mandatory indemnification of directors and officers to the fullest extent permitted from time to time by the GCL or any other applicable law, against liability incurred by them in proceedings instituted or threatened against them by third parties, or by or on behalf of the Registrant itself, relating to the manner in which they performed their duties unless they have been guilty of willful misconduct or of a knowing violation of the criminal law.

Under Article X of the Registrant's Restated Certificate of Incorporation, a director of the Registrant is not personally liable to the Registrant or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Registrant or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the GCL, or (iv) for any transaction from which the director derived an improper personal benefit.

The Registrant also maintains a directors and officers insurance policy which insures the officers and directors of the Registrant from any claim arising out of an alleged wrongful act by such person in their respective capacities as officers and directors of the Registrant.

The Plan provides for indemnification of each member of the committee responsible for administering the Plan and each other person to whom any duty or power relating to the administration or interpretation of the Plan or any award granted thereunder has been delegated, against any cost or expense (including counsel fees) or liability (including any sum paid in settlement of a claim with the approval of the committee) arising out of any action, omission or determination relating to the Plan or any award granted thereunder, to the fullest extent permitted by applicable law (subject to the Registrant's Restated Certificate of Incorporation and Amended and Restated Bylaws).

Item 7. Exemption From Registration Claimed.

Not applicable.

Item 8. Exhibits.

The following exhibits are filed with or incorporated by reference into this Registration Statement (numbering corresponds to Exhibit Table in Item 601 of Regulation S-K).

| <u>Exhibit No.</u> | <u>Document</u> |
|--------------------|---|
| 4.1 | Capital One Financial Corporation 2004 Stock Incentive Plan |
| 4.2 | Restated Certificate of Incorporation of the Registrant |
| 4.3 | Certificate of Amendment to Restated Certificate of Incorporation of the Registrant |
| 4.4 | Amended and Restated Bylaws of the Registrant |
| 4.5 | Rights Agreement dated as of November 16, 1995, between Capital One Financial Corporation and Mellon Bank, N.A. |
| 4.6 | Amendment Number 1 to Rights Agreement, dated as of April 29, 1999, between Capital One Financial Corporation and First Chicago Trust Company of New York, as successor to Mellon Bank, N.A. |
| 4.7 | Amendment Number 2 to Rights Agreement, dated as of October 18, 2001, between Capital One Financial Corporation and Equiserve Trust Company, N.A., as successor to First Chicago Trust Company of New York, as Rights Agent |
| 5.1 | Opinion of Frank R. Borchert, III, Deputy General Counsel of the Registrant, regarding the validity of the securities being registered |
| 23.1 | Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm |

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23.2 Consent of Frank R. Borchert, III, Deputy General Counsel of the Registrant (included in Exhibit 5.1)

24.1 Power of Attorney (included on signature page)

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of the prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by

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reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the County of Fairfax, Commonwealth of Virginia, on July 29, 2004.

CAPITAL ONE FINANCIAL CORPORATION

By: /s/ Frank R. Borchert, III
Frank R. Borchert, III

Senior Vice President, Deputy General

Counsel and Assistant Secretary

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints John G. Finneran, Jr. and Frank R. Borchert, III, and each of them, his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all future amendments to this Registration Statement and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, state securities law administrators, other governmental authorities, the National Association of Securities Dealers, Inc., and stock exchanges, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully and to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the following capacities on July 29, 2004.

| <u>Signature</u> | <u>Title</u> |
|---|--|
| /s/ Richard D. Fairbank _____ Name: Richard D. Fairbank | Director, Chairman, Chief Executive Officer, and President (Principal Executive Officer) |
| /s/ Gary L. Perlin _____ Name: Gary L. Perlin | Executive Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer) |

/s/ W. Ronald Dietz

Director

Name: W. Ronald Dietz

/s/ James A. Flick, Jr.

Director

Name: James A. Flick, Jr.

/s/ Patrick W. Gross

Director

Name: Patrick W. Gross

/s/ Lewis Hay, III

Director

Name: Lewis Hay, III

/s/ James V. Kimsey

Director

Name: James V. Kimsey

/s/ Mayo A. Shattuck, III

Director

Name: Mayo A. Shattuck, III

/s/ Stanley I. Westreich

Director

Name: Stanley I. Westreich

EXHIBIT INDEX

| Exhibit Number | Description | Method of Filing |
|-----------------------|---|---|
| 4.1 | Capital One Financial Corporation 2004 Stock Incentive Plan | Filed as Appendix B to the Registrant's Proxy Statement on Schedule 14A, filed March 17, 2004 (File No. 1-13300) and incorporated herein by reference |
| 4.2 | Restated Certificate of Incorporation of the Registrant | Filed as Exhibit 3.1.1 to the Registrant's Report on Form 8-K, filed January 16, 2001 (File No. 1-13300) and incorporated herein by reference |
| 4.3 | Certificate of Amendment to Restated Certificate of Incorporation of the Registrant | Filed as Exhibit 3.1.2 to the Registrant's Report on Form 8-K, filed January 16, 2001 (File No. 1-13300) and incorporated herein by reference |
| 4.4 | Amended and Restated Bylaws of the Registrant | Filed as Exhibit 3.2 to the Registrant's Annual Report on Form 10-K, as amended, for the year ending December 31, 1999 (File No.1-13300) and incorporated herein by reference |
| 4.5 | Rights Agreement dated as of November 16, 1995, between Capital One Financial Corporation and Mellon Bank, N.A. | Filed as Exhibit 4.2.1 to the Registrant's Annual Report on Form 10-K for the year ending December 31, 2002 (File No.1-13300) and incorporated herein by reference |

| | | |
|------|---|---|
| 4.6 | Amendment Number 1 to Rights Agreement, dated as of April 29, 1999, between Capital One Financial Corporation and First Chicago Trust Company of New York, as successor to Mellon Bank, N.A. | Filed as Exhibit 4.2.2 to the Registrant's Annual Report on Form 10-K, as amended, for the year ending December 31, 1999 (File No.1-13300) and incorporated herein by reference |
| 4.7 | Amendment Number 2 to Rights Agreement, dated as of October 18, 2001, between Capital One Financial Corporation and Equiserve Trust Company, N.A., as successor to First Chicago Trust Company of New York, as Rights Agent | Filed as Exhibit 99.1 to the Registrant's Report on Form 8-K, filed November 2, 2001 (File No.1-13300) and incorporated herein by reference |
| 5.1 | Opinion of Frank R. Borchert, III, Deputy General Counsel of the Registrant, regarding the validity of the securities being registered | Filed herewith |
| 23.1 | Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm | Filed herewith |
| 23.2 | Consent of Frank R. Borchert, III, Deputy General Counsel of the Registrant (included in Exhibit 5.1) | Filed herewith |
| 24.1 | Power of Attorney (included on signature page) | Filed herewith |