

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**BERNARD MENSAH**, individually, and on  
behalf of all others similarly situated,

Plaintiff,

v.

**CAPITAL ONE, N.A.**,

Defendant.

Case No.

(Removal from the Circuit Court of the  
Eleventh Judicial Circuit in and for Miami-  
Dade County, Florida)

**DEFENDANT CAPITAL ONE, N.A.’S NOTICE OF REMOVAL**

Defendant Capital One, N.A. (“Capital One”) hereby files this Notice of Removal of the above captioned action from the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida to the United States District Court for the Southern District of Florida, based on the District Court’s jurisdiction under 28 U.S.C. §§ 1332, 1441, 1446, and 1453.

In support of this Notice of Removal, Capital One states as follows:

**I. BACKGROUND**

1. On May 2, 2022, Plaintiff Bernard Mensah (“Plaintiff”) filed this putative class action, captioned *Mensah v. Capital One, N.A.*, Dkt. No. 2022-008014-CA-01 (the “State Court Action”), in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, attached hereto as **Exhibit A**.

2. Plaintiff purports to bring a class action on behalf of himself and a nationwide class consisting of “[a]ll persons with a Capital One account who signed up for the Zelle Service and incurred unreimbursed losses due to fraud (the ‘Class’)” and on behalf of Florida subclass

consisting of “[a]ll Florida persons with a Capital One account who signed up for the Zelle Service and incurred unreimbursed losses due to fraud (the ‘Florida Subclass’).” Ex. A at ¶ 56.

3. Capital One was served with a copy of the Complaint in the State Court Action on May 9, 2022.

4. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of the Complaint and all process, pleadings, and orders on file with the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida are attached hereto as **Exhibit B**.

5. In accordance with 28 U.S.C. § 1446(d), Capital One has contemporaneously filed a Notice of Removal with the Clerk of the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. A copy of Capital One’s Notice to State Court of Removal to Federal Court without exhibits is attached hereto as **Exhibit C**.

6. In accordance with 28 U.S.C. § 1446(d), Capital One has also provided written notice to the Plaintiff by contemporaneously serving this Notice of Removal on Plaintiff’s counsel.

## II. BASIS FOR REMOVAL UNDER CAFA

7. The State Court Action is removable under the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4.

8. There is no presumption against removal under CAFA, “which Congress enacted to facilitate adjudication of certain class actions in federal court.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014).

9. CAFA provides that federal district courts “shall have original jurisdiction of any civil action” (1) which is a “class action” (2) “in which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant,” and (3) “the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs,” provided that (4) the members of the putative class number at least 100. 28 U.S.C. § 1332(d)(2), (5).

**A. The Complaint Is a Class Action.**

10. Plaintiff brings this putative class action pursuant to Florida Rules of Civil Procedure 1.220(b)(2) and (b)(3) on behalf of himself and “[a]ll persons with a Capital One account who signed up for the Zelle Service and incurred unreimbursed losses due to fraud (the ‘Class’)” and on behalf of “[a]ll Florida persons with a Capital One account who signed up for the Zelle Service and incurred unreimbursed losses due to fraud (the ‘Florida Subclass’)”. Ex. A at Compl. ¶ 56.

11. Plaintiff also states that the members of the classes are “so numerous that joinder of all members would be unfeasible and impracticable.” *Id.*

12. Accordingly, this case is a “class action,” defined under CAFA as “any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B).

**B. There is Minimal Diversity Between the Parties.**

13. The putative classes include “citizen[s] of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

14. For diversity purposes, “[a]ll national banking associations shall, for the purposes of all other actions by or against them, be deemed citizens of the States in which they are respectively located.” 28 U.S.C. § 1348.

15. Capital One is a national banking association with its main office located in McLean, Virginia. Ex. A at ¶ 14; *see also* Capital One’s Amended and Restated Articles of Association attached hereto as **Exhibit D**; Office of the Comptroller of the Currency List of National Banks Active as of April 30, 2022 (“OCC List”), available at

<https://www.occ.gov/topics/charters-and-licensing/financial-institution-lists/national-by-name.pdf>.

16. Therefore, Capital One is a citizen of Virginia for diversity purposes. *See Wachovia v. Schmidt*, 546 U.S. 303, 307 (2006) (holding that national banking associations be deemed citizens of the state designated in its articles of association as the locus of its main office); *Hunt v. Nationstar Mortg., LLC*, 684 F. App'x 938, 942 (11th Cir. 2017) (same); Exhibit D (listing main office as located in McLean, Virginia); OCC List (same).

17. Plaintiff is a resident of Florida and purports to bring suit on behalf of a nationwide class of and a Florida subclass of Capital One customers who have signed up for the Zelle service. Ex. A at ¶ 56; *see also Beach Terrace Condo. Ass'n, Inc. v. Goldring Investments, Inc.*, No. 8:15-CV-1117-T-33TBM, 2015 WL 3770401, at \*1 (M.D. Fla. June 17, 2015) (“there is a presumption that the state in which a person resides at any given time is also that person’s domicile”). Therefore, Plaintiff is a Florida citizen for diversity jurisdiction purposes. *See, e.g., Huchon v. Jankowski*, No. 06-10094-CIV, 2007 WL 221421, at \*2 (S.D. Fla. Jan. 25, 2007) (finding defendant properly alleged plaintiff’s citizenship by asserting in notice of removal plaintiff “was and is a Florida resident domiciled in Monroe County, Florida”).

18. Thus, Section 1332(d)(2)(A)’s requirement of minimal diversity is met.

**C. The Amount in Controversy Exceeds \$5 Million.**

19. Under CAFA, the claims of individual class members are aggregated to determine the amount in controversy. See 28 U.S.C. § 1332(d)(6). The amount in controversy is “an estimate of how much will be put at issue during the litigation,” rather than “a prediction of how much the plaintiffs are ultimately likely to recover.” *S. Fla. Wellness, Inc. v. Allstate Ins. Co.*, 745 F.3d 1312, 1315 (11th Cir. 2014) (internal citations and quotation marks omitted). Defendant’s “notice

of removal need include only a *plausible allegation* that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin*, 574 U.S. at 89 (emphasis added).

20. The Complaint asserts causes of action for violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201, et seq., breach of contract; and breach of the covenant of good faith and fair dealing. Ex. A. at ¶¶ 59-73.

21. Plaintiff also seeks to recover compensatory and punitive damages, restitution, disgorgement of ill-gotten gains, attorneys’ fees, costs, and interest. *Id.* at Prayer for Relief.

22. Capital One does not concede in any way that Plaintiff’s claims are valid in any respect and states solely for the purposes of estimating the amount in controversy on Plaintiff’s theory of the case that the amount in controversy well exceeds \$5 million if Plaintiff’s allegations as stated in the Complaint are taken as true.

23. Plaintiff alleges that he brings a suit on behalf of himself and “thousands of similarly situated customers of Capital One who have signed up for the Zelle money transfer service and who: have been the victim of fraud on the Zelle service.” *Id.* at ¶ 1.

24. Plaintiff further alleges that he and these “thousands” of putative class members “incurred losses due to that fraud that has not been reimbursed by Capital One; and who were entitled by the marketing representations of Capital One regarding the Zelle service and by the Capital One’s contract promises to full reimbursement of losses caused by fraud on the Zelle Service.” *Id.*

25. Plaintiff avers that he suffered actual losses of \$2,000 from his “personal bank account using the Zelle service” due to fraud. *Id.* at ¶¶ 47, 51.

26. Plaintiff further alleges that the Zelle “fraud problem” is “widespread” and he claims that “many people” have been defrauded for “thousands of dollars” using Zelle. *Id.* at ¶¶ 10, 26.

27. Additionally, Plaintiff claims that he and the putative class members are entitled to punitive damages, attorneys’ fees, restitution, and an injunction, all of which are included in calculating the amount in controversy. *Id.* at Prayer for Relief; *see S. Fla. Wellness*, 745 F.3d at 1316; *McDaniel v. Fifth Third Bank*, 568 F. App’x 729, 731 (11th Cir. 2014).

28. Accepting these allegations as true, even if the putative class consisted of only 2,000 members who incurred a loss of \$3,500 each (including out-of-pocket loss, attorney’s fees, punitive damages<sup>1</sup> and costs), it is clear that the amount in controversy well exceeds the \$5 million requirement.

29. Accordingly, the requirement of 28 U.S.C. § 1332(d)(2) for an amount in controversy of at least \$5 million is satisfied.

**D. Class Membership Exceeds 100 Persons.**

30. Plaintiff alleges that he brings a suit on behalf of himself and “thousands of similarly situated customers of Capital One who have signed up for the Zelle money transfer service and who: have been the victim of fraud on the Zelle service.” *Id.* at ¶ 1. Thus, the aggregate number of putative class members is at least 100 for purposes of § 1332(d)(5)(B); *cf. Perret v. Wyndham Vacation Resorts, Inc.*, No. 11-CV-61904, 2012 WL 592171, at \*2 (S.D. Fla. Feb. 22, 2012) (concluding plaintiff’s allegation that “potentially thousands” of class members existed was sufficient on its face to establish jurisdiction in case removed under CAFA).

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<sup>1</sup> In fact, punitive damages can reach three times any compensatory award. *McDaniel*, 568 F. App’x at 732; Fla. Stat. § 768.73(1)(a).

31. Plaintiff further purports to bring suit on behalf of himself and putative classes, which he estimates is “greater than one hundred individuals.” *Id.* at ¶ 59.

32. Accordingly, the numerosity requirement of 28 U.S.C. § 1332(d)(5) is satisfied.

### **III. ALL OTHER REQUIREMENTS FOR REMOVAL ARE MET**

33. Capital One was served with a copy of the Complaint in this State Court Action on May 9, 2022. Thus, Capital One’s Notice of Removal is timely because it is filed within thirty (30) days of Capital One’s receipt of the Complaint as required under 28 U.S.C. § 1446(b).

34. The court in which this State Court Action is pending is located within the Southern District of Florida, as required by 28 U.S.C. §§ 1446(a) and 1441(a).

35. Immediately following the filing of this Notice of Removal, written notice of the filing will be served on Plaintiff’s counsel, the only adverse party in this case, as required by 28 U.S.C. § 1446(d).

36. Capital One will promptly file this Notice of Removal with the Clerk of the Circuit Court of the Eleventh Judicial Circuit, Florida, where the State Court Action was pending as required by 28 U.S.C. § 1446(d). A copy of the Notice of Filing of Removal is attached hereto as Exhibit C.

37. By removing this action to this Court, Capital One does not waive any defenses, objections, or motions under state or federal law. *See, e.g., Kostelac v. Allianz Glob. Corp. & Specialty AG*, 517 F. App’x 670, 675 n.6 (11th Cir. 2013) (“The removal of an action from state to federal court does not waive any Rule 12(b) defenses”).

### **IV. CONCLUSION**

WHEREFORE, for the reasons stated above, Capital One hereby removes the State Court Action to the United States District Court for the Southern District of Florida, Miami Division, in accordance with 28 U.S.C. §§ 1332, 1441, 1446, and 1453.

Dated: June 1, 2022

Respectfully submitted,

**MCGUIREWOODS LLP**

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*Attorneys and Trial Counsel for Defendant  
Capital One, N.A.*

**CERTIFICATE OF SERVICE**

I hereby certify this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on June 1, 2022, and sent via U.S. Mail and/or email to participants not registered with the CM/ECF system:

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*Attorneys for Plaintiff Bernard Mensah  
and proposed class*

/s/ Emily Y. Rottmann  
Attorney

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Bernard Mensah

(b) County of Residence of First Listed Plaintiff Miami-Dade County, FL (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Shamis & Gentile, P.A., 14 NE 1st Ave, Suite 705, Miami, FL 33132 (305) 479-2299

DEFENDANTS

Capital One, N.A.

County of Residence of First Listed Defendant Fairfax County, VA (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

McGuireWoods LLP, 50 N Laura St, Suite 3300, Jacksonville, FL 32202; (904) 798-3200

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Property Damage, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §§ 1332, 1441, 1446. Brief description of cause: Alleged violation of Florida Statute and breach of contract

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ exceeds \$5,000,000. CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE June 1, 2022 SIGNATURE OF ATTORNEY OF RECORD /s/ Emily Y. Rottmann

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

**Defendant's Notice of Removal**

**Exhibit A**

**Complaint filed on May 2, 2022**  
***Mensah v. Capital One, N.A.***  
**Case No. 2022-008014-CA-01**

***Mensah v. Capital One, N.A.***  
**United States District Court**  
**Southern District of Florida, Miami Division**

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

**BERNARD MENSAH**, individually, and on  
behalf of all others similarly situated,

Plaintiff,

v.

**CAPITAL ONE, N.A.**,

Defendant.

Case No.: \_\_\_\_\_

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff Bernard Mensah, individually and on behalf of all others similarly situated, hereby brings this Class Action Complaint against Defendant Capital One, N.A. (“Capital One,” “Bank,” or “Defendant”) and alleges as follows:

**INTRODUCTION**

1. This lawsuit is brought as a class action on behalf of Plaintiff and thousands of similarly situated customers of Capital One who have signed up for the Zelle money transfer service and who: have been the victim of fraud on the Zelle service; who have incurred losses due to that fraud that have not been reimbursed by Capital One; and who were entitled by the marketing representations of Capital One regarding the Zelle service and by the Capital One’s contract promises to a full reimbursement of losses caused by fraud on the Zelle service.

2. Zelle is a payment transfer service wholly owned and operated by seven of the largest banks in the U.S.

3. There are approximately 1,500 member banks and credit unions who participate in the Zelle service. Those members engage in their own significant marketing efforts to encourage their accountholders to sign up for the Zelle service by marketing Zelle as a fast, safe and secure way for consumers to send money. This is false. In fact, there are huge, undisclosed security risks

of using the service that Capital One omitted from its marketing push to get its accountholders to sign up for Zelle.

4. Capital One prominently touts Zelle to its accountholders as a secure, free and convenient way to make money transfers. However, it misrepresents and omits a key fact about the service that is unknown to accountholders: that there is virtually no recourse for consumers to recoup losses due to fraud. Indeed, unlike virtually every other payment method commonly used by American consumers—debit cards, credit cards, and checks—there is no protection for accountholders who are victims of fraud, and virtually no recourse for accountholders attempting to recoup losses due to fraud.

5. The unique, misrepresented, and undisclosed architecture of the Zelle payment system means—again, unlike other payment options commonly used by American consumers—that virtually any money transferred for any reason via Zelle is gone forever, without recourse, reimbursement or protection.

6. Worse, Capital One misrepresents and omits the truth about a secret policy it has adopted: it does not and will not reimburse its accountholders for losses via Zelle due to fraud, even where those losses are timely reported by accountholders.

7. Capital One was required not to misrepresent the unique and dangerous features of the Zelle service in its marketing about it and in contractual representations. But it failed to do so.

8. As a result, users like Plaintiff sign up for and use the Zelle service without the benefit of accurate information regarding that service, and later end up with huge, unreimbursed losses due to fraud. Such users never would have signed up for Zelle in the first place if they had known the extreme risks of signing up for and using the service.

9. As a member of the Zelle network, the risks are well known to Capital One but are omitted from all of its marketing regarding Zelle.

10. As a recent New York Times investigation showed, fraud on the Zelle network is a widespread scourge of which bank is well aware. Quoting an industry expert, the *Times* reported:

“Organized crime is rampant,” said John Buzzard, Javelin’s lead fraud analyst. “A couple years ago, we were just starting to talk about it” on apps like Zelle and Venmo, Mr. Buzzard said. “Now, it’s common and everywhere.”

The banks are aware of the widespread fraud on Zelle. When Mr. Faunce called [his bank] to report the crime, the customer service representative told him, “A lot of people are getting scammed on Zelle this way.” Getting ripped off for \$500 was “actually really good,” Mr. Faunce said the rep told him, because “many people were getting hit for thousands of dollars.”

<https://www.nytimes.com/2022/03/06/business/payments-fraud-zelle-banks.html> (last accessed March 28, 2022).

11. Had Plaintiff and the Class members known of the true operation and risks of the Zelle service—risks Capital One alone was aware of and actively misrepresented—they would not have signed up for and used the Zelle service.

12. Plaintiff and the Class members have been injured by signing up for and using the Zelle service on Capital One’s mobile application and website. Plaintiff brings this action on behalf of himself, the putative Class, and the general public. Plaintiff seeks actual damages, punitive damages, restitution, and an injunction on behalf of the general public to prevent Capital One and Zelle from continuing to engage in its illegal practices as described herein.

### **PARTIES**

13. Plaintiff Bernard Mensah is a citizen and resident of Miami-Dade County, Florida.

14. Defendant Capital One, N.A. is a federally chartered bank with its principal place of business in McLean, Virginia. Capital One operates and conducts business, throughout, the State of Florida.

### **JURISDICTION AND VENUE**

15. This Court has subject matter jurisdiction pursuant to Florida Rule of Civil Procedure 1.220 and Fla. Stat. § 26.012(2). The matter in controversy exceeds the sum or value of \$30,000 exclusive of interest, costs, and attorney's fees.

16. Defendant is subject to personal jurisdiction in Florida because this suit arises out of and relates to Defendant's contacts with this state. Defendant is authorized to do business in the State of Florida and maintains a network of retail branches doing business in Florida that operates, conducts, engages in, and/or carries on business and business activities in Florida and engages in substantial and not isolated activity in Florida.

17. Venue for this action is proper in this Court pursuant to Fla. Stat. §47.011 and §47.051 because Defendant has an agent or other representative and a substantial part of the events and omissions giving rise to this action occurred in Miami-Dade County, Florida.

### **FACTUAL ALLEGATIONS**

#### **A. Overview**

18. It is free to sign up with Zelle, and in fact Zelle is integrated into the websites and mobile apps of Capital One. In marketing and within the website and app itself, Capital One encourages its accountholders to sign up for the Zelle service—a sign up that occurs quickly within the Capital One website or mobile app. During that sign-up process, a user provides basic information to Zelle to link into the Zelle network.

19. While Zelle provides a link to what it calls a “User Agreement” on its website, at no time during the sign-up process on the bank’s website or app did Plaintiff agree to be bound by that document.

20. Sign up for the Zelle service allows the fast transfer of account funds to other Zelle users.

21. Created in 2017 by the largest banks in the U.S. to enable instant digital money transfers, Zelle is by far the country’s most widely used money transfer service. Last year, people sent \$490 billion in immediate payment transfers through Zelle.

22. The Zelle network is operated by Early Warning Services, a company created and owned by seven banks, including Defendant: Bank of America, Capital One, JPMorgan Chase, PNC, Truist, U.S. Bank and Wells Fargo.

23. The Zelle service is very popular, but it also has a massive fraud problem—in no small part because of the immediacy with which money transfers are made on the service. If a fraudster removes money from a Zelle user’s bank account, either directly or by fooling the Zelle user to transfer money, those funds are unrecoverable to the consumer.

24. Nearly 18 million Americans were defrauded through scams involving person-to-person payment apps like Zelle in 2020 alone, according to Javelin Strategy & Research, an industry consultant.

25. Organized crime is rampant on Zelle and other similar person-to-person transfer services.

26. The 1500 banks and credit unions who are members of the Zelle network, including Capital One, know full well that they have a widespread fraud problem on their hands, but have

misrepresented and failed to take steps to warn their accountholders of these risks—or protect their accountholders who fall prey to fraud.

27. For example, a common scam involves a scammer impersonating a bank employee and requesting that the accountholder transfer money to a different bank account for testing purposes. Unsuspecting Zelle users, tricked into making a fraudulent transfer, in many cases send hundreds or thousands of dollars to fraudsters.

28. In another very common scheme, a Zelle user's phone is stolen and Zelle transfers are made from the stolen phone to the fraudster.

29. In short, and unbeknownst to average Zelle users, the Zelle network has become a preferred tool for fraudsters like romance scammers, cryptocurrency con artists and those who use social media sites to advertise fake concert tickets and purebred puppies.

30. Scams like these are rampant on the Zelle network precisely because of the design and architecture of the network, specifically that money transfer is instantaneous and unrecoverable. Indeed, there is virtually no recourse for consumers to recoup losses due to fraud, unlike other payment methods commonly used by American consumers—debit cards, credit cards, and checks. Zelle provides no protection for accountholders who are victims of fraud, and Capital One provides virtually no recourse for accountholders attempting to recoup losses due to fraud.

31. The unique, misrepresented, and undisclosed architecture of the Zelle payment system and Capital One's own fraud policies means—again, unlike other payment options commonly used by American consumers—that virtually any money transferred for any reason via Zelle is gone forever, without recourse, reimbursement or protection for victimized accountholders.

**B. Capital One Falsely Markets Zelle as a Safe and Secure Way to Transfer Money, Omits Information Regarding the Extreme Risks of**

**Signing Up for and Using the Service, and Misrepresents Fraud Protections Regarding Zelle in its Account Contract**

32. In its marketing about Zelle and during the Zelle signup process within the Bank's mobile app or website, the Bank makes repeated promises that Zelle is a "fast, **safe** and easy way to send and receive money" (emphasis added).

33. It promises: "Move money in the moment. Simply and **securely** – with lots of people you know." (emphasis added).

34. It also promises: "With Zelle, money payments and requests are simple, **safe**—and free—using the Capital One Mobile app." (emphasis added).

35. At no time in its marketing or during the sign-up process does Capital One warn potential users of the true security risks of using the Zelle service—including the risk of fraud and the risk that fraudulent losses will never be reimbursed by Capital One.

36. Zelle's services can cause unsuspecting consumers like Plaintiff to incur massive losses on their linked bank accounts.

37. Capital One misrepresents (and omits facts about) the true nature, benefits, and risks of the Zelle service, functioning of which means that users are at extreme and undisclosed risk of fraud when using Zelle. Had Plaintiff been adequately informed of these risks, he would not have signed up for or used Zelle.

38. The Bank's marketing representations about Zelle—including within its app and website—misrepresent and never disclose these risks and material facts, instead luring accountholders to sign up for and use the service with promises of ease, safety and security.

39. These representations—which all users view during the sign-up process—are false and contain material omissions.

40. Capital One misrepresents the true nature, benefits and risks of the service, which burden users with an extreme and undisclosed risk of Zelle causing losses due to fraud. Plaintiff would not have used Zelle if he had been adequately informed of the risks.

41. The Bank's misrepresentations and omissions are especially pernicious because Capital One alone knows a crucial fact regarding Zelle transfers that occur on its accountholders' accounts: as a matter of secret bank policy, fraud-induced Zelle transfers will almost never be reimbursed to accountholders.

42. Indeed, upon information and belief, Capital One maintains secret policy whereby it refuses to reimburse fraud losses incurred via Zelle, even where its accountholders timely inform Capital One of the fraud.

43. It misrepresents and fails to disclose this secret policy.

44. Further, Capital One's Account Disclosures applicable to consumer accounts repeatedly promises users that, if they timely report fraud, such fraud will be fairly investigated and accountholders will not be liable for fraudulent transfers:

**13. Liability for Unauthorized Transfers on Consumer Accounts Only:**

A. Notify us immediately ... if you believe that an electronic fund transfer has been made without your permission. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your designated accounts (plus any available revolving line of credit, if applicable).

[...]

C. If you think that a transfer or withdrawal shown on your periodic statement is incorrect, or if you believe an unauthorized transfer or withdrawal has taken place, including those made by your ATM/Debit Card, code, or other means, contact us at once. We must be notified within sixty (60) days after the first statement we mailed to you on which the suspected problem appeared. If you do not contact us within this sixty (60) day time period, you could be held responsible for all unauthorized transfers and withdrawals that occurred between the end of the sixty (60) day period and the time you actually notified us if the transaction could have been prevented if we had been notified.

D. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we may extend the above time periods.

E. If you believe ... that someone has transferred or may transfer money from your account without your permission, you may:

Call us at: 1-800-655-2265

Write us at:  
Capital One, N.A.  
7933 Preston Rd.  
Plano, TX 75024  
Attn: Customer Service Center

45. These provisions are and were reasonably understood by Plaintiff to mean that Plaintiff would not be liable for electronic funds transfers effectuated by fraud.

**C. Plaintiff's Experience**

46. When Plaintiff signed up for Zelle he was not informed that Zelle's service had a significant "catch" and that significant monetary losses could result from signing up for the service—or that those losses almost never are reimbursed by users' banks or credit unions.

47. For example, on August 31, 2021, a fraudster transferred \$2,000.00 from Plaintiff's personal bank account using the Zelle service.

48. In August 2021, Plaintiff relocated to Miami, Florida and was searching for rental apartments online. Plaintiff believed he found a potential unit to lease on apartments.com, so he reached out to the purported landlord, who in reality was a fraudster, to express his interest in the apartment.

49. Before signing a lease, however, Plaintiff wanted to tour the property in-person. The fraudster happily agreed and scheduled a time for the two to meet and view the apartment.

50. After touring the apartment, Plaintiff negotiated terms of the "lease" with the fraudster, reached an agreement, and signed the "lease."

51. Upon signing, Plaintiff transferred \$2,000.00 via Zelle to the fraudster for his deposit of first and last month's rent.

52. Later that day, Plaintiff received an email from a different person with the same property, same description, and same rental application, but it was listed on realtors.com.

53. At this point, Plaintiff determined he fell victim to fraud and immediately notified Capital One who assured him it would issue a stop payment on the pending Zelle transfer.

54. The next day, however, Plaintiff called Capital One for an update and was informed that Capital One could not issue a stop payment and only Zelle had the authority to do so.

55. Despite Plaintiff timely alerting Capital One of the fraud, Capital One refused to reimburse him for the losses.

### **CLASS ALLEGATIONS**

56. Pursuant to Florida Rule of Civil Procedure 1.220(b)(2) and (b)(3), Plaintiff brings this action individually and as representatives of all those similarly situated, on behalf of the below-defined Classes:

All persons with a Capital One account who signed up for the Zelle Service and incurred unreimbursed losses due to fraud (the "Class").

All Florida persons with a Capital One account who signed up for the Zelle Service and incurred unreimbursed losses due to fraud (the "Florida Subclass").

57. Excluded from the Classes are Defendant and its affiliates, parents, subsidiaries, employees, officers, agents, and directors. Also excluded are any judicial officers presiding over this matter and the members of their immediate families and judicial staffs.

58. This case is appropriate for class treatment because Plaintiff can prove the elements of their claims on a class wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

59. **Numerosity:** The members of the Classes are so numerous that joinder of all members would be unfeasible and impracticable. The precise membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes are greater than one hundred individuals. The identity of such membership is readily ascertainable via inspection of Defendant's books and records or other approved methods. Class members may be notified of the pendency of this action by mail, email, internet postings, and/or publication.

60. **Common Questions of Law or Fact:** There are common questions of law and fact as to Plaintiff and all other similarly situated persons, which predominate over questions affecting only individual Class members, including, without limitation:

- a) Whether Defendant's representations and omissions about the Zelle service are false, misleading, deceptive, or likely to deceive;
- b) Whether Defendant failed to disclose the risks of using the Zelle service;
- c) Whether Plaintiff and the Class members were damaged by Defendant's conduct;
- d) Whether Defendant's actions or inactions violated the consumer protection statute invoked herein; and
- e) Whether Plaintiff is entitled to a preliminary and permanent injunction enjoining Defendant's conduct.

61. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendant's uniform practices applicable to each individual Class member. As such, these common questions predominate over individual questions concerning each Class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

62. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the Classes because, among other things, Plaintiff and all Class members were similarly injured through Defendant's uniform misconduct as alleged above. As alleged herein, Plaintiff, like the members of the Classes, were deprived of monies that rightfully belonged to them. Further, there are no defenses available to Defendant that are unique to Plaintiff.

63. **Adequacy of Representation:** Plaintiff is an adequate class representative because they are fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes, and because their interests do not conflict with the interests of the other Class members they seek to represent. Moreover, Plaintiff's attorneys are ready, willing, and able to fully and adequately represent Plaintiff and the members of the Classes. Plaintiff's attorneys are experienced in complex class action litigation, and they will prosecute this action vigorously.

64. **Superiority:** The nature of this action and the claims available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each Class member were required to file an individual lawsuit, Defendant would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of each individual Plaintiff with its vastly superior financial and legal resources. Moreover, the prosecution of separate actions by individual Class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual Class members against Defendant, and which would establish potentially incompatible standards of conduct for Defendant and/or legal determinations with respect to individual Class members which would, as a practical matter, be dispositive of the interests of the other Class members not parties to adjudications or which would substantially impair or impede the ability of the Class members to protect their interests. Further, the claims of

the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto.

**FIRST CAUSE OF ACTION**

**Violation of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”)**

**Fla. Stat. § 501.201, et seq, et seq.**

**(Asserted on Behalf of the Classes)**

59. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

60. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, *et seq.* The stated purpose of the FDUTPA is to “protect the consuming public ... from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” Fla. Stat. § 501.202(2).

61. Plaintiff and members of the class are “consumers” as defined by Fla. Stat. § 501.203(7).

62. Defendant engaged in “trade or commerce” as defined by Fla. Stat. § 501.203(8) by offering the Zelle money transfer services through its website and mobile app.

59. As described herein, Capital One’s misrepresentations that it provides safe, secure, Zelle money transfer services through its website and mobile app constitutes an unconscionable, unfair and/or deceptive act in trade or commerce in violation of Fla. Stat. § 501.201.

60. As described herein, Capital One’s misrepresentations that it will protect accountholders who incur fraud losses via Zelle, even where its accountholders timely inform Capital One of the fraud, constitutes an unconscionable, unfair and/or deceptive act in trade or commerce in violation of Fla. Stat. § 501.201.

61. Capital One’s deceptive omissions of the material security risks of using the Zelle service, including the risk of fraud and the risk that fraudulent losses will never be reimbursed by

Capital One as a matter of secret policy, is a practice that is likely to mislead a consumer acting reasonably under the circumstances, to the consumer's detriment.

62. Defendant's practices, as described herein, constitute deceptive and/or fraudulent business practices in violation of the FDUTPA because, among other things, they are likely to deceive reasonable consumers, who expect their bank to fully investigate and protect fraudulent losses incurred using the Zelle service. Moreover, Defendant concealed the security risks of using the Zelle service, including the risk of fraud and the risk that fraudulent losses will never be reimbursed by Capital One as a matter of secret policy, is a practice that is likely to deceive a consumer acting reasonably under the circumstances, to the consumer's detriment.

**SECOND CAUSE OF ACTION**

**Breach of Contract Including Breach of the Covenant of Good Faith and Fair Dealing  
(Asserted on Behalf of the Classes)**

63. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

64. Plaintiff and members of the Classes contracted with Capital One for checking account services, as embodied in the Account Disclosures.

65. Capital One breached the terms of its contract with consumers when as described herein, Capital One failed to fairly investigate reported fraudulent transactions on the Zelle money transfer service and failed to reimburse accountholders for fraud-induced losses incurred using the Zelle service.

66. Further, under the law of each of the states where Capital One does business, an implied covenant of good faith and fair dealing governs every contract. The covenant of good faith and fair dealing constrains Defendant's discretion to abuse self-granted contractual powers.

67. This good faith requirement extends to the manner in which a party employs discretion conferred by a contract.

68. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit—not merely the letter—of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

69. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes his conduct to be justified. A lack of good faith may be overt or may consist of inaction, and fair dealing may require more than honesty. Other examples of violations of good faith and fair dealing are willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance.

70. Defendant breached the covenant of good faith and fair dealing when it failed to fairly investigate reported fraudulent transactions on the Zelle money transfer service and failed to reimburse accountholders for fraud-induced losses incurred using the Zelle service.

71. Each of Defendant's actions was done in bad faith and was arbitrary and capricious.

72. Plaintiff and members of the Classes have performed all of the obligations imposed on them under the contract.

73. Plaintiff and members of the Classes have sustained monetary damages as a result of Capital One's breaches of the contract and covenant of good faith and fair dealing.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of the Classes, demands a jury trial on all claims so triable and judgment as follows:

- A. Certifying the proposed Classes, appointing Plaintiff as representative of the Classes, and appointing counsel for Plaintiff as lead counsel for the respective Classes;
- B. Declaring that Defendant's policies and practices as described herein constitute a breach of contract, and a breach of the covenant of good faith and fair dealing or unjust enrichment, and violation of Florida's Deceptive and Unfair Trade Practices Act.
- C. Enjoining Defendant from the wrongful conduct as described herein;
- D. Awarding restitution of all fees at issue paid to Defendant by Plaintiff and the Classes as a result of the wrongs alleged herein in an amount to be determined at trial;
- E. Compelling disgorgement of the ill-gotten gains derived by Defendant from its misconduct;
- F. Awarding actual and/or compensatory damages in an amount according to proof;
- G. Punitive and exemplary damages;
- H. Awarding pre-judgment interest at the maximum rate permitted by applicable law;
- I. Reimbursing all costs, expenses, and disbursements accrued by Plaintiff in connection with this action, including reasonable attorneys' fees, costs, and expenses, pursuant to applicable law and any other basis; and
- J. Awarding such other relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff and all others similarly situated hereby demand trial by jury on all issues in this Class Action Complaint that are so triable.

Dated: May 2, 2022

Respectfully Submitted,

**SHAMIS & GENTILE, P.A.**

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*Counsel for Plaintiff and Proposed Class*

# **EXHIBIT 1**

# Account Disclosures



## Rules Governing Deposit Accounts

Effective February 9, 2022

Welcome to Capital One, N.A. (hereafter referred to as “Capital One Bank,” “Capital One,” “we,” “us,” or “our”). These Rules Governing Deposit Accounts (herein after referred to as “Rules”), as well as other agreements that are provided to you separately, as may be amended from time to time, constitute the deposit contract which governs all deposit accounts with Capital One Bank. By opening or continuing to maintain a deposit account with us, each customer (referred to as “you” or “your”) agrees to be bound by the applicable provisions of these Rules, and all applicable agreements, disclosures, and other documents, as well as by all applicable federal or state laws, statutes and regulations. Please keep a copy of the Rules.

We may decline to open an account for any reason, or for no reason. We are not liable for any damages or liabilities resulting from refusal of an account relationship.

**Important Information about Procedures for Opening a New Account.** To help the United States Government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information identifying each person who opens an account.

When you open an account, we will ask for your name, street address (a post office box may not be used), date of birth, and other information that will allow us to identify you. We will also ask to see your driver’s license or other identifying documents.

**Taxpayer Identification Number.** Federal law requires that you provide us with your Social Security Number or your Employer Identification Number before opening any account. If you are in the process of applying for such a number, we may open your account temporarily pending receipt of the number. If you fail to provide us with the number, we may close the account at any time without prior notice to you.

**Your New Account.** Additional terms and conditions, applicable service charges, minimum deposit requirement, and where applicable, information concerning the calculation, compounding and crediting of interest are contained in the disclosure statement and agreement for the type of account you have opened (your “Account Disclosure”).

Your account is considered a new account if it has been open for thirty (30) calendar days or less. If you already have existing accounts with Capital One Bank that have been open for a period of at least thirty (30) calendar days, accounts subsequently opened will not be considered new accounts.

**Additional Deposits.** Unless otherwise provided by the terms and conditions contained in your Account Disclosure, there is no limit on the number of deposits that may be made to an account, however, we reserve the right, at our sole discretion, to refuse further deposits to your account.

**Crediting of Deposits.** Funds deposited in a branch before 2 p.m. local time, or such later time posted in the branch, (9 p.m. ET for funds deposited at an ATM) on any business day will be credited to the applicable account that business day. Funds deposited after the above stated times will be credited on that business day or the next business day. Please refer to the section of this disclosure entitled Deposit Availability Disclosure to determine when funds are available for withdrawal or for paying transactions on your account.

**Accepting Items for Deposit.** We will accept items for deposit, but act only as your agent for collection and assume no responsibility for these items, beyond the exercise of ordinary care.

Even though we credit your account for the amount of any item, this credit is temporary until we receive final payment in cash or other manner acceptable to us. Any temporary credit may be reversed by us. We reserve the right to require waiting periods, as described in the Deposit Availability Disclosure provided herein, before we will allow withdrawal

against temporary credits. If an item you deposit (or a check cashed against your account) is returned to us unpaid, or if we receive a claim from another bank that the item was not properly payable (for example, a claim that the item was altered), we may debit the entire amount of the item (plus any applicable fees) from any account you hold with us, even if doing so creates an overdraft. If a temporary credit is reversed or an item is charged back to your account, a fee may be deducted from the account, together with any interest earned on the amount of the item. Your account may also be debited for any special fees incurred in processing items for collection.

If checks deposited into multiple accounts are returned unpaid, we'll debit your account with the largest amount deposited. For equal deposit amounts, we'll debit the account that first received a deposit. If one of the deposits was to a Total Control Checking, Confidence Savings, or a 360 account, we'll always debit that account for the full amount. Please ask a banker if you have questions.

Foreign checks are handled as collection items only and are converted at our current daily rate and credited in U.S. dollars. Foreign checks sent for collection are exchanged at the exchange rate on the day of payment. All returned foreign checks will be charged back to your account at the rate used when initially credited and may be subject to a return fee and foreign bank charge (if applicable). Any payment(s) made to you from such items shall be provisionally credited to your account until we receive final payment from the foreign bank. Please note that while the foreign check collection process typically takes anywhere from four to six weeks, we have no control over the process once a check is sent for foreign collection. Accordingly, the process may take longer, depending on the foreign bank. You hereby waive notice of dishonor, nonpayment, or protest with respect to any items credited to or charged against your account.

**Receipts for Deposits.** We will give you a receipt for the total amount shown on your deposit ticket, but the amount must be verified before it is credited to your account. If an error is discovered in the amount of your deposit, we will adjust your account and notify you of the correction.

**Deposit Errors.** If we mistakenly credit your account for funds to which you are not the rightful owner, we may deduct those funds from your account, even if this causes your account to be overdrawn. We may do so at any time and without prior notice to you.

**Envelope Depository.** We may accept payments and/or deposits through the use of an "envelope depository" (a "drop" receptacle into which envelopes may be placed during business and nonbusiness hours). You authorize us to remove your payment and/or deposit from the envelope, count the funds and credit your account.

The envelope depository is provided as a convenience to our clients, and we are not responsible for any loss suffered by you resulting from your use of said envelope depository unless caused by our gross negligence or willful misconduct. If an error is discovered in the amount of your deposit, we will adjust your account and notify you of the correction.

**Withdrawals.** Withdrawals from your account may be made at the teller window only by authorized signer(s) on the account. We will not pay withdrawals to third parties. If you provide your ATM card or ATM/Debit card and personal access code to a third party, you have authorized the third party to withdraw funds from your account at a teller window, ATM machine or point of sale terminal.

**Account Transaction Limitations.** Commercial-purpose savings accounts (including savings accounts with check writing privileges and money market accounts) may be limited in the number of transfers or withdrawals allowed per monthly service charge cycle to a third party or to another account of the depositor at Capital One Bank by means of preauthorized, automatic, telephone or online transfers.

If you exceed the number of transactions permitted in a monthly service charge cycle as disclosed to you in the applicable product disclosure more than once during any twelve-month period, you may be charged a fee for each transaction in excess of the number permitted (an "Excessive Transaction Fee"). Please see the current Schedule of Fees and Charges applicable to your account for the amount of the Excessive Transaction Fee. If you exceed six (6) transfers or withdrawals from your account three (3) times in any twelve-month period you agree that we may, at our discretion, convert your savings or money market account to an account that is not subject to transaction limits (a "transaction account").

Consumer savings accounts are not currently subject to a transfer limit. You will be notified if we choose to re-impose a limit.

Unless your Account Disclosures provide otherwise, you may make any number of withdrawals from your account in

person or at any ATM; provided that you do not exceed daily ATM cash withdrawal limits. Please refer to our Electronic Fund Transfers Agreement and Disclosure ("EFT Disclosure") available on our Website or at any of our banking offices for the daily cash withdrawal and point of sale limits applicable to your ATM card or ATM/Debit card.

**Notice of Withdrawal.** We may allow withdrawals at any time, but reserve the right to require twenty-one (21) days written notice of intention to withdraw funds from any savings, money market and negotiable order of withdrawal (NOW) account.

**Large Cash Transactions.** We reserve the right to place a limit on the amount of cash that may be deposited or withdrawn in a business day. We may require advance notice of a large cash withdrawal, and we may require that the cash be obtained by an armored carrier (at your expense). We may also refuse to accept a cash deposit for a very large amount.

**Same-Day Transactions.** We are not responsible for paying items against deposits made the same day the items are presented for payment.

**Statements.** We will provide you with monthly or periodic statements for certain accounts. The postal (or electronic) address you provide to us will be deemed to be correct for purposes of delivering account statements and other notices to you, until we receive a change of address notification from you. If your statement is returned to us as a result of your failure to notify us of your change in address, we may stop sending account statements to you until a valid address is provided to us, but for all purposes it shall be considered as if we delivered your account statement to you as of the date that was or would have been printed on your account statement. If you enroll in Online Banking, your periodic statements will be accessible online from the date of enrollment. You must inspect your statement and any cancelled checks promptly after they are made available to you. You have a responsibility to review your account statement in a timely manner and to notify us promptly of any errors. Within sixty (60) days after your statement is postmarked or made available to you, or account transaction history is made available to you through Online Banking, you must notify us in writing of any errors, discrepancies or irregularities, including but not limited to, unauthorized signature, alterations, improper charges, unauthorized transfers or withdrawal of funds, nonreceipt of an expected statement, or that any deposit was not properly credited to your account. We will not be responsible for any loss suffered by you if you do not notify us in writing within these stated time periods. If we pay an item bearing an unauthorized signature, forged maker's signature or forged endorsement or alteration, our liability, if any, shall be limited to the face amount of the item.

**Claim of Loss.** If you claim a credit or refund because of a forgery, alteration, or any other unauthorized withdrawal, you agree to cooperate with us in the investigation of the loss. Your cooperation **may** include, but not be limited to, providing us with an affidavit containing whatever reasonable information we require concerning your account, the transaction and the circumstances surrounding the loss. You further agree to notify law enforcement authorities of any criminal act related to the claim. We will have a reasonable period of time to investigate the facts and circumstances surrounding any claim of loss. Unless we have acted in bad faith, we will not be liable for special or consequential damages, including loss of profits or opportunity, or for attorneys' fees incurred by you. You agree that you will not waive any rights you have to recover your loss against anyone who is obligated to repay, insure or otherwise reimburse you for your loss. You will pursue your rights or, at our option, assign them to us so that we may pursue them. Our liability will be reduced by the amount you recover or are entitled to recover from these other sources.

If you make a claim, or if we suspect that your account may be compromised, we may recommend that you close the account. For non-consumer accounts only, if you decline to close the account, you agree that we will not be liable to you for subsequent losses or damages on the account due to unauthorized activity.

**Transactions using Our IVR System.** Telephone transactions using the IVR System may require a combination of: 1) the entry of your social security number 2) the entry of the last four digits of your account number 3) the entry of your debit card number 4) the entry of your debit card pin or 5) automated phone number verification/matching to transfer funds between checking, savings and money market accounts bearing your name and linked to your social security number. All accounts must be maintained with us. You are solely responsible for the security of your debit card pin, which should be held under the strictest confidence and not revealed to other persons. If you know or suspect that another person knows your debit card pin, you should notify us immediately so that your debit card pin may be changed. You will be liable for unauthorized transactions to your accounts using your debit card pin to the extent allowed by applicable state or federal law. You hereby agree that the security procedure described in this section is commercially reasonable and authorize us to process transfers between your accounts via our automated telephone

service. Please consult our EFT Disclosure for the rules and regulations regarding telephone transfers and the limits of our liability.

**Processing Order of Credits and Debits.** We process credits and debits to your account in a specific order. We refer to this as the processing order and it is how we decide what posts first and last each day. The processing order also determines the order that you will see the items on your statement.

Our processing order might not be the same as the order you make transactions and could result in overdraft transactions. You can avoid overdrafts on your account by always making sure you have enough available funds in your account to cover your transactions. Please read the Deposit Availability Disclosure section of these Rules for more information on when we make funds available to you.

Credits, like a check or cash deposit, increase your account balance. Debits, like ATM withdrawals and debit card transactions, decrease your balance. We will process credits and debits as follows:

- All credits to your account that are received by the close of our business day will be processed to your account first. Any credits that we initiate to your account, like interest payments, will be processed last. Credits received after our business day cutoff time will be processed the next business day. We will post credits from the highest to lowest dollar amount, regardless of the order in which we receive or process them.
- After we have processed any credits to your account, we will process debits. First, we group any similar types of debits (like all checks) together into separate categories. Then, we process those debits within each category in a specific order such as by dollar amount. For some debits, we will know the time you made the transaction. This allows us to post the debit closer to the time you actually made the debit transaction instead of by dollar amount.

To help you better understand our debit processing, we have created the following table that includes both the category of debits to be processed and our processing order for each:

Processing Order	Debit Category	Examples	How Processed
1	Debits deferred from a prior day for manual review due to insufficient or unavailable funds and related fees	<ul style="list-style-type: none"> <li>• Manually approved checks and ACH transactions</li> <li>• Overdraft and nonsufficient funds (bounced check) fees from the prior business day</li> </ul>	Lowest dollar amount to highest.
2	Cash or cash-like withdrawals	<ul style="list-style-type: none"> <li>• Teller and ATM withdrawals</li> <li>• Wire Transfers</li> <li>• Capital One loan payments</li> </ul>	Date and time, if available. Everything else from lowest dollar amount to highest.
3	Customer initiated service charges and fees (except overdraft transfer protection fees)	<ul style="list-style-type: none"> <li>• Stop payment request</li> <li>• Check re-order fees</li> <li>• Wire transfer fees</li> </ul>	Date and time, if available. Everything else from lowest dollar amount to highest.
4	Debit card transactions and fees	<ul style="list-style-type: none"> <li>• One-time and recurring debit card transactions</li> </ul>	Date and time, if available. Everything else from lowest dollar amount to highest.

5	Automated Clearinghouse (ACH) transactions	<ul style="list-style-type: none"> <li>• Automatic payments you authorize, like mortgage payments or monthly utility bills</li> </ul>	Date and time, if available. Everything else from highest dollar amount to lowest.
6	Checks and other payment items	<ul style="list-style-type: none"> <li>• Check payments</li> <li>• Capital One Bank Online Bill Pay transactions</li> </ul>	Highest dollar amount to lowest.
7	Bank initiated transaction fees	<ul style="list-style-type: none"> <li>• Returned items chargeback fee</li> </ul>	Highest dollar amount to lowest.
8	Certain Capital One Bank account-to-account funding transfers and related fees	<ul style="list-style-type: none"> <li>• Overdraft protection account transfers</li> <li>• Sweep account transfers</li> </ul>	Highest dollar amount to lowest.
9	Credits and debits that we initiate	<ul style="list-style-type: none"> <li>• Account interest payments (credits)</li> <li>• Monthly account fees (debits)</li> </ul>	Credits first, then debits.

**Uncollected/Held Funds.** We reserve the right to return and/or refuse to pay any check, in-person withdrawal, ATM withdrawal or other electronic item or instruction which is presented for payment against uncollected/held funds. If you have a commercial account, a fee may be deducted from the account for any item drawing against uncollected funds, whether the item is paid or returned unpaid, in accordance with our current Schedule of Fees and Charges.

**Returning Items for Insufficient Funds.** You do not have the right to write a check or draft, to make an ATM or other withdrawal, or to initiate or have an automatic debit processed against your account for an amount that exceeds your available balance (If you're enrolled in an overdraft protection, we'll transfer available amounts to cover the transaction in accordance with the agreement governing your overdraft protection plan). At any time before final payment (as defined in the Uniform Commercial Code) we may return any check, draft, image, negotiable order of withdrawal, electronic debit or other item presented for payment against your account when there are insufficient available funds in your account to pay the item or if for some other reason the item is not good or payable. In addition, we may charge a fee for each item returned in accordance with our current Schedule of Fees and Charges.

**Overdrafts.** This section applies to consumer accounts. Business-purpose accounts may have different policies.

*What is an overdraft?*

An overdraft occurs when you do not have enough money in your account to cover a debit transaction, but we pay it anyway. Debit transactions include your checks, Automated Clearinghouse (ACH) transactions, bill payments, regularly scheduled repeating payments (like your mortgage or car payment) and other withdrawals you make.

*What overdraft services do we offer?*

For all checking accounts, we will consider paying your checks, ACH (such as your mortgage payment), bill payments, withdrawals and recurring debit card transactions (like your monthly gym payment) into overdraft rather than returning the item unpaid.

We also offer an additional overdraft service that you can opt into. If you opt into this service we will also consider

paying your everyday one-time debit card and ATM transactions.

You can also ask us to generally decline all transactions that would take your account into overdraft.

Regardless of the overdraft service you have, sometimes we are required to pay a transaction that may create an overdraft in your account. Here are two examples of when this could happen:

- For example, some merchants, like restaurants, hotels or gas stations—won't know the exact amount of your purchase when they request the authorization. That transaction could come in for more money and we would need to pay it even if you don't have enough money in your account.
- Or sometimes we authorize a debit card purchase when you have funds in your account, but if the merchant does not submit it for payment right away, another transaction could come in first (while the original debit card purchase transaction is still pending). Then when that debit card transaction comes in for payment there are no longer enough funds in your account to cover it and the payment makes your balance negative.

In either case, you still won't be charged a fee.

You can avoid overdrafts on your account by always making sure that you have sufficient funds in your account to cover all the transactions presented for payment.

#### *How do we handle overdraft items?*

You have no right to overdraw your account at any time, for any reason, and our decision to pay overdraft transactions is solely within our discretion. We may refuse to pay an overdraft transaction at any time, even though we may have previously paid overdrafts. If we choose to pay a transaction into overdraft, you must make a deposit into your account to cover the overdrawn amount. We will send you a notice to let you know that your account is overdrawn. You will receive the notice via mail if you have not agreed to receive electronic communications or if you have not provided us with a valid email address.

When deciding to pay transactions that cause an overdraft, we consider a variety of factors, including the amount of the transaction and/or your history with us, including whether you've previously had too many overdrafts on your account(s).

#### *What else do you need to know?*

Maintaining a negative balance in your account for 56 consecutive calendar days will result in account closure and this could affect your ability to open new accounts with us or other banks in the future. Also, we may report the account closure to a consumer reporting agency.

**Stop Payment Orders.** You or any one of the signers on your account may request us to stop payment on a check written on your account by providing us with the account number and the check number or check range. You understand that unless we have complete and accurate information from you, we may be unable to identify the check for which a stop payment has been requested which will result in the check being paid. We also require a reasonable amount of time to act on the request. If two or more signatures are required to transact business, we may accept any ONE authorized signature for a stop payment order.

Under certain circumstances, current transaction information may not be available, and the item upon which a stop payment has been requested may already have been paid. If the item upon which you have stopped payment has already been paid, we will refund the stop payment fee at your request. Written stop payment orders expire after six (6) months. All stop payment orders entered by you through Teleservice24<sup>SM</sup> expire six months from the date entered unless otherwise renewed by you in writing before they expire.

Unless stop payment orders are renewed in writing, Capital One Bank assumes no responsibility if the item is paid after the expiration of the stop payment order. You will be charged a fee for initial and renewed stop payment orders.

You may not stop payment on a check that is used to purchase a Cashier's Check, on the purchased Cashier's Check (except as otherwise provided by applicable law), or on any item that has already cleared or has been paid.

**Automated Processing.** In accordance with general banking standards, we have adopted automated collection and

payment systems which rely on information encoded onto each check in magnetic ink. You agree that we may disregard all information on any check drawn on your account (front and back) other than your signature, the amount of the check and the information encoded in magnetic ink. You further agree that we shall not be deemed to have failed to exercise ordinary care in paying an item solely because our procedures do not require us to perform a sight examination of items with a face amount below a threshold level established by us from time to time.

**Postdated Checks.** If you write a post-dated check, we may pay it and charge it against your account, even if it is presented prior to the date of the check.

**Stale Checks.** We are not obligated to pay a check presented for payment more than six months after its date (a "Stale Check"). Notwithstanding the foregoing, you agree to hold us harmless if we pay a Stale Check. If you do not want us to pay a Stale Check, you must place a stop-payment order on the check.

**Restrictive Legends.** We are not required to honor any restrictive legend placed on checks you write. Examples of restrictive legends placed on checks are "must be presented within 90 days" or "not valid for more than \$1000.00". We are not responsible for any losses, claims, damages, or expenses that result from your placement of these or other special instructions on your checks.

**Drafts Which Do Not Bear Your Signature.** If we receive a draft drawn against your account which does not contain your signature as reflected on the signature card for your account we may, at our discretion, return the draft unpaid. If you wish to ensure that a draft drawn against your account but not bearing your signature will be paid, you must communicate to us in advance that you want the draft to be paid.

**Facsimile Signature/System-Generated Signatures.** If you authorize us to honor any facsimile or system-generated signature, you have the sole responsibility for maintaining the security of each signature affixing device or system. No facsimile or system-generated signature shall be deemed to be an unauthorized signature notwithstanding the lack of authority of the person(s) affixing such signature, and you shall be solely responsible for any and all losses incurred in connection with the use of the facsimile or system-generated signature.

**Checks Presented Over The Counter For Payment By a Non-Customer.** To the extent permitted by applicable law, you agree that if a check drawn against your account is presented over-the-counter for payment by a person who is not a deposit customer of Capital One Bank we may, in our sole discretion, refuse payment of the check or charge a fee for payment of the check.

**Power of Attorney.** Power of attorney is a legal arrangement in which a person (the principal), authorizes another person (the agent/ attorney(s)-in-fact) to act on his or her behalf with respect to certain matters. Such matters may include banking, retirement benefits, real estate, insurance, and other transactions. If you want someone other than an authorized signer on your account to transact business on your account, you must provide us with a form reasonably acceptable to us which identifies the person to whom you grant your power of attorney and each account for which you wish the agent to exercise the power of attorney.

We have no duty or agreement whatsoever to monitor or insure that the acts of the agent are for your benefit. We may continue to honor the transactions of the agent until: (a) we have received written notice or have actual knowledge of the termination of the authority or the death of the principal, and (b) we have had a reasonable opportunity to act on that notice or knowledge. You agree not to hold us responsible for any loss or damage you may incur as a result of our following instructions given by an agent acting under a valid power of attorney.

**Death or Incompetence.** If any person with a right to withdraw funds from your account(s) dies or becomes legally incompetent, we must be promptly notified. We may continue to honor your checks, items and instructions until (a) we know of your death or legal incompetence, and (b) we have had a reasonable opportunity to act on that knowledge. You agree that we may pay checks drawn on or before the date of death or legal incompetence unless ordered to stop payment by someone claiming interest in the account. We may restrict access to your account upon notice of your death or legal incompetence until the appropriate documentation is provided to us by your executor, administrator or other legal representative of your estate or person.

**Grant of Security Interest and Right to Set-Off.** To secure payment of any monies that you may owe us or any of our affiliates, for any reason, you grant us a continuing security interest in all funds that you may now and in the future maintain on deposit with us, with the exception of funds held in a trust or fiduciary account, or in an Individual Retirement Account, or in other qualified tax-deferred accounts. You agree that we may apply (set-off) funds that you

maintain on deposit with Capital One Bank, or any of its affiliates, against any amount that you may then owe us, or any of our affiliates, under a loan, or Overdraft, or guaranty, or for any other reason at any time and without prior notice to you. This right of set off does not apply if the debt is created under a consumer credit card plan. We may set-off your account at any time whether or not you are then in default in making payment to us, and we may exercise our right of set-off without liability to you even if it results in an interest penalty or dishonor of subsequent checks and other items with respect to your account. You further agree that the foregoing right extends to any federal or state benefit payments (including Social Security benefits) electronically deposited into your account. You understand and agree that if you do not want your benefits to be subject to our right of set-off, you may change your direct deposit instructions by providing notice to the benefits payor at any time. You also agree that any federal benefits or other payments deposited to your account after you are no longer eligible to receive benefits must be returned to the federal government or other payor, and we may set-off against any of your accounts if we are obligated to return funds to the payor. Our right to set-off your account is in addition to any other rights and remedies that we may have under law or under any other contractual agreement.

**Collection Expenses.** You agree to pay and reimburse us for our reasonable costs and expenses in attempting to collect amounts that you owe us arising out of transactions on your account. This includes payment and reimbursement of fees we incur for collecting such amounts, including, without limitation, attorneys' fees (including our in-house attorneys) and court costs.

**Adverse Claims.** If we receive conflicting instructions with respect to your account, or notice of an adverse claim of ownership, right to control, or access to funds in your account, or notice that the funds in your account may have been obtained through fraudulent or criminal acts, you agree that if any such dispute exists, we may place a hold on the funds in your account and refuse to honor all withdrawal and transfer requests, including checks written on the account, until all appropriate parties provide us with joint specific written instructions with respect to disposition of the funds. We are not required to determine whether a dispute has merit. Additionally, we shall have the right to close the account and deposit the funds held in the account into the registry of a court of proper jurisdiction, wherein the adverse claimants and/or appropriate parties shall be interpleaded and/or joined to the action for purposes of resolving the dispute regarding the funds. If we elect to take any action(s) described herein, you agree that we shall not be liable to you for damages of any kind, and you agree to pay and reimburse us for our reasonable costs and expenses including, without limitation, attorneys' fees (including our in-house attorneys) and court costs from the funds in the account prior to any distribution. If an adverse claim is made among joint depositors, the rights of the parties shall be determined in accordance with the section herein entitled Special Rules for Multiple Party Deposit Accounts.

**Legal Process Against Account.** If your account is attached, garnished, or otherwise subject to levy or seizure, in whole or in part, by legal action, we shall not be liable to you for any sums we may be required to pay because of such attachment, garnishment, levy or seizure, even if paying the money from your account leaves insufficient funds to pay a check you have written. We can restrain your account regardless of the location of the account and the location of service. For example, if a New York levy is properly served on us in New York, we may honor the New York levy even if your account was opened in Virginia. You hereby authorize us to comply with legal process, and we are not required to determine whether the court issuing the legal process had jurisdiction over you or over the account or otherwise had the authority to issue the legal process. If we incur any expenses, including without limitation, reasonable attorney fees, in responding to an attachment, garnishment, levy, or seizure that are not otherwise reimbursed, we may charge such expenses to your account without prior notice to you. Any such attachment, garnishment, levy or seizure is subject to our right of offset. If we are served with a notice of proceeding relating to a safe deposit box, and you are not a named defendant in the proceeding, we may deny you access to the box unless otherwise directed by an appropriate court or the judgment creditor.

**Unclaimed Property.** The law establishes procedures under which unclaimed property must be surrendered to the applicable State. The applicable State is usually the State listed in the address on your account statement. Generally, the funds in your account are considered unclaimed if you have not had any activity or communication with us regarding your account over a period of years. If your funds are surrendered to the State, you may be able to reclaim them, but your claim must be presented to the State. Once your funds are surrendered, we no longer have any liability or responsibility with respect to the funds.

**Closing an Account.** We may close any account in our sole discretion at any time, for any or no reason and without notice to you. For example, we may close your account with no notice of action if the account has a zero balance. If we close your account with a balance, we will notify you of our action and either transfer the funds to another internal account owned by you or an external account through an approved link or send you a check for the collected balance in

your account, less any amounts due to us for pending transactions. Capital One Bank is not liable for any damages or liabilities resulting from the termination of an account relationship. Subject to any rights we may have with respect to advance notice of withdrawal from your account, you may close your account at any time and for any reason. If we receive a debit or credit to your closed account, the account may be reopened to accept the debit or credit for you, even if doing so overdraws your account, and funds deposited therein will be subject to any and all rights we may have with respect to offset. If your account is overdrawn when we close it, you agree to promptly pay all amounts owed to us.

**Minor Accounts.** We may pay funds on deposit in an account in the name of a minor to the minor. Once the minor attains the age of majority he or she will be considered to be the owner of the account, capable of making any and all transactions on the account.

**Business Accounts.** If the account owner is not a natural person, such as a corporation, unincorporated association, limited liability company, partnership or any other entity holding an account in any capacity other than an individual capacity, and as may be required by Capital One Bank for the specific deposit account, each person who signs the signature card hereby certifies that they are fully authorized to execute all documents in their stated capacity. Additionally, and where applicable as set forth above, the individual who signs the signature card as Secretary hereby certifies that (1) she/he is the duly qualified Secretary or other authorized officer of the business entity identified on the signature card as the account holder; (2) such business entity is organized and existing under state or federal law; (3) all actions by shareholders, directors and all others necessary to execute this signature card and establish an account with Capital One Bank have been taken; and, (4) until further actual notice to Capital One Bank, each signer is authorized to transact on the account until Capital One Bank receives actual written notice in a form acceptable to us, executed by the number of Signers required to execute withdrawals on the account, and/or executed by others as required by us, that such Signer is no longer so authorized. To the extent a signature card is required for the specific deposit account, in the event any one or more of the signatures affixed to the front of this signature card, or otherwise provided to Capital One Bank as an authorized signature for the operation of this account, are facsimiles or made or reproduced by any mechanical means, Capital One Bank is authorized to rely upon and treat the same, in good faith, as a true and valid signature, and the account holder hereby holds Capital One Bank harmless and indemnifies it from and against any loss, damage or liability it may suffer or incur as a result of its said reliance.

**Multiple-Signer Business Accounts.** We are not required to comply with any multiple-signature requirement, even if your signature card specifies that multiple signatures are required or you have otherwise instructed us to do so. A multiple-signature requirement is for your internal control purposes.

**Online Account Consolidation Disclosure.** If you have more than one eligible Capital One account, we will link your eligible accounts so they appear when you are logged into your account through the website or mobile app. We will display only summary information about your connected accounts. To get any other information or conduct any activity on these account types, you must access the specific account servicing area for that account. All connected bank accounts will be visible when you log into your account through the website or mobile app. Keep in mind that certain features, information, types of transactions, or other services may not be available for all of your connected accounts. As long as you maintain your unique log in credentials, you will have access to view all of your individual accounts and shared accounts. People with whom you share accounts will only be able to view accounts that are shared with you, not your individual accounts.

**Payment Processing Restrictions on Internet Gambling Fund Transfers.** The Federal Reserve recently enacted regulations that require U.S. financial firms that participate in designated payment systems to establish and implement policies and procedures reasonably designed to prevent payments connected to unlawful Internet gambling. In light of the regulations, please be informed that restricted transactions (as defined in Federal Reserve Regulation GG / 12 CFR Part 233) are prohibited from being processed directly or indirectly through any account or relationship maintained with us. Restricted transactions generally include, but are not limited to, those in which credit, electronic fund transfers, checks or drafts are knowingly accepted by gambling businesses in connection with unlawful Internet gambling.

### **Specific Terms Applicable to the Following Account Ownerships.**

**Joint Account** – If two or more individuals are designated as owners of the accounts (without a fiduciary, beneficiary or other designation), then the account is a joint account and, unless your signature card states otherwise, all owners are considered to be joint tenants with right of survivorship. If there is more than one joint owner, the rights of survivorship will continue between the surviving joint owners. One joint owner is not authorized to remove another joint owner from the title of the joint account, but may withdraw all of the funds in the account or close the account.

**Trust** — An account established pursuant to a written trust agreement. Any funds placed in or added to this type of account are conclusively presumed to be a delivery at that time to the trust estate. Only the trustee is authorized to perform transactions on the trust account. If the original trustee dies or is replaced as trustee, we reserve the right to require documentation reasonably acceptable to us to which identifies the successor trustee. We have no duty whatsoever for enforcing the terms of the trust agreement and can rely on the statements and representations made to us by the trustee. The owners and beneficiaries of the trust agree that we shall not be held liable if the trustee breaches their fiduciary duty or fails to comply with the terms of the trust agreement.

**Uniform Transfers to Minors** — This type of account is established pursuant to the Uniform Transfers/Gifts to Minors Act in effect in the state where the account is opened and maintained, as may be amended from time to time. Only the Custodian is authorized to act on the account. As the Custodian you agree to comply with all applicable laws. When the minor reaches the age of majority, in accordance with applicable state law, the Custodian shall transfer any funds in the account to the minor. In the event we receive actual notice of the death, resignation or legal incapacity of the Custodian, we are directed to deliver this account to the Successor Custodian (as provided by law) who shall, in such event, have all of the rights and duties of the Custodian.

**“Payable on Death” (POD)** – You may designate an individual or joint account to be payable upon your death to a designated beneficiary or beneficiaries. POD accounts are also known as “In Trust For” (ITF), “As Trustee For” (ATF), “Transfer on Death” (TOD) or “Totten Trust” account and are governed by applicable state laws and regulations. You are solely responsible for meeting the requirements for establishing your account as a POD, including any titling requirements.

During your life, the funds in the account belong to you and, until your death, or if there are co-owners, upon the death of the last co-owner, the beneficiary(ies) have no interest in the account and cannot perform transactions on the account. You may withdraw all or part of the account balance, close the account, remove or add POD beneficiaries or change the account type or ownership. Upon the death of all owners, we will distribute the then remaining funds to such of the beneficiaries as shall be then-living, in equal shares, subject to our right to charge the account for any amount a deceased owner, co-owner or POD beneficiary owes us; if any beneficiary is under the age of 18 years at the time he would be entitled to receive property under the terms of the previous provision, we will pay such person’s share to any person who is the statutory or court-appointed custodian for the benefit of such person.

### **Special Rules for Multiple Party Deposit Accounts.**

If your account was opened or assigned to a branch in New Jersey, the provisions of the Multiple Party Account Act, N.J.S.A. 17:16i-1 et seq. apply.

1. We may treat each co-owner of a joint account as having full and complete authority to make deposits into such account, to request information with respect to such account and to place a hold on such account. Each co-owner owns his/her net contribution to such account. In the absence of proof of net contribution, and unless all of the co-owners have specifically otherwise agreed, each co-owner will own an equal share of such account. We are not required to determine net contributions.
2. Deposits: Each co-owner authorizes the other co-owners to endorse for deposit into the account any item payable to any or all of the co-owners, and you expressly authorize us to supply the endorsement of any co-owner necessary for such deposit.
3. Withdrawals:
  - A. You authorize us to recognize the signature, oral or electronic instruction of any co-owner for withdrawals, payments or funds transfer. We are not required to enforce multiple signature requirements that you may have agreed upon among yourselves.
  - B. We may continue to honor checks and withdrawal requests by any co-owner without liability to any other co-owner unless we receive written notice signed by one of you not to honor checks or withdrawals against the joint account. After we receive such a notice, we may require written authorization from all of you for any checks or withdrawals. If we receive a notice in writing as provided by this section 3(b), we shall be relieved of responsibility to each and every co-owner for failure or refusal to honor any check, draft or other demand for payment or withdrawal unless the action is authorized by all co-owners in writing.

4. Without notice to any party, we may withdraw or hold any or all of the money in the joint account and apply funds withdrawn to reduce any indebtedness of any party due and owing to Capital One Bank. A notice sent, mailed or delivered to any party constitutes notice to all.
5. We may make payment from the joint account, including payment of the entire account balance: (i) pursuant to any statutory or common law right of set-off, levy, attachment, or other valid legal process or court order, relating to the interest of any one or more of the co-owners or (ii) on request, to a trustee in bankruptcy, receiver in any state or federal insolvency proceeding or other duly authorized insolvency representative of any one or more of the co-owners.
6. **Overdrafts:** In the event that we pay a check drawn on a joint account and that payment causes an Overdraft, each party to that joint account will be jointly and severally liable to us for the amount of that Overdraft without regard to which party signed the check or for what purpose the proceeds of the check were used.
7. **Death of a Party:** You agree to notify us of the death of any joint owner and to reimburse us for any tax we must pay by reason of our payment or release of funds in the account to you. **Unless your signature card states otherwise, upon the death of any account owner, the funds in a multiple-owner account shall belong to the surviving owner(s).** We reserve the right to hold funds in the account until we receive documentation satisfactory to us, proving death and/or directing the disposition of such funds.
8. If you want to change the form of your account, you must notify us in writing, by certified or registered mail, return receipt requested, addressed to the branch where your account is maintained. If you wish to alter the form of an account, the altered form must be an account offered by Capital One Bank and written notice must be made by the proper completion of a document approved by Capital One Bank and delivery of that document to us. Written notice is not effective until received by us. You must also provide us with new completed signature cards within thirty (30) days from the date you forwarded written notice to us.
9. We will be protected from liability for all payments made from the multiple party deposit account, when made in accordance with applicable law.

**Limitations on Assignment and Transfer of Ownership.** You may not assign or transfer ownership of your deposit accounts with us without obtaining our prior written approval. In addition, you may not grant a security interest in funds held in your deposit accounts in favor of any other creditor without obtaining our prior written approval, which we have the right to withhold for any or no reason. If any ownership interest in an account is proposed to be transferred or if there is any change in account title, we may require that the account be closed and a new account be opened.

### **Deposit Availability Disclosure.**

#### General Deposit Availability:

Our general policy is to make funds from your deposits available to you on the first business day after the day we receive your deposits. Wire Transfers, and electronic deposits (such as ACH credit transfer direct deposits) will be available on the day we receive the deposit. Once funds are available, you may withdraw the funds in cash, and we will use the funds to pay checks that you have written. For the purpose of determining the availability of your deposits, every day is a business day except Saturdays, Sundays, and federal holidays. Banking office cutoff times may vary, but in no event shall a cutoff time be earlier than 2:00 p.m. local time. If you make a deposit in a branch before 2:00 p.m. local time, or such later time posted at the branch of deposit on a business day that we are open, we will consider that day to be the day of your deposit. If you make a deposit at one of our automated teller machines ("ATM") before 9:00 p.m. ET, we will consider the deposit to be made that day. However, if you make a deposit after these stated times, or on a day we are not open, we will consider the deposit to be made on the next business day that we are open. Deposits made through our night drop after 7:00 a.m. may be processed on the next business day.

Please remember that even after we have made deposited funds available to you, and you have withdrawn the funds, you are still responsible for checks you deposit that are returned to us unpaid and for any other problems involving your deposit. If you have any questions, contact a banking officer.

#### 1. **Government Checks and Cashier's Checks:**

Funds from the following deposits are available on the first business day after the day of your deposit: U.S.

Treasury Checks, USPS Money Orders, Federal Reserve Bank & Federal Home Loan Bank checks; and when deposited with a special deposit slip, State or Local government checks, Cashier's, Certified, Teller's and Travelers checks.

## 2. Longer Delays May Apply:

In some cases, we will not make all of the funds you deposit by check available to you on the first business day after the day of your deposit. Funds may not be available until the second business day after the day of your deposit. The first \$225 of your deposits, however, may be available on the first business day after the day of your deposit. If we are not going to make all of the funds from your deposit available on the first business day, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we will mail you the notice by the day after we receive your deposit.

If you will need the funds from a deposit right away, you should ask us when the funds will be available.

In addition, funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe the check you are depositing will not be paid.
- You deposit checks totaling more than \$5,525 on any day to any account(s) you maintain (alone or with others) at Capital One Bank.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account(s) repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. The funds will generally be available no later than the seventh business day after the day of your deposit.

## 3. Special Rules for New Accounts:

If you are a new customer, the following special rules will apply during the first thirty (30) days your account is open:

- Funds from wire transfers and electronic deposits (such as ACH credit transfer direct deposits) will be available on the day we receive the deposit.
- Funds from the following deposits are available on the first business day after the day of your deposit: U.S. Treasury Checks, USPS Money Orders, Federal Reserve Bank & Federal Home Loan Bank checks; and when deposited with a special deposit slip, State or Local government checks, Cashier's, Certified, Teller's and Travelers checks.
- Funds from all other check deposits will be available no later than the fifth business day after the day of your deposit.

## 4. Expedited Availability:

Based on your overall relationship with us, we may make a portion of your check deposits available to you on an expedited basis. We will periodically reevaluate the usage and handling of your account based on your customer history with Capital One Bank. This review could result in reducing the availability schedule currently applied to your check deposits. In the event of such a reduction, your funds will be made available to you as described in the preceding sections of this disclosure.

As described above, deposits made after the branch and/or ATM cut-off time will be considered next day deposits. In some instances, however, you may be able to access these deposits on the calendar day the deposit was made. In these instances, the funds will be accessible to you for withdrawal (at a branch or ATM), but will not be available to pay incoming ACH transactions or checks you have written.

## 5. Holds on Other Funds (Check Cashing):

If we cash a check for you that is drawn on another bank, we may withhold the availability of a corresponding amount of funds that are already in your account. (These funds will be available at the time that funds from the check we cashed would have been available if you had deposited the check.)

## 6. Holds on Other Funds (Other Accounts):

If we accept for deposit a check that is drawn on another bank, we may make funds from the deposit available for withdrawal immediately but delay your availability to withdraw a corresponding amount of funds that you have on deposit in another account with us. The funds in the other account would then not be available for withdrawal until the time periods that are described elsewhere in this disclosure. Please ask a Relationship Banker if you are unsure about when funds from a deposit will be available.

**Substitute Checks and Your Rights.** Federal rules for Check 21 allow banks to replace original checks with “substitute checks”. Below are the details and your rights:

### *What is a substitute check?*

To make check processing faster, federal law permits banks to replace original checks with “substitute checks.” These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a substitute check states: “This is a legal copy of your check. You can use it the same way you would use the original check.” You may use a substitute check as proof of payment just like the original check.

Some or all of the checks that you receive back from us may be substitute checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under other law with respect to those transactions.

### *What are my rights regarding substitute checks?*

In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (for example, bounced check fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your account is an interest-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other law. If you use this procedure, you may receive up to \$2,500 of your refund (plus interest if your account earns interest) within 10 business days after we received your claim and the remainder of your refund (plus interest if your account earns interest) not later than 45 calendar days after we received your claim.

We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

### *How do I make a claim for a refund?*

If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact your local branch or call us at 1-800-262-5689. You must contact us within 40 calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances.

Your claim must include:

- A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect);
- An estimate of the amount of your loss;
- An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss; and
- A copy of the substitute check and/or the following information to help us identify the substitute check: the account number, the check number, the name of the person to whom you wrote the check, the date paid, and the

amount of the check.

Substitute checks should only be generated by banks during the check collection process. If you deposit a substitute check that was not generated or previously handled by Capital One Bank, you agree to provide the substitute check warranties as required by Check 21, and represent that the substitute check:

- is properly generated and accurately, clearly and completely represents all the information on the front and back of the original check as of the time the original check was truncated
- bears a MICR encoded line that is suitable for automated processing in the same manner as the original check
- has not previously been paid by the drawee bank, and
- is not fraudulent

A breach of any Check 21 warranty may result in the substitute check being charged back against your account.

**Telephone Solicitation.** If you provide our routing number and your account number to a telephone solicitor pursuant to your acceptance of an offer of goods or services made by the solicitor, you agree that any and all subsequent transactions made to your account by the entity which the solicitor represents are considered authorized transactions. We shall not be liable for any transactions you later allege are unauthorized unless you have placed a stop payment order, and we have had a reasonable time to act upon your stop payment request.

**Communications.** You agree that we may communicate with you by mail, telephone, email, fax, prerecorded message, automated voice, text message or other means allowed by law regarding your Account. You agree that we may contact you at any telephone number (including a mobile telephone number that you provide us), and use an automated telephone dialing system or similar device to do so. You agree that we may monitor or record any conversation or other communication with you.

**Correspondents.** Capital One Bank may forward items to correspondent banks and will not be liable for the wrongful conduct of the correspondent bank. Each correspondent will be liable only for its own negligence. We will not be liable for the loss of items in transit.

**Address Changes for Deposit Accounts governed by this document<sup>1</sup>** You are responsible for notifying us of any change in your address. Your Privacy and Security is important to us so having the most current address on file is required. Unless we agree otherwise, changes of address must be made online, over the phone, or in a branch by at least one of the account holders. Informing us of your address on a check reorder form is not sufficient. We will attempt to communicate with you only by use of the most recent address you have provided to us. In the event mail we attempt to deliver to you is returned as a result of your failure to notify us of your change in address, we may charge a fee to your account in accordance with our Schedule of Fees and Charges.

We may change your postal address of record if we receive an address change notice from the U.S. Postal Service or if we receive information from a third party vendor in the business of providing correct addresses, that our records no longer correspond to your address.

<sup>1</sup> For example, if you have a line of credit with us or a 360 checking account, please follow the account agreement given to you.

**Cash Transaction Reporting.** The law requires all financial institutions to gather and report information on certain types of cash transactions. If the information required to complete the report is not provided, we are required to refuse to process the transaction.

**Obtaining Credit Reports.** We may request a consumer (credit) report in connection with your account(s). Upon your request, you will be informed whether or not a consumer (credit) report was requested, and if such report was requested, informed of the name and address of the consumer (credit) reporting agency that furnished the report. We may also request subsequent consumer (credit) reports for all legitimate purposes in connection with updating, renewing, reviewing, modifying, and/or taking collection action on your account(s).

**Reporting Information to Credit Bureaus and Check Verification Systems.** We may report information about your account to credit bureaus and/or check verification systems. Defaults on your account may be reflected in your credit report. This could affect your ability to open accounts in the future.

In the event we report your account to a check verification system, you acknowledge that even if you pay us all amounts owed, we are not required to remove an accurate report of account mishandling from any such check verification system.

**Business Day.** Any day, excluding Saturdays, Sundays and federal holidays.

**Reproduction of Bank Records.** If you request us to research and/or reproduce any of your records (statements, checks, deposits, withdrawals, etc.) we may charge a fee, and you agree to pay this fee. If the expected fee is large, you may be asked to pay the fee in advance. We reserve the right to provide any account holder with an imaged item in lieu of the original item.

**Governing Law/Waiver of Jury Trial.** Applicable federal law will decide any questions under these Rules, or if no federal law exists, applicable state law (the state where your account was established). Any action you commence against us, arising out of or concerning these Rules, shall be heard by a judge sitting without a jury. In any such action, Capital One Bank shall be entitled to its reasonable attorney's fees (including in-house attorney's fees) and court costs if it is the prevailing party.

**Notices.** We shall deem any and all notices to us effective upon receipt by us. Any notice that we give to you will be effective when mailed or electronically transmitted to you at the mailing/email address reflected in our records. Even though we may have provided you account opening disclosures in a language other than English, we may continue to provide you with notices/communications in English. Notice to any one owner of an account constitutes notice to all owners of that account.

**Severability.** If any provision of these Rules is deemed to be invalid or unenforceable, such invalidity or unenforceability will not affect the validity and enforceability of the remaining provisions of these Rules or of any agreements, disclosures or other documents incorporated by reference herein.

**Liability.** You agree that we shall be not be liable for acting upon your instructions or failing to act upon your instructions when we reasonably believe that doing so would expose us to civil or criminal liability or conflict with industry standard banking practices. You agree further, that except as otherwise provided by applicable law, IN NO EVENT SHALL WE BE LIABLE FOR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR FOR ATTORNEY'S FEES INCURRED BY YOU, REGARDLESS OF THE FORM OF THE ACTION, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**Waiver of Rights.** We reserve the right to waive any one or more of our rights hereunder in our sole discretion, however, any such waiver shall only apply to that specific instance. Any such waiver of rights can also be terminated at any time, in our sole discretion.

**Caption Headings.** The caption headings in these Rules are for convenience purposes only and are not to be construed as a summary of each provision of these Rules.

**Privacy Policy.** We understand how important privacy and confidentiality are to you. Please consult our Online Privacy Policy and our U.S. Consumer Policy Notice for information about our commitment to you and your privacy rights. A copy of our Online Privacy Policy and our U.S. Consumer Policy Notice is available on our Website. Information regarding mobile banking security can also be found on our Website ([capitalone.com/privacy](https://capitalone.com/privacy)).

**Electronic Funds Transfers.** Special provisions relating to electronic funds transfers are set forth in our EFT Disclosure which is available at any of our banking offices.

**Wire and ACH Transfers.** Special provisions relating to wire transfers are set forth in our Wire Transfer Agreement and Disclosure, provided to you at account opening and available at any of our banking offices. For Treasury Management clients, ACH and Wire transfer terms are set forth in the applicable Treasury Management agreements. This provision supplements those agreements. You agree that we are not required to provide you with a separate notice of incoming or outgoing wire/ACH transfers. We notify you by listing the wire/ACH transfer on your account statement. We can deduct our fees for handling wire/ACH transfers from the amount of the transfer. You can verify whether a wire/ACH transfer has been processed to your account by calling us at 1-800-655-2265.

For international wire transfers involving non-U.S. currencies, exchange rates can vary and we do not guarantee any rate. The exchange rates we use for your transactions will typically be the customary retail exchange rates in effect at

the time of the transaction. This rate is not necessarily the bank-to-bank negotiated exchange rate or other potentially more favorable rate. FDIC deposit insurance does not insure against any loss due to foreign currency fluctuations. Consult your attorney or investment advisor regarding the potential risks associated with foreign exchange transactions.

**Amendments and Fee Changes.** We reserve the right to change our fees, these Rules and any or all of the agreements, disclosures, and other documents incorporated by reference at any time. If we change these Rules, the then-current version of these Rules supersedes all prior versions and contains the terms governing your account. We will provide prior notice of changes to you as required by applicable law. You agree that continued use of your account(s) will constitute your agreement to any and all new fees, Rules, agreements, disclosures and other documents incorporated by reference. If you choose to close your account and do so prior to the effective date of any amendment, you will not be bound by such amendment.

**Copy Received.** You acknowledge receipt of a copy of these terms and conditions and agree to be bound by them.

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## ELECTRONIC FUND TRANSFER AGREEMENT AND DISCLOSURE FOR PERSONAL AND COMMERCIAL ACCOUNTS:

Effective February 9, 2022

Welcome to Capital One, N.A. (hereinafter referred to as "Capital One Bank," "us," "our," or "we"). In this Agreement, "you," "your," and "yours" mean the authorized person or persons who conduct electronic fund transfers, including but not limited to persons to whom a Capital One Bank ATM or Debit Card is issued. Capital One Bank provides various electronic banking services to you. These services include, but are not limited to:

- Automated Teller Machine ("ATM") transactions.
- Telephone transfers.
- Point-of-Sale ("POS") transactions, whether or not initiated through an electronic terminal.
- Pre-authorized transfers to or from an account ("ACH").
- Smartphone or other mobile device transfers.
- Online banking (see the Online Banking Terms and Conditions at [www.capitalone.com/corporate/terms/](http://www.capitalone.com/corporate/terms/)).

This Electronic Fund Transfer Agreement and Disclosure ("Agreement") contains disclosures required by Regulation E that apply to consumer accounts in addition to disclosures that apply to commercial accounts as they relate to electronic banking services, and it contains our terms and conditions with respect to these services. A consumer account is an account held by an individual and used primarily for personal, family, or household purposes.

1. **Your Access Device and Your Personal Identification Number:** An access device is a card, personal identification number ("PIN"), or other code used to initiate an electronic fund transfer ("EFT") to or from your account. The Capital One Bank, ATM card, platinum Debit Card, or Business Debit Card (hereinafter referred to collectively as "ATM/Debit Card") that you have requested is an access device.

You have selected or have been provided with a special PIN, a code you must enter into the ATM or that you may be required to enter into the POS terminal whenever you use your ATM/Debit Card. For your own protection, please memorize the PIN, and do not keep any notation of the PIN on the ATM/Debit Card or in the same wallet or purse as the ATM/Debit Card, and do not disclose the PIN to anyone who is not authorized to use your ATM/Debit Card.

**Important Information Concerning International Use of Your ATM or Debit Card:** Capital One Bank employs fraud monitoring and protection capabilities to help protect you from ATM/Debit Card fraud. These protection systems are designed to block transactions that occur outside of our customers' ordinary transaction patterns and may block transactions originating in countries that are experiencing a high incidence of card fraud.

2. **Accounts That May Be Accessed:** The accounts you link to your ATM/Debit Card are referred to in this Agreement as "designated accounts." You may access only the designated accounts. If you requested access to multiple accounts, you chose one checking account and one savings account as your primary checking and savings accounts. We may limit the number of accounts that can be linked to an ATM/Debit Card. If you wish to

access additional accounts or change your primary accounts, please contact your banking officer.

You may use your ATM/Debit Card and PIN to access the following types of designated accounts:

- A. Checking account.
- B. NOW account.
- C. Savings account.
- D. Money Market account\*

\* At certain ATMs, when accessing your Money Market accounts you may need to select the 'checking' option rather than the 'savings' option.

3. **Types of Transactions That Can Be Completed:** You may use your ATM/Debit Card at any Capital One Bank ATM. You may also use your ATM/Debit Card to complete transactions at non-Capital One Bank ATMs that are members of the EFT networks in which we participate.

Purchases may also be made using your ATM/Debit Card at merchant locations that are members of the POS networks in which we participate. You may also use your Debit Card or Business Debit Card to make purchases at locations that accept Debit MasterCard™ Cards. (Note: Your Debit Card or your Business Debit Card is not a MasterCard credit card, and this Agreement does not replace or affect any MasterCard account agreement that you may have with us or any other financial institution.)

Please note that some of the below services may not be available at all ATMs.

A. **Cash Withdrawals:** You can use your ATM/Debit Card and PIN at ATMs to obtain cash withdrawals from your designated accounts. At certain ATMs, cash withdrawals may only be made from your primary savings and primary checking account. Withdrawals made at ATMs owned and operated by other entities will be automatically deducted from your designated primary checking or savings account. Each time you use your ATM/Debit Card, we may place a hold on a corresponding amount of funds in your account until the transaction is posted against your account.

B. **Deposits:** You can use your ATM/Debit Card and PIN at Capital One Bank-branded ATMs to make deposits into your designated accounts. Deposits made at an ATM may not be available for immediate withdrawal. Please refer to the Deposit Availability Disclosure contained in our Rules Governing Deposit Accounts Agreement to determine when the deposit will be credited to your account and when funds will be available for withdrawal or for paying transactions on your account.

C. **Transfers Between Your Capital One Accounts:** You can use your ATM/Debit Card and PIN at a Capital One Bank-branded ATM to transfer available funds between your designated accounts. Transfers made at a non-Capital One Bank ATM can only be made between your designated primary checking and primary savings accounts.

You may also transfer funds between your Capital One Bank accounts via the telephone, online banking, or by establishing an automatic transfer schedule.

D. **Purchases:** You can use your ATM/Debit Card and PIN to make purchases at merchant locations that are members of POS networks in which we participate.

You may also use your ATM/Debit Card without your PIN to make purchases at merchant locations accepting Debit MasterCard Cards. The merchant may request a preauthorization for the transaction. If we authorize the transaction, the funds will be debited from your primary checking account immediately, or a hold may be placed on your account for up to several days after the purchase transaction has occurred, depending upon the promptness with which the merchant processes your transaction.

Some purchases may result in a longer hold. Sometimes the preauthorization requests may be in amounts different from the total amount of the transaction. For example, a gas station typically requests authorization in the amount of \$1.00. Also, restaurants typically request authorization for 20% more than the price of the meal. If

the preauthorization request varies from the amount of the actual transaction, payment of the transaction may not remove the preauthorization hold immediately. Generally, the preauthorization hold may remain on your account for up to three (3) business days after the date of the transaction and may affect the availability of funds from your designated account for other transactions. We will not be responsible for damages for wrongful dishonor of an item resulting from a preauthorization hold. You agree not to withdraw, write checks, or make point-of-sale purchases against funds that are needed to pay ATM/Debit Card transactions that have not yet posted against your account.

**E. Inquiries:** You can use your ATM/Debit Card and PIN at ATMs to check the balance in your designated accounts. At non-Capital One Bank ATMs, you may only make balance inquiries on your designated primary checking or savings account. You may also check the balance in your designated accounts via our telephone or online banking service.

**F. Transfers Between Your Capital One Bank Accounts and Accounts at Other Financial Institutions (or Third Parties) and Check Conversion:** You can authorize a third party to initiate transfers between your accounts and the third party's accounts by providing the third party with our routing number and your account number.

You may also authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check to: (i) pay for purchases, or (ii) pay bills.

When you provide a check as payment, you authorize us to use information from your check to make a one-time electronic fund transfer from your account. In certain circumstances, such as for technical or processing reasons, we may process your payment as a check transaction. When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account on the same day you make your payment.

You should only provide your financial institution and account information (whether over the phone, the Internet, or via some other method) to trusted third parties whom you have authorized to initiate electronic fund transfers.

**4. Limitations on Transactions:** There are certain limitations on the use of electronic banking services. These include, but are not limited to, the following:

**A. Designated Accounts:** You may only access your designated accounts with Capital One Bank.

**B. Daily Limitation:** A daily spending limitation exists on all ATM/Debit Cards. This limitation combines three categories: cash withdrawals, cash advances and point-of-sale purchases. You may not aggregate transactions during any one (1) day (including either cash withdrawals, purchases, cash advances or a combination of the three) that exceed the established card limit. See the chart below for the limits established for the card product that you have. The limits listed below are the current default limits for our standard ATM/Debit Card products. Some cards might have different prevailing limits for their product at time of issuance. We do offer specialty ATM/Debit Cards with different default limits. If you have received a Wealth Management debit card or a Deposit Only ATM card, please refer to the documentation you received when you opened your account for details about limits for these cards.

	Established Card Limit	Cash Limit	POS Limit
Platinum Debit	\$2,500	\$600	\$2,500
Business Debit	\$5,000	\$800	\$5,000
ATM Card	\$2,500	\$600	\$2,500

Other ATM owners and operators may impose lower dollar limitations on the amount of cash withdrawals made at their ATMs.

**C. Online Banking External Funds Transfer Limitation:** You may enroll in online banking to perform electronic transfers. When you enroll, you will be provided with additional terms and conditions that apply to electronic transfers using our online banking services. The below charts provide the default limits established for online banking transfers into and out of your designated accounts. Different limits may be assigned on a case-by-case basis. These limits do not apply to internal transfers between accounts opened in a Capital One Bank branch and accounts opened with Capital One Direct Banking accounts (both National Direct Bank [NDB] and 360 accounts), bill pay transfers, or pre-authorized third party payments.

The below limits apply to High Yield Checking and High Interest Checking accounts:

	Per Transfer Limit	Daily Limit	Monthly Limit
Inbound Transfer	\$10,000	\$10,000	\$25,000
Outbound Transfer	\$10,000	\$10,000	\$25,000
Total Transfer Limit (Combined Inbound and Outbound)		\$20,000	\$50,000

The below limits apply to all other products (excluding High Yield Checking and High Interest Checking):

	Per Transfer Limit	Daily Limit	Monthly Limit
Inbound Transfer	\$3,000	\$3,000	\$6,000
Outbound Transfer	\$3,000	\$3,000	\$6,000
Total Transfer Limit (Combined Inbound and Outbound)		\$6,000	\$12,000

Small Business accounts have different limits that change based on multiple factors.

**D. Third Party Transaction Limitation:** Our savings and money market accounts permit no more than six (6) transfers per statement cycle to a third party or to any of your other deposit accounts at Capital One. There is no limit in the number of transfers that you may make into your account. Note: We are currently not enforcing the transfer limits on consumer accounts. You'll be notified if we choose to re-impose these limits.

**E. Other Reasons:** We and other ATM owners and operators may limit or refuse to complete your ATM/Debit Card transactions for security or technical reasons.

We may also suspend your ATM/Debit Card if we consider your designated account to be inactive or dormant.

5. **Overdraft Situations:** An overdraft occurs when you do not have enough money in your designated account to cover a transaction, but we pay it anyway. Generally, we will not authorize and pay overdrafts for ATM

withdrawals and everyday debit card transactions against your designated account unless you have authorized us to do so.\* You understand and agree that even if you have authorized us to do so, you have no right to overdraw your account at any time, for any reason, and our decision to pay overdraft items is solely within our discretion. You further agree that if we elect to pay overdraft items, you must deposit additional funds into your designated account immediately in an amount sufficient to cover the overdraft. Available credit on an overdraft protection line of credit associated with the designated account may be used to fund ATM/Debit Card transactions when you do not have sufficient collected funds in your designated account(s). If the amount of the overdraft causes you to exceed the balance in the overdraft protection deposit account linked to the overdrawn deposit account, you agree to pay the amount by which the deposit account has been overdrawn \*Applies only to consumer accounts.

6. **Transactions That Are Not Completed:** If we do not complete a transfer to or from your account on time or in the correct amount according to our Agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- A. If, through no fault of ours, you do not have enough money in your account to make the transfer;
- B. if we have terminated this Agreement for any reason;
- C. if the funds in your designated accounts are subject to legal process or other encumbrance restricting the transaction;
- D. if circumstances beyond our control (such as fire or flood) prevent the transaction from being completed despite reasonable precautions that we have taken;
- E. if an ATM does not have enough cash to complete the transaction;
- F. if there is a technical malfunction in the ATM that is known to you when you try to perform the transaction;
- G. if we have reason to believe that you or someone else is using our electronic banking services for fraudulent or illegal purposes;
- H. if you exceed the transfer limits listed in Section 4, "Limitations on Transactions," of this Agreement;
- I. if your ATM/Debit Card has deteriorated or has been damaged so that it does not function properly;
- J. if your ATM/Debit Card or PIN has been reported lost or stolen;

You agree that we will not be liable for any damages resulting from a refusal for any reason to authorize a transaction that you have attempted. You further agree that we will not be responsible or liable for a merchant's refusal to accept your ATM/Debit Card.

7. **Charges for ATM/Debit Card Transactions:** When you use your ATM/Debit Card at a non-Capital One Bank branded ATM, the ATM owner/operator may charge you a fee for your use of their ATM, and you may be charged a fee for a balance inquiry, even if you do not complete a cash withdrawal or funds transfer. You may also be charged a fee by us, as disclosed in our then current Schedule of Fees and Charges, for each cash withdrawal, funds transfer, or balance inquiry that you may make using a non-Capital One Bank branded ATM.

For international transactions, MasterCard's currency conversion procedure includes use of either a government mandated exchange rate, or a wholesale exchange rate selected by MasterCard for the processing cycle in which the transaction is processed. The currency conversion rate used by MasterCard on the processing date may differ from the rate that would have been used on the purchase date or cardholder statement posting date.

Withdrawals from an ATM outside of the United States, Puerto Rico, and U.S. Virgin Islands may incur an international transaction fee, as disclosed in our then current Schedule of Fees and Charges.

8. **Receipts and Account Statement:** You will be given a receipt for transactions made with your ATM/Debit Card at ATMs owned by Capital One Bank unless you decline to receive the receipt. Your periodic account statement(s) for your designated accounts will also detail electronic transfer activity on the designated account. Generally, if you have a consumer account, you will receive a monthly statement if you have an EFT in that

month. In any case, you will get the statement at least quarterly.

9. **In Case of Errors or Questions About Your Electronic Transfers:** (For information pertaining to the error resolution process for international wire transfers, please refer to the Wire Funds Transfer Disclosure Statement and related disclosures.)

Call us at: 1-866-536-9023; Small Business: 1-833-368-5386

Write to us at:

Capital One, N.A.

7933 Preston Rd.

Plano, TX 75024

Attn: Customer Service Center

Log into your account at [capitalone.com](https://capitalone.com) and click on the transaction.

Contact us as soon as you can if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt.

***The following section applies only to consumer accounts:*** We must hear from you no later than sixty (60) days after we sent you the FIRST statement on which the problem or error appeared.

1. Tell us your name and account number.
2. Describe the error or transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
3. Tell us the dollar amount of the suspected error.

If you tell us verbally, we may require that you send us your complaint or question in writing within ten (10) business days.

We will determine whether an error occurred within ten (10) business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to forty-five (45) days (ninety (90) days for those transactions at merchant POS terminals, processed on a new account, or initiated outside the United States) to investigate your complaint or question. If we decide to do this, we will credit your account within ten (10) business days for the amount you think is in error so that you will have full use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within ten (10) business days, we may not credit your account.

For errors involving new accounts (an account where the first deposit to the account occurs less than 30 days before the error), we may take up to twenty (20) business days to credit your account for the amount you think is in error.

We will tell you the results within three (3) business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

The following section applies only to commercial accounts: If you are a business or other entity that is not a natural person, the above referenced procedures do not apply to any accounts held by you. If you believe that an unauthorized transaction has occurred, we must hear from you within twenty four (24) hours of the time the transaction posts to your account. We will require you to submit an affidavit of unauthorized activity in connection with any such transaction immediately thereafter.

## 10. **Pre-Authorized Payments:**

**A. Right to stop payment:** If you have authorized regular payments out of your account, you can stop any of these payments. If the account requires multiple signatures to transact the withdrawal of funds, it is understood that we will recognize and accept stop payment instructions from any one authorized signer. Here is how: Visit your nearest Capital One Bank location. You may also:

Call us at: 1-800-655-2265

Write us at:

Capital One, N.A.

7933 Preston Rd.

Plano, TX 75024

Attn: Customer Service Center

We must receive your request at least three (3) business days before the payment is scheduled to be made. If you call us, we may also require you to put your request in writing to the above address and to get it to us within fourteen (14) days after you call. If you do not, then your verbal request will expire after fourteen (14) days. We will charge you a fee as disclosed in our then current Schedule of Fees and Charges for each stop payment order you give.

Merchants may allow returns or refunds on purchases; however, except as provided above for recurring payments, you cannot stop a one-time payment on any ATM/Debit Card transactions. For this reason, you should inquire about the merchant's return or refund policy before entering into a purchase transaction. Merchandise purchased using your ATM/Debit Card that is subsequently returned will be reflected as a credit on your designated account statement, provided you elect to have the return credited to your designated account. Please refer to Section 9 for information on error resolution.

**B. Varying amounts:** If these regular payments vary in amount, the person you are paying must tell you ten (10) days before each payment when it will be made and how much it will be. If you do not know this information, you may be unable to have the payment stopped without closing your account. (If we are required to provide this notice, you may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.)

**C. Liability:** If you order us to stop one of these payments three (3) business days or more before the transfer is scheduled, and we do not do so, we will be liable for your actual losses or damages, unless you failed to give us proper instructions that would enable us to stop the transfer. We will pay other damages only as required by applicable law. *We will not be liable for any consequential or special losses or damages unless we act in bad faith. In addition, we will not be liable if the merchant or other third party initiating the transaction changes the dollar amount of the transaction or makes other changes so that we do not recognize it as the payment you stopped.*

11. **Verifying Pre-Authorized Deposits:** You can verify whether a direct deposit has been processed to your account by calling us at 1-800-655-2265.
12. **Joint Accounts:** If more than one person signed your request for electronic banking services, each person who signed will be bound by this Agreement and will be responsible for paying all amounts owed as a result of this Agreement. If two (2) signatures are required to transact business on a designated account, any ONE (1) signer may initiate an electronic banking transaction on the account.
13. **Liability for Unauthorized Transfers on Consumer Accounts Only:**
  - A. Notify us immediately if you believe your ATM/Debit Card has been lost or stolen, or if you believe that an electronic fund transfer has been made without your permission. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your designated accounts (plus any available revolving line of credit, if applicable). If you tell us within two (2) business days after you learn of the loss or theft, you can lose no more than \$50.00 if someone used your ATM/Debit Card without your permission.
  - B. If you DO NOT tell us within two (2) business days after you learn of the loss or the theft of your ATM/Debit Card, and we can prove we could have stopped someone from using your ATM/Debit Card without your permission if you had told us, you could lose as much as \$500.00.
  - C. If you think that a transfer or withdrawal shown on your periodic statement is incorrect, or if you believe an unauthorized transfer or withdrawal has taken place, including those made by your ATM/Debit Card, code, or other means, contact us at once. We must be notified within sixty (60) days after the first statement we mailed to

you on which the suspected problem appeared. If you do not contact us within this sixty (60) day time period, you could be held responsible for all unauthorized transfers and withdrawals that occurred between the end of the sixty (60) day period and the time you actually notified us if the transaction could have been prevented if we had been notified.

D. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we may extend the above time periods.

E. If you believe that your ATM/Debit Card has been lost or stolen or that someone has transferred or may transfer money from your account without your permission, you may:

Call us at: 1-800-655-2265

Write us at:

Capital One, N.A.

7933 Preston Rd.

Plano, TX 75024

Attn: Customer Service Center

14. **MasterCard Zero Liability:** You may have additional rights under the MasterCard rules. Provided that the PIN is not used as the cardholder verification method, you will not be responsible for unauthorized use of the Platinum Debit and Business Debit Cards under the following conditions:

A. Your account is in good standing;

B. You have exercised reasonable care in safeguarding your card from any unauthorized use. Unauthorized use means that you did not provide directly, by implication or otherwise, the right to use your card, and you received no benefit from the "unauthorized" purchase; and

C. You have not reported two or more unauthorized events in the past 12 months.

If you have questions regarding zero liability coverage or you suspect unauthorized use of your debit card, contact us IMMEDIATELY.

15. **Evidence:** If we go to court for any reason, we can use a copy, microfilm, or microfiche of any document or electronic documentation, e-mail, or database information to prove what you owe or that a transaction has taken place. These facsimiles will have the same validity as the original documents.
16. **Our Rules and Regulations and Other Agreements:** The designated deposit accounts are also subject to other agreements that you may have with us including, but not limited to, our Rules Governing Deposit Accounts and Online Banking Terms and Conditions.
17. **Disclosure of Information About Your Account:** In the ordinary course of business, we may disclose information to third parties about your designated accounts or the transfers you make:
- Where it is necessary for completing transfers or resolving errors involving transfers;
  - In order to verify the existence and condition of your account for a third party, such as a consumer reporting agency or a merchant;
  - In order to comply with orders or subpoenas of government agencies or courts;
  - If you give us your written permission;
  - As disclosed in our Privacy Notice; or
  - As otherwise permitted by law.
18. **Our Business Days:** For purposes of this Agreement, our business days are Monday through Friday. Federal holidays or other days we are closed are not considered business days.
19. **Terminating This Agreement:** You can terminate this Agreement at any time by notifying us in writing. We reserve the right to deactivate any ATM/Debit Card that has not been used for an extended period of time. We can also terminate this Agreement at any time. The termination of this Agreement by either party will not affect

your obligations under this Agreement, even if we allow any transaction to be completed after this Agreement has been terminated.

20. **Changing This Agreement:** We have the right to change the terms of this Agreement from time to time. We will notify you at least twenty-one (21) days before the change will take effect if the change will cause you greater costs or liability or if it will limit your access to your designated accounts. We will not have to notify you in advance, however, if the change is necessary for security reasons.
  21. **Notices:** All notices from us will be effective when we have e-mailed them, mailed them or delivered them to the last address that we have for you in our records. Notices from you will generally be effective when received at the appropriate address specified in this Agreement, but notices under Section 14 ("Liability for Unauthorized Transfers on Consumer Accounts Only") will be effective once you have done whatever is reasonably necessary to give us the information we need. A mailed notice will be considered delivered to us when it is received by us at the notice address in Section 14 of this Agreement. If more than one person signs your request for electronic banking services, notice to or from one of the people who signed the request will be effective for everybody who signed.
  22. **Collection Expenses:** If we have to file a lawsuit to collect whatever you owe us, you will pay our reasonable expenses, including attorney's fees.
  23. **Governing Law:** Any questions under this Agreement will be decided by applicable federal law, or, if no federal law exists, applicable state law. If any term of this Agreement cannot legally be enforced, the Agreement is to be considered changed to the extent necessary to comply with the law.
  24. **Acceptance of This Agreement:** You have agreed to be bound and obligated under the terms of this Agreement and any subsequent amendments to this Agreement by using our electronic banking services.
- 

## WIRE FUNDS TRANSFER DISCLOSURE STATEMENT

Effective September 17, 2020

In this Wire Funds Transfer Disclosure Statement and Agreement (this "Agreement"), the words "you" and "your" mean a Capital One Bank account owner, and the words "us," "we," and "our" mean Capital One Bank. Capital One Bank is used as a trade name for Capital One, N.A. This Agreement defines your responsibilities and our responsibilities with respect to transfers of funds from your account(s) with us by wire transfer for credit to an account at another financial institution or another account with us ("Funds Transfers"), whether such transfers are domestic or international, made pursuant to: (a) written instructions, signed by you or your authorized representative ("Authorized Representative"), which we receive (i) in person from you or from someone present on your behalf, (ii) via facsimile transmission, (iii) via email, or (b) instructions we receive via our telephone wire request channel [(a) and (b) are collectively referred to herein as the "Funds Transfer Service"; (b) referred to herein as "Remote Channel"]. You understand that, except as specifically modified by this Agreement, your account(s) will continue to be governed by the terms and conditions contained in other agreements and/or disclosures that you have been provided with in connection with your account(s), which are incorporated herein by reference. Unless otherwise defined herein, the terms used in this Agreement shall have the same meaning as set forth in Article 4A of the Uniform Commercial Code and, to the extent applicable, the Electronic Fund Transfer Act (EFTA) and its implementing regulations.

1. **How to Make a Funds Transfer:** You may request or authorize a Funds Transfer ("Funds Transfer Request") either in person, through our Telephone Wire Request Service, or strictly for an outbound international wire from a business account, by email. All Funds Transfer Requests delivered in person, by email, or by facsimile must be in writing, signed by you or your Authorized Representative and must contain detailed and specific instructions in a form acceptable to us in our sole discretion. Your Authorized Representative may be: (1) any joint owner on your account; (2) an authorized attorney-in-fact of an individual or joint owner on the account, acting pursuant to a power of attorney recognized by us; (3) an authorized fiduciary, such as a trustee, executor, administrator, custodian, guardian or conservator; (4) an authorized signatory on a business account, or (5) an individual indicated on a business resolution as someone authorized to initiate a Funds Transfer.
2. **Method Used to Make the Funds Transfer:** We may select any means for the transmission of funds that we

consider suitable, including but not limited to Fedwire. We may make use of correspondents, agents, subagents and funds transfer and communication systems. Such third parties shall be deemed your agents and we shall not be liable for any errors, delay, misdelivery, or failure of delivery by any of them unless applicable law says otherwise.

3. **Cut-Off Times:** We have cut-off hours for processing Funds Transfers. Cut-off times vary depending on the location. Check with your local branch or contact the call center for cut-off hours. We may treat any Funds Transfer Request received at or after our cut-off time as if it were received that business day or we may treat it as if it were received at the opening of the next business day.
4. **Security Procedures:** You agree and consent to the use of certain security procedures by us to confirm the validity of the Funds Transfer Request made pursuant to this Agreement. You understand the security procedures are not designed to detect errors in the content of the Funds Transfer Request or to prevent duplicate transfers.

Some elements of the procedures will vary depending upon the method used to initiate a Funds Transfer. You hereby agree that your utilization of any security procedure established hereunder shall constitute your agreement to its use and affirmative acknowledgment of its commercial reasonableness. You further agree that any Funds Transfer Request that is acted upon in good faith by us in compliance with these security procedures, whether or not in fact authorized by you, shall constitute an authorized Funds Transfer.

The following security procedures shall apply to this Agreement: Before accepting any such Funds Transfer Requests, we will: (1) perform verification on the individuals initiating the Funds Transfer Request that is designed to ensure they are the individuals previously authorized to initiate a Funds Transfer for the account in question; (2) apply fraud-related screens to the wire instructions; (3) contact you using information from your account records to verify the Funds Transfer for wires that are not initiated in person (this contact may be through a method different than the one you used to request the Funds Transfer (e.g., phone versus e-mail) or it may be through the same channel to obtain a password or other information that only you should have); and (4) request and receive any other proof of identification or any other documentation from you or your Authorized Representative which we may, in our sole discretion, require under the circumstances.

5. **International Funds Transfer:** For commercial transactions involving an international Funds Transfer (also known as a "remittance transfer"), you are responsible for providing us with the name and address of an intermediary bank at the time of the Funds Transfer. If you do not supply us with an intermediary bank, we will select one of our choosing. We will not be held liable if we have not confirmed the intermediary bank with you. For a consumer international Funds Transfer, we will select the intermediary bank through which the Funds Transfer is transmitted.

**Selection of currency:** Unless you state otherwise on the Funds Transfer Request form, Funds Transfers sent to foreign countries may be converted to the currency of the destination country at our rate of currency exchange for remittance transfers. Even if you tell us that you want the Funds Transfer sent in U.S. dollars, we cannot guarantee that the beneficiary/designated recipient will receive the funds in U.S. currency. The actual amount that the beneficiary/designated recipient receives may be reduced by fees and taxes imposed by the beneficiary bank, or a correspondent bank, including currency conversion charges.

**Refund:** Refunds of U.S. dollar consumer international Funds Transfer Requests shall be in U.S. dollars in the total amount of funds provided by you at the time of the Funds Transfer; refunds of commercial U.S. dollar international Funds Transfer Requests shall be in U.S. dollars in the amount of U.S. dollar payment that we receive from the bank returning the funds to us at such bank's rate of currency exchange, less any fees therefore. Refunds of foreign currency consumer international Funds Transfer Requests shall be in the total amount of foreign currency funds provided by you at the time of the Funds Transfer; refunds of commercial foreign currency international Funds Transfer Requests shall be in the amount of U.S. dollars that can be bought by us for the applicable non-U.S. dollar currency amount at our then current rate of currency exchange. You shall bear all risk of loss due to fluctuation in the currency exchange rate.

**Conversion rate:** For international Funds Transfers involving non-U.S. currencies, the exchange rates we use for your transactions are not necessarily the bank-to-bank negotiated exchange rate or other potentially more favorable rate. FDIC deposit insurance does not insure against any loss due to foreign currency fluctuations.

Consult your attorney or investment advisor regarding the potential risks associated with foreign exchange transactions.

6. **Force Majeure:** We will not be liable for our inability to perform our obligations under this Agreement when such inability arises out of causes beyond our control, including but not limited to, any act of God, accident, labor disputes, power failures, system failure, equipment malfunction, suspension of payment by another bank, refusal or delay by another bank to accept the funds transfer, war, emergency conditions, fire, earthquake or the failure of any third party to provide any electronic or telecommunication service used in connection with the execution or cancellation of a Funds Transfer.
7. **Inconsistency of Name and Account Number:** You acknowledge and agree that when you (or your Authorized Representative), provide us with a name and account number in order for us to process a Funds Transfer, payment may be made by the beneficiary's/designated recipient's bank solely on the basis of the account number, even if the account number identifies a person different from the beneficiary so named. We or an intermediary bank may send a Funds Transfer to an intermediary bank or beneficiary's/designated recipient's bank based solely on the bank identifying number, even if the payment order indicates a different name. We may rely on all information contained in the Funds Transfer Request, regardless of who may have provided the information. You further agree that your obligation to pay the amount of a Funds Transfer to us is not excused in such circumstances. Except as provided by applicable law, any losses resulting from an incorrect account number or your misidentification of the beneficiary/designated recipient is your responsibility and not ours.
8. **Acceptance and Execution of Request by Capital One Bank:** A Funds Transfer Request is considered accepted by us when we execute it. There is a deadline for each type of Funds Transfer Request. Please contact your Capital One Bank branch or Capital One Call Center for this information. If a Funds Transfer Request is received prior to the deadline, it will be executed by us that business day, provided we are able to validate your request that same business day as described in Section 4. A Funds Transfer Request received after the cut-off time may be executed on the next business day, again provided we are able to validate your request that next business day as described in Section 4. You can verify whether your Funds Transfer Request has been executed by calling us at [1-800-655-BANK \(2265\)](tel:1-800-655-BANK).
9. **Payment to Capital One Bank:** You must pay us the amount of the Funds Transfer, plus any applicable fees, before we will execute the Funds Transfer Request. Please contact your Capital One Bank branch or Capital One Call Center for fees applicable to Funds Transfers and any other related pre-payment disclosures.
10. **Rejection of Funds Transfer:** We have no responsibility to accept any incoming Funds Transfer(s) for your benefit. Likewise, we have a right to reject any Funds Transfer Request(s) for an outgoing Funds Transfer for reasons including, but not limited to, insufficient or uncollected funds in the account specified in the Funds Transfer Request, a request that fails the security procedures outlined in Section 4, our inability to execute the Funds Transfer for the reasons set out in the Section of this Agreement entitled Method Used to Make the Funds Transfer above, or if we are unable to verify the authenticity of the Funds Transfer Request.
11. **Notice of Funds Transfer Not Executed:** If we determine, in our sole discretion, not to honor, execute or accept a Funds Transfer Request, we will endeavor to notify you, but we shall have no liability for delay or failure to do so. We will also endeavor to notify you promptly if a Funds Transfer is returned to us after its execution but shall have no liability by reason of our delay or failure to do so. We shall have no obligation to resend a Funds Transfer if we complied with the original Funds Transfer Request and such Funds Transfer was returned to us.
12. **Cancellation or Amendment of Funds Transfer:**
  - A. **Domestic Funds Transfers:** Once we receive a domestic Funds Transfer Request, it may not be able to be canceled or amended. However, at our discretion, we may use reasonable efforts to act on any request for cancellation or amendment, provided that the method by which we are notified of a request for cancellation or amendment complies with our security procedures. However, we shall have no liability if such cancellation or amendment is not effected. You agree to indemnify and hold us harmless from any and all liabilities, claims, damages, costs and expenses we may incur in attempting to cancel or amend the Funds Transfer. Any cancellation or amendment of a Funds Transfer by us shall relieve us of any obligation to act on the original Funds Transfer Request.

- B. Consumer International Funds Transfers:** Cancellation requests for consumer international Funds Transfers, must be received no later than 30 minutes after payment is made for the Funds Transfer. Cancellation requests received outside of this time frame may not be able to be processed.
13. **Account Statements:** Except as provided by applicable law, you agree that we are not required to provide you with a separate notice of incoming or outgoing Funds Transfer. All Funds Transfers will be reflected on your periodic bank statement. You should review your statement for any discrepancies, unauthorized transactions or errors in connection with any Funds Transfers. Except as otherwise provided herein, if you think a Funds Transfer is wrong or if you need more information about a Funds Transfer, you must contact us in writing upon discovery of the error or within fourteen (14) days from the date your statement is postmarked or otherwise made available to you, whichever is earlier. Failure to do so will relieve us of any obligation to pay interest on the amount of an unauthorized or erroneous Funds Transfer for which we are liable. Furthermore, you will also be liable to us for any damages or losses we may incur as a result of your failure to notify us within the time period stated in this Section.
14. **Change in Authorized Representative:** Any changes in the authority of persons authorized to make a Funds Transfer on your behalf shall not be binding upon us until we have received written notice from you. The notice must be in a form acceptable to us and be given within a reasonable period of time for us to act upon the change.
15. **Duty of Reasonable Care:** We shall exercise good faith and reasonable care in processing Funds Transfer Requests. You shall similarly exercise good faith and reasonable care in observing and maintaining security procedures, in communicating Funds Transfer Requests to us, and in reviewing periodic bank statements for any discrepancies.
16. **Liability of Capital One Bank:** We shall be responsible only for performing the Funds Transfer Service expressly provided for in this Agreement; provided however, we shall be liable only for our own gross negligence or willful misconduct in performing such service. We shall not be liable to any third party or for any act or omission of yours or any third party, including, but not limited to, third parties used by us in executing a Funds Transfer or performing a related act and no such third party shall be deemed to be our agent. IN NO EVENT SHALL WE BE LIABLE FOR ANY DAMAGES OF ANY KIND INCLUDING WITHOUT LIMITATION DIRECT, INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS, LOSSES OR EXPENSES ARISING OUT OF OR IN CONNECTION WITH THE FUNDS TRANSFER SERVICE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SAME. Except as otherwise provided by applicable law, the maximum period for which we shall be liable for interest on any amount to be refunded or paid to you with respect to an unauthorized, erroneous or other Funds Transfer Request is thirty days.

**Interest Compensation:** In the event we are liable to you for interest compensation under this Agreement, or applicable law, interest shall be calculated at the average of the federal funds rate published by the Federal Reserve Bank for the period involved; or at such other rate that we may agree to, in writing, from time to time.

**Consumer International Wire Fund Transfer Error Resolution:** In case of errors contact us at 866-536-9023, or write us at:

Capital One Bank  
Claims Processing Center  
PO Box 85039  
Richmond, VA 23285-5039

You must contact us within 180 days of the funds availability date on your Funds Transfer receipt, or within 60 days of the date we provided you with any requested documentation, additional information or clarification concerning a Funds Transfer.

When you do, please tell us:

- (1) Your name and address [or telephone number];
- (2) The error or problem with the transfer, why you believe it is an error or problem and, if possible, the date of the error;
- (3) The name of the designated recipient of the funds and, if possible, the designated recipient's telephone number and address;

- (4) The dollar amount of the transfer; and
- (5) The confirmation code or number of the transaction.

We will determine whether an error occurred within 90 days after you contact us and report the results to you within three (3) business days of completing our investigation. If we determine an error occurred, we will notify you of the available remedies and will correct the error promptly and in accordance with the remedy you select.

If we determine no error occurred, we will send you a written explanation. You may ask for copies of the documents on which we relied for our determination.

17. **Liability of the Customer:** Except as otherwise provided by law, you shall be liable for any loss or damage to which your negligence contributed or which resulted in unauthorized, fraudulent or dishonest acts by your current and/or former Authorized Representatives. Such liability includes instances when a current or former Authorized Representative effects one or more Funds Transfers or improper use of telephone security procedures to effect a Funds Transfer to your detriment.
18. **Compliance with Anti-Money Laundering and Exchange Control Regulations and OFAC Enforced Sanctions:**
  - A. You covenant with us to observe all Anti-Money Laundering and Exchange Control laws and regulations including economic and trade sanctions promulgated by the Office of Foreign Assets Control of the U.S. Department of Treasury in relation to any Funds Transfer and you will use all reasonable endeavors to assist us to do likewise. In particular, you covenant that the information given to us by you is accurate. We may disclose any information given to us that we in our sole discretion think necessary or desirable to disclose; except we will only disclose confidential information if required by law, a court, or legal, regulatory, or governmental authority, or as permitted by law in order to combat, prevent, or investigate issues arising under anti-money laundering laws, economic sanctions, or criminal law.
  - B. Sometimes legal, regulatory, or governmental authorities require additional information, either in respect of individuals, entities, or particular transactions. You agree to promptly supply all such information, which any such authority may require, and/or which we may be required to supply, in relation to the individual, entity, or particular transaction.
  - C. If you, or your Authorized Representative, breach any such laws or regulations, you irrevocably agree that we may retain any monies or funds transmitted to us pursuant to this Agreement and/or not fulfill any Funds Transfer Request if we are required to take or refrain from such action by any legal, regulatory or governmental authority or if we reasonably believe that such action may violate any laws or regulations described herein, and such monies shall not bear interest against us. You further agree that we may pay such monies to the appropriate legal, regulatory or governmental authority, if and when required by law.
19. **Indemnification:** In consideration of Capital One Bank agreeing to accept Funds Transfer Requests in the manner set forth herein, you shall forever indemnify and hold Capital One Bank, its officers, directors, shareholders, employees, successors, predecessors, representatives, principals, agents, assigns, parents, subsidiaries and/or insurers, harmless from and against all liability, claims, damages, costs, claims or expenses (including reasonable attorneys' fees) that we may incur, without regard to the merit or lack thereof, arising out of, or related in any way to the matters set forth herein, or to the Funds Transfer Service, which shall be provided pursuant to the terms of this Agreement. Your agreement to indemnify us and hold us harmless shall survive the expiration and/or termination of this Agreement and all provisions contained herein.
20. **Recording of Communication:** You agree that all telephone conversations made in connection with the Agreement may be recorded and retained by us.
21. **Termination of Agreement:** We may terminate the right to make Funds Transfers at any time or amend or change the terms of this Agreement or cancel this Agreement without advance notice to you.
22. **Agreement Controls:** Both you and Capital One Bank will be bound by this Agreement. If there is a conflict between this Agreement and something said by one of our employees, you agree that this Agreement controls. This Agreement and the terms of the Account Agreement(s) related to your deposit accounts, which are incorporated herein by reference, constitute the entire Agreement between you and us regarding your use of the

Funds Transfer Service. If any inconsistency exists between the account disclosure statements and agreement(s) and this Agreement, then the terms of this Agreement shall control. No representation or statement not expressly contained in this Agreement or in any amendment hereto shall be binding upon you or us.

23. **Governing Law:** All actions arising out of or concerning the Funds Transfer Service or these terms and conditions shall be heard by a judge sitting without a jury. In any such action, Capital One Bank shall be entitled to its reasonable attorneys' fees. The Funds Transfer Service and these terms and conditions shall be governed by the internal laws of the State of Virginia without regard to its conflicts of rules and the laws of the United States.
24. **Severability:** In the event that any court or tribunal of competent jurisdiction determines that any provision of the Agreement is illegal, invalid or unenforceable, the remainder of this Agreement shall not be effected thereby.



**Defendant's Notice of Removal**

**Exhibit B**

**Complaint and all process, pleadings, and orders on file with the Circuit Court, Eleventh Judicial Circuit, Miami-Dade County, Florida**

***Mensah v. Capital One, N.A.***  
**United States District Court**  
**Southern District of Florida, Miami Division**



# MIAMI-DADE COUNTY CLERK OF THE COURTS

## HARVEY RUVIN

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## CIVIL, FAMILY AND PROBATE COURTS ONLINE SYSTEM

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Not all search results will be displayed on-line. For example, the following case types (Sealed, Juvenile, Adoption and Mental Health Cases) may or may not be in existence and may or may not be viewable by the public pursuant to Florida Supreme Court Mandate and the corresponding [Access Security Matrix](#).

BERNARD MENSAH VS CAPITAL ONE, N.A.			
<b>Local Case Number:</b>	2022-008014-CA-01	<b>Filing Date:</b>	05/02/2022
<b>State Case Number:</b>	132022CA008014000001	<b>Judicial Section:</b>	CA24
<b>Consolidated Case No.:</b>	N/A	<b>Case Type:</b>	Other Civil Complaint
<b>Case Status:</b>	OPEN		

Parties <span style="float: right;">Total Of Parties: 2 -</span>			
Party Description	Party Name	Attorney Information	Other Attorney(S)
Plaintiff	Mensah, Bernard	<b>B#: (Bar Number)102630</b> N: (Attorney Name)Angelica M Gentile, Esq	
Defendant	Capital One, N.A.		

Hearing Details <span style="float: right;">Total Of Hearings: 0 +</span>	
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Dockets <span style="float: right;">Total Of Dockets: 8 -</span>	
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Number	Date	Book/Page	Docket Entry	Event Type	Comments
8	05/16/2022		Service Returned	Event	
	05/04/2022		20 Day Summons Issued	Service	
7	05/04/2022		ESummons 20 Day Issued	Event	<b>RE: INDEX # 5.</b> Parties: Capital One N.A.
6	05/04/2022		Receipt:	Event	<b>RECEIPT#:3110181 AMT PAID:\$10.00 NAME:ANGELICA M GENTILE, ESQ 14 NE 1ST AVE STE# 705 MIAMI FL 33131 COMMENT: ALLOCATION CODE QUANTITY UNIT AMOUNT 3139-SUMMONS ISSUE FEE 1 \$10.00 \$10.00 TENDER TYPE:EFILINGS TENDER AMT:\$10.00 RECEIPT DATE:05/04/2022 REGISTER#:311 CASHIER:EFILINGUSER</b>
5	05/03/2022		(M) 20 Day (C) Summons (Sub) Received	Event	

Number	Date	Book/Page	Docket Entry	Event Type	Comments
4	05/03/2022		Receipt:	Event	<b>RECEIPT#:3110205 AMT PAID:\$401.00 NAME:ANGELICA M GENTILE, ESQ 14 NE 1ST AVE STE# 705 MIAMI FL 33131 COMMENT: ALLOCATION CODE QUANTITY UNIT AMOUNT 3100-CIRCUIT FILING FEE 1 \$401.00 \$401.00 TENDER TYPE:EFILINGS TENDER AMT:\$401.00 RECEIPT DATE:05/03/2022 REGISTER#:311 CASHIER:EFILINGUSER</b>
 2	05/02/2022		Complaint	Event	
 1	05/02/2022		Civil Cover Sheet - Claim Amount	Event	

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## HARVEY RUVIN

Miami-Dade County  
Clerk of the Courts

73 W. Flagler Street  
Miami, Florida 33130

305-275-1155

**FORM 1.997. CIVIL COVER SHEET**

The civil cover sheet and the information contained in it neither replace nor supplement the filing and service of pleadings or other documents as required by law. This form must be filed by the plaintiff or petitioner with the Clerk of Court for the purpose of reporting uniform data pursuant to section 25.075, Florida Statutes. (See instructions for completion.)

---

**I. CASE STYLE**

IN THE CIRCUIT/COUNTY COURT OF THE ELEVENTH JUDICIAL CIRCUIT,  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

Bernard Mensah  
Plaintiff

Case # \_\_\_\_\_  
Judge \_\_\_\_\_

vs.

Capital One, N.A.  
Defendant

---

**II. AMOUNT OF CLAIM**

Please indicate the estimated amount of the claim, rounded to the nearest dollar. The estimated amount of the claim is requested for data collection and clerical processing purposes only. The amount of the claim shall not be used for any other purpose.

- \$8,000 or less
- \$8,001 - \$30,000
- \$30,001- \$50,000
- \$50,001- \$75,000
- \$75,001 - \$100,000
- over \$100,000.00

**III. TYPE OF CASE** (If the case fits more than one type of case, select the most definitive category.) If the most descriptive label is a subcategory (is indented under a broader category), place an x on both the main category and subcategory lines.

## **CIRCUIT CIVIL**

- Condominium
- Contracts and indebtedness
- Eminent domain
- Auto negligence
- Negligence—other
  - Business governance
  - Business torts
  - Environmental/Toxic tort
  - Third party indemnification
  - Construction defect
  - Mass tort
  - Negligent security
  - Nursing home negligence
  - Premises liability—commercial
  - Premises liability—residential
- Products liability
- Real Property/Mortgage foreclosure
  - Commercial foreclosure
  - Homestead residential foreclosure
  - Non-homestead residential foreclosure
  - Other real property actions
- Professional malpractice
  - Malpractice—business
  - Malpractice—medical
  - Malpractice—other professional
- Other
  - Antitrust/Trade regulation
  - Business transactions
  - Constitutional challenge—statute or ordinance
  - Constitutional challenge—proposed amendment
  - Corporate trusts
  - Discrimination—employment or other
  - Insurance claims
  - Intellectual property
  - Libel/Slander
  - Shareholder derivative action
  - Securities litigation
  - Trade secrets
  - Trust litigation

## **COUNTY CIVIL**

- Small Claims up to \$8,000
- Civil
- Real property/Mortgage foreclosure

- Replevins
- Evictions
  - Residential Evictions
  - Non-residential Evictions
- Other civil (non-monetary)

**COMPLEX BUSINESS COURT**

This action is appropriate for assignment to Complex Business Court as delineated and mandated by the Administrative Order. Yes  No

**IV. REMEDIES SOUGHT (check all that apply):**

- Monetary;
- Nonmonetary declaratory or injunctive relief;
- Punitive

**V. NUMBER OF CAUSES OF ACTION: [ ]**

(Specify)

2

**VI. IS THIS CASE A CLASS ACTION LAWSUIT?**

- yes
- no

**VII. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?**

- no
- yes If “yes,” list all related cases by name, case number, and court.

**VIII. IS JURY TRIAL DEMANDED IN COMPLAINT?**

- yes
- no

**IX. DOES THIS CASE INVOLVE ALLEGATIONS OF SEXUAL ABUSE?**

- yes
- no

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief, and that I have read and will comply with the requirements of Florida Rule of Judicial Administration 2.425.

Signature: s/ Angelica Gentile Gentile  
Attorney or party

Fla. Bar # 102630  
(Bar # if attorney)

Angelica Gentile Gentile  
(type or print name)

05/02/2022  
Date

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

**BERNARD MENSAH**, individually, and on  
behalf of all others similarly situated,

Plaintiff,

v.

**CAPITAL ONE, N.A.**,

Defendant.

Case No.: \_\_\_\_\_

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff Bernard Mensah, individually and on behalf of all others similarly situated, hereby brings this Class Action Complaint against Defendant Capital One, N.A. (“Capital One,” “Bank,” or “Defendant”) and alleges as follows:

**INTRODUCTION**

1. This lawsuit is brought as a class action on behalf of Plaintiff and thousands of similarly situated customers of Capital One who have signed up for the Zelle money transfer service and who: have been the victim of fraud on the Zelle service; who have incurred losses due to that fraud that have not been reimbursed by Capital One; and who were entitled by the marketing representations of Capital One regarding the Zelle service and by the Capital One’s contract promises to a full reimbursement of losses caused by fraud on the Zelle service.

2. Zelle is a payment transfer service wholly owned and operated by seven of the largest banks in the U.S.

3. There are approximately 1,500 member banks and credit unions who participate in the Zelle service. Those members engage in their own significant marketing efforts to encourage their accountholders to sign up for the Zelle service by marketing Zelle as a fast, safe and secure way for consumers to send money. This is false. In fact, there are huge, undisclosed security risks

of using the service that Capital One omitted from its marketing push to get its accountholders to sign up for Zelle.

4. Capital One prominently touts Zelle to its accountholders as a secure, free and convenient way to make money transfers. However, it misrepresents and omits a key fact about the service that is unknown to accountholders: that there is virtually no recourse for consumers to recoup losses due to fraud. Indeed, unlike virtually every other payment method commonly used by American consumers—debit cards, credit cards, and checks—there is no protection for accountholders who are victims of fraud, and virtually no recourse for accountholders attempting to recoup losses due to fraud.

5. The unique, misrepresented, and undisclosed architecture of the Zelle payment system means—again, unlike other payment options commonly used by American consumers—that virtually any money transferred for any reason via Zelle is gone forever, without recourse, reimbursement or protection.

6. Worse, Capital One misrepresents and omits the truth about a secret policy it has adopted: it does not and will not reimburse its accountholders for losses via Zelle due to fraud, even where those losses are timely reported by accountholders.

7. Capital One was required not to misrepresent the unique and dangerous features of the Zelle service in its marketing about it and in contractual representations. But it failed to do so.

8. As a result, users like Plaintiff sign up for and use the Zelle service without the benefit of accurate information regarding that service, and later end up with huge, unreimbursed losses due to fraud. Such users never would have signed up for Zelle in the first place if they had known the extreme risks of signing up for and using the service.

9. As a member of the Zelle network, the risks are well known to Capital One but are omitted from all of its marketing regarding Zelle.

10. As a recent New York Times investigation showed, fraud on the Zelle network is a widespread scourge of which bank is well aware. Quoting an industry expert, the *Times* reported:

“Organized crime is rampant,” said John Buzzard, Javelin’s lead fraud analyst. “A couple years ago, we were just starting to talk about it” on apps like Zelle and Venmo, Mr. Buzzard said. “Now, it’s common and everywhere.”

The banks are aware of the widespread fraud on Zelle. When Mr. Faunce called [his bank] to report the crime, the customer service representative told him, “A lot of people are getting scammed on Zelle this way.” Getting ripped off for \$500 was “actually really good,” Mr. Faunce said the rep told him, because “many people were getting hit for thousands of dollars.”

<https://www.nytimes.com/2022/03/06/business/payments-fraud-zelle-banks.html> (last accessed March 28, 2022).

11. Had Plaintiff and the Class members known of the true operation and risks of the Zelle service—risks Capital One alone was aware of and actively misrepresented—they would not have signed up for and used the Zelle service.

12. Plaintiff and the Class members have been injured by signing up for and using the Zelle service on Capital One’s mobile application and website. Plaintiff brings this action on behalf of himself, the putative Class, and the general public. Plaintiff seeks actual damages, punitive damages, restitution, and an injunction on behalf of the general public to prevent Capital One and Zelle from continuing to engage in its illegal practices as described herein.

### **PARTIES**

13. Plaintiff Bernard Mensah is a citizen and resident of Miami-Dade County, Florida.

14. Defendant Capital One, N.A. is a federally chartered bank with its principal place of business in McLean, Virginia. Capital One operates and conducts business, throughout, the State of Florida.

### **JURISDICTION AND VENUE**

15. This Court has subject matter jurisdiction pursuant to Florida Rule of Civil Procedure 1.220 and Fla. Stat. § 26.012(2). The matter in controversy exceeds the sum or value of \$30,000 exclusive of interest, costs, and attorney's fees.

16. Defendant is subject to personal jurisdiction in Florida because this suit arises out of and relates to Defendant's contacts with this state. Defendant is authorized to do business in the State of Florida and maintains a network of retail branches doing business in Florida that operates, conducts, engages in, and/or carries on business and business activities in Florida and engages in substantial and not isolated activity in Florida.

17. Venue for this action is proper in this Court pursuant to Fla. Stat. §47.011 and §47.051 because Defendant has an agent or other representative and a substantial part of the events and omissions giving rise to this action occurred in Miami-Dade County, Florida.

### **FACTUAL ALLEGATIONS**

#### **A. Overview**

18. It is free to sign up with Zelle, and in fact Zelle is integrated into the websites and mobile apps of Capital One. In marketing and within the website and app itself, Capital One encourages its accountholders to sign up for the Zelle service—a sign up that occurs quickly within the Capital One website or mobile app. During that sign-up process, a user provides basic information to Zelle to link into the Zelle network.

19. While Zelle provides a link to what it calls a “User Agreement” on its website, at no time during the sign-up process on the bank’s website or app did Plaintiff agree to be bound by that document.

20. Sign up for the Zelle service allows the fast transfer of account funds to other Zelle users.

21. Created in 2017 by the largest banks in the U.S. to enable instant digital money transfers, Zelle is by far the country’s most widely used money transfer service. Last year, people sent \$490 billion in immediate payment transfers through Zelle.

22. The Zelle network is operated by Early Warning Services, a company created and owned by seven banks, including Defendant: Bank of America, Capital One, JPMorgan Chase, PNC, Truist, U.S. Bank and Wells Fargo.

23. The Zelle service is very popular, but it also has a massive fraud problem—in no small part because of the immediacy with which money transfers are made on the service. If a fraudster removes money from a Zelle user’s bank account, either directly or by fooling the Zelle user to transfer money, those funds are unrecoverable to the consumer.

24. Nearly 18 million Americans were defrauded through scams involving person-to-person payment apps like Zelle in 2020 alone, according to Javelin Strategy & Research, an industry consultant.

25. Organized crime is rampant on Zelle and other similar person-to-person transfer services.

26. The 1500 banks and credit unions who are members of the Zelle network, including Capital One, know full well that they have a widespread fraud problem on their hands, but have

misrepresented and failed to take steps to warn their accountholders of these risks—or protect their accountholders who fall prey to fraud.

27. For example, a common scam involves a scammer impersonating a bank employee and requesting that the accountholder transfer money to a different bank account for testing purposes. Unsuspecting Zelle users, tricked into making a fraudulent transfer, in many cases send hundreds or thousands of dollars to fraudsters.

28. In another very common scheme, a Zelle user's phone is stolen and Zelle transfers are made from the stolen phone to the fraudster.

29. In short, and unbeknownst to average Zelle users, the Zelle network has become a preferred tool for fraudsters like romance scammers, cryptocurrency con artists and those who use social media sites to advertise fake concert tickets and purebred puppies.

30. Scams like these are rampant on the Zelle network precisely because of the design and architecture of the network, specifically that money transfer is instantaneous and unrecoverable. Indeed, there is virtually no recourse for consumers to recoup losses due to fraud, unlike other payment methods commonly used by American consumers—debit cards, credit cards, and checks. Zelle provides no protection for accountholders who are victims of fraud, and Capital One provides virtually no recourse for accountholders attempting to recoup losses due to fraud.

31. The unique, misrepresented, and undisclosed architecture of the Zelle payment system and Capital One's own fraud policies means—again, unlike other payment options commonly used by American consumers—that virtually any money transferred for any reason via Zelle is gone forever, without recourse, reimbursement or protection for victimized accountholders.

**B. Capital One Falsely Markets Zelle as a Safe and Secure Way to Transfer Money, Omits Information Regarding the Extreme Risks of**

**Signing Up for and Using the Service, and Misrepresents Fraud Protections Regarding Zelle in its Account Contract**

32. In its marketing about Zelle and during the Zelle signup process within the Bank's mobile app or website, the Bank makes repeated promises that Zelle is a "fast, **safe** and easy way to send and receive money" (emphasis added).

33. It promises: "Move money in the moment. Simply and **securely** – with lots of people you know." (emphasis added).

34. It also promises: "With Zelle, money payments and requests are simple, **safe**—and free—using the Capital One Mobile app." (emphasis added).

35. At no time in its marketing or during the sign-up process does Capital One warn potential users of the true security risks of using the Zelle service—including the risk of fraud and the risk that fraudulent losses will never be reimbursed by Capital One.

36. Zelle's services can cause unsuspecting consumers like Plaintiff to incur massive losses on their linked bank accounts.

37. Capital One misrepresents (and omits facts about) the true nature, benefits, and risks of the Zelle service, functioning of which means that users are at extreme and undisclosed risk of fraud when using Zelle. Had Plaintiff been adequately informed of these risks, he would not have signed up for or used Zelle.

38. The Bank's marketing representations about Zelle—including within its app and website—misrepresent and never disclose these risks and material facts, instead luring accountholders to sign up for and use the service with promises of ease, safety and security.

39. These representations—which all users view during the sign-up process—are false and contain material omissions.

40. Capital One misrepresents the true nature, benefits and risks of the service, which burden users with an extreme and undisclosed risk of Zelle causing losses due to fraud. Plaintiff would not have used Zelle if he had been adequately informed of the risks.

41. The Bank's misrepresentations and omissions are especially pernicious because Capital One alone knows a crucial fact regarding Zelle transfers that occur on its accountholders' accounts: as a matter of secret bank policy, fraud-induced Zelle transfers will almost never be reimbursed to accountholders.

42. Indeed, upon information and belief, Capital One maintains secret policy whereby it refuses to reimburse fraud losses incurred via Zelle, even where its accountholders timely inform Capital One of the fraud.

43. It misrepresents and fails to disclose this secret policy.

44. Further, Capital One's Account Disclosures applicable to consumer accounts repeatedly promises users that, if they timely report fraud, such fraud will be fairly investigated and accountholders will not be liable for fraudulent transfers:

**13. Liability for Unauthorized Transfers on Consumer Accounts Only:**

A. Notify us immediately ... if you believe that an electronic fund transfer has been made without your permission. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your designated accounts (plus any available revolving line of credit, if applicable).

[...]

C. If you think that a transfer or withdrawal shown on your periodic statement is incorrect, or if you believe an unauthorized transfer or withdrawal has taken place, including those made by your ATM/Debit Card, code, or other means, contact us at once. We must be notified within sixty (60) days after the first statement we mailed to you on which the suspected problem appeared. If you do not contact us within this sixty (60) day time period, you could be held responsible for all unauthorized transfers and withdrawals that occurred between the end of the sixty (60) day period and the time you actually notified us if the transaction could have been prevented if we had been notified.

D. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we may extend the above time periods.

E. If you believe ... that someone has transferred or may transfer money from your account without your permission, you may:

Call us at: 1-800-655-2265

Write us at:  
Capital One, N.A.  
7933 Preston Rd.  
Plano, TX 75024  
Attn: Customer Service Center

45. These provisions are and were reasonably understood by Plaintiff to mean that Plaintiff would not be liable for electronic funds transfers effectuated by fraud.

**C. Plaintiff's Experience**

46. When Plaintiff signed up for Zelle he was not informed that Zelle's service had a significant "catch" and that significant monetary losses could result from signing up for the service—or that those losses almost never are reimbursed by users' banks or credit unions.

47. For example, on August 31, 2021, a fraudster transferred \$2,000.00 from Plaintiff's personal bank account using the Zelle service.

48. In August 2021, Plaintiff relocated to Miami, Florida and was searching for rental apartments online. Plaintiff believed he found a potential unit to lease on apartments.com, so he reached out to the purported landlord, who in reality was a fraudster, to express his interest in the apartment.

49. Before signing a lease, however, Plaintiff wanted to tour the property in-person. The fraudster happily agreed and scheduled a time for the two to meet and view the apartment.

50. After touring the apartment, Plaintiff negotiated terms of the "lease" with the fraudster, reached an agreement, and signed the "lease."

51. Upon signing, Plaintiff transferred \$2,000.00 via Zelle to the fraudster for his deposit of first and last month's rent.

52. Later that day, Plaintiff received an email from a different person with the same property, same description, and same rental application, but it was listed on realtors.com.

53. At this point, Plaintiff determined he fell victim to fraud and immediately notified Capital One who assured him it would issue a stop payment on the pending Zelle transfer.

54. The next day, however, Plaintiff called Capital One for an update and was informed that Capital One could not issue a stop payment and only Zelle had the authority to do so.

55. Despite Plaintiff timely alerting Capital One of the fraud, Capital One refused to reimburse him for the losses.

### **CLASS ALLEGATIONS**

56. Pursuant to Florida Rule of Civil Procedure 1.220(b)(2) and (b)(3), Plaintiff brings this action individually and as representatives of all those similarly situated, on behalf of the below-defined Classes:

All persons with a Capital One account who signed up for the Zelle Service and incurred unreimbursed losses due to fraud (the "Class").

All Florida persons with a Capital One account who signed up for the Zelle Service and incurred unreimbursed losses due to fraud (the "Florida Subclass").

57. Excluded from the Classes are Defendant and its affiliates, parents, subsidiaries, employees, officers, agents, and directors. Also excluded are any judicial officers presiding over this matter and the members of their immediate families and judicial staffs.

58. This case is appropriate for class treatment because Plaintiff can prove the elements of their claims on a class wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

59. **Numerosity:** The members of the Classes are so numerous that joinder of all members would be unfeasible and impracticable. The precise membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes are greater than one hundred individuals. The identity of such membership is readily ascertainable via inspection of Defendant's books and records or other approved methods. Class members may be notified of the pendency of this action by mail, email, internet postings, and/or publication.

60. **Common Questions of Law or Fact:** There are common questions of law and fact as to Plaintiff and all other similarly situated persons, which predominate over questions affecting only individual Class members, including, without limitation:

- a) Whether Defendant's representations and omissions about the Zelle service are false, misleading, deceptive, or likely to deceive;
- b) Whether Defendant failed to disclose the risks of using the Zelle service;
- c) Whether Plaintiff and the Class members were damaged by Defendant's conduct;
- d) Whether Defendant's actions or inactions violated the consumer protection statute invoked herein; and
- e) Whether Plaintiff is entitled to a preliminary and permanent injunction enjoining Defendant's conduct.

61. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendant's uniform practices applicable to each individual Class member. As such, these common questions predominate over individual questions concerning each Class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

62. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the Classes because, among other things, Plaintiff and all Class members were similarly injured through Defendant's uniform misconduct as alleged above. As alleged herein, Plaintiff, like the members of the Classes, were deprived of monies that rightfully belonged to them. Further, there are no defenses available to Defendant that are unique to Plaintiff.

63. **Adequacy of Representation:** Plaintiff is an adequate class representative because they are fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes, and because their interests do not conflict with the interests of the other Class members they seek to represent. Moreover, Plaintiff's attorneys are ready, willing, and able to fully and adequately represent Plaintiff and the members of the Classes. Plaintiff's attorneys are experienced in complex class action litigation, and they will prosecute this action vigorously.

64. **Superiority:** The nature of this action and the claims available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each Class member were required to file an individual lawsuit, Defendant would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of each individual Plaintiff with its vastly superior financial and legal resources. Moreover, the prosecution of separate actions by individual Class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual Class members against Defendant, and which would establish potentially incompatible standards of conduct for Defendant and/or legal determinations with respect to individual Class members which would, as a practical matter, be dispositive of the interests of the other Class members not parties to adjudications or which would substantially impair or impede the ability of the Class members to protect their interests. Further, the claims of

the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto.

**FIRST CAUSE OF ACTION**

**Violation of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”)**

**Fla. Stat. § 501.201, et seq, et seq.**

**(Asserted on Behalf of the Classes)**

59. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

60. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, *et seq.* The stated purpose of the FDUTPA is to “protect the consuming public ... from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” Fla. Stat. § 501.202(2).

61. Plaintiff and members of the class are “consumers” as defined by Fla. Stat. § 501.203(7).

62. Defendant engaged in “trade or commerce” as defined by Fla. Stat. § 501.203(8) by offering the Zelle money transfer services through its website and mobile app.

59. As described herein, Capital One’s misrepresentations that it provides safe, secure, Zelle money transfer services through its website and mobile app constitutes an unconscionable, unfair and/or deceptive act in trade or commerce in violation of Fla. Stat. § 501.201.

60. As described herein, Capital One’s misrepresentations that it will protect accountholders who incur fraud losses via Zelle, even where its accountholders timely inform Capital One of the fraud, constitutes an unconscionable, unfair and/or deceptive act in trade or commerce in violation of Fla. Stat. § 501.201.

61. Capital One’s deceptive omissions of the material security risks of using the Zelle service, including the risk of fraud and the risk that fraudulent losses will never be reimbursed by

Capital One as a matter of secret policy, is a practice that is likely to mislead a consumer acting reasonably under the circumstances, to the consumer's detriment.

62. Defendant's practices, as described herein, constitute deceptive and/or fraudulent business practices in violation of the FDUTPA because, among other things, they are likely to deceive reasonable consumers, who expect their bank to fully investigate and protect fraudulent losses incurred using the Zelle service. Moreover, Defendant concealed the security risks of using the Zelle service, including the risk of fraud and the risk that fraudulent losses will never be reimbursed by Capital One as a matter of secret policy, is a practice that is likely to deceive a consumer acting reasonably under the circumstances, to the consumer's detriment.

**SECOND CAUSE OF ACTION**

**Breach of Contract Including Breach of the Covenant of Good Faith and Fair Dealing  
(Asserted on Behalf of the Classes)**

63. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

64. Plaintiff and members of the Classes contracted with Capital One for checking account services, as embodied in the Account Disclosures.

65. Capital One breached the terms of its contract with consumers when as described herein, Capital One failed to fairly investigate reported fraudulent transactions on the Zelle money transfer service and failed to reimburse accountholders for fraud-induced losses incurred using the Zelle service.

66. Further, under the law of each of the states where Capital One does business, an implied covenant of good faith and fair dealing governs every contract. The covenant of good faith and fair dealing constrains Defendant's discretion to abuse self-granted contractual powers.

67. This good faith requirement extends to the manner in which a party employs discretion conferred by a contract.

68. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit—not merely the letter—of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

69. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes his conduct to be justified. A lack of good faith may be overt or may consist of inaction, and fair dealing may require more than honesty. Other examples of violations of good faith and fair dealing are willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance.

70. Defendant breached the covenant of good faith and fair dealing when it failed to fairly investigate reported fraudulent transactions on the Zelle money transfer service and failed to reimburse accountholders for fraud-induced losses incurred using the Zelle service.

71. Each of Defendant's actions was done in bad faith and was arbitrary and capricious.

72. Plaintiff and members of the Classes have performed all of the obligations imposed on them under the contract.

73. Plaintiff and members of the Classes have sustained monetary damages as a result of Capital One's breaches of the contract and covenant of good faith and fair dealing.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of the Classes, demands a jury trial on all claims so triable and judgment as follows:

- A. Certifying the proposed Classes, appointing Plaintiff as representative of the Classes, and appointing counsel for Plaintiff as lead counsel for the respective Classes;
- B. Declaring that Defendant's policies and practices as described herein constitute a breach of contract, and a breach of the covenant of good faith and fair dealing or unjust enrichment, and violation of Florida's Deceptive and Unfair Trade Practices Act.
- C. Enjoining Defendant from the wrongful conduct as described herein;
- D. Awarding restitution of all fees at issue paid to Defendant by Plaintiff and the Classes as a result of the wrongs alleged herein in an amount to be determined at trial;
- E. Compelling disgorgement of the ill-gotten gains derived by Defendant from its misconduct;
- F. Awarding actual and/or compensatory damages in an amount according to proof;
- G. Punitive and exemplary damages;
- H. Awarding pre-judgment interest at the maximum rate permitted by applicable law;
- I. Reimbursing all costs, expenses, and disbursements accrued by Plaintiff in connection with this action, including reasonable attorneys' fees, costs, and expenses, pursuant to applicable law and any other basis; and
- J. Awarding such other relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff and all others similarly situated hereby demand trial by jury on all issues in this Class Action Complaint that are so triable.

Dated: May 2, 2022

Respectfully Submitted,

**SHAMIS & GENTILE, P.A.**

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*Counsel for Plaintiff and Proposed Class*

# **EXHIBIT 1**

# Account Disclosures



## Rules Governing Deposit Accounts

Effective February 9, 2022

Welcome to Capital One, N.A. (hereafter referred to as “Capital One Bank,” “Capital One,” “we,” “us,” or “our”). These Rules Governing Deposit Accounts (herein after referred to as “Rules”), as well as other agreements that are provided to you separately, as may be amended from time to time, constitute the deposit contract which governs all deposit accounts with Capital One Bank. By opening or continuing to maintain a deposit account with us, each customer (referred to as “you” or “your”) agrees to be bound by the applicable provisions of these Rules, and all applicable agreements, disclosures, and other documents, as well as by all applicable federal or state laws, statutes and regulations. Please keep a copy of the Rules.

We may decline to open an account for any reason, or for no reason. We are not liable for any damages or liabilities resulting from refusal of an account relationship.

**Important Information about Procedures for Opening a New Account.** To help the United States Government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information identifying each person who opens an account.

When you open an account, we will ask for your name, street address (a post office box may not be used), date of birth, and other information that will allow us to identify you. We will also ask to see your driver’s license or other identifying documents.

**Taxpayer Identification Number.** Federal law requires that you provide us with your Social Security Number or your Employer Identification Number before opening any account. If you are in the process of applying for such a number, we may open your account temporarily pending receipt of the number. If you fail to provide us with the number, we may close the account at any time without prior notice to you.

**Your New Account.** Additional terms and conditions, applicable service charges, minimum deposit requirement, and where applicable, information concerning the calculation, compounding and crediting of interest are contained in the disclosure statement and agreement for the type of account you have opened (your “Account Disclosure”).

Your account is considered a new account if it has been open for thirty (30) calendar days or less. If you already have existing accounts with Capital One Bank that have been open for a period of at least thirty (30) calendar days, accounts subsequently opened will not be considered new accounts.

**Additional Deposits.** Unless otherwise provided by the terms and conditions contained in your Account Disclosure, there is no limit on the number of deposits that may be made to an account, however, we reserve the right, at our sole discretion, to refuse further deposits to your account.

**Crediting of Deposits.** Funds deposited in a branch before 2 p.m. local time, or such later time posted in the branch, (9 p.m. ET for funds deposited at an ATM) on any business day will be credited to the applicable account that business day. Funds deposited after the above stated times will be credited on that business day or the next business day. Please refer to the section of this disclosure entitled Deposit Availability Disclosure to determine when funds are available for withdrawal or for paying transactions on your account.

**Accepting Items for Deposit.** We will accept items for deposit, but act only as your agent for collection and assume no responsibility for these items, beyond the exercise of ordinary care.

Even though we credit your account for the amount of any item, this credit is temporary until we receive final payment in cash or other manner acceptable to us. Any temporary credit may be reversed by us. We reserve the right to require waiting periods, as described in the Deposit Availability Disclosure provided herein, before we will allow withdrawal

against temporary credits. If an item you deposit (or a check cashed against your account) is returned to us unpaid, or if we receive a claim from another bank that the item was not properly payable (for example, a claim that the item was altered), we may debit the entire amount of the item (plus any applicable fees) from any account you hold with us, even if doing so creates an overdraft. If a temporary credit is reversed or an item is charged back to your account, a fee may be deducted from the account, together with any interest earned on the amount of the item. Your account may also be debited for any special fees incurred in processing items for collection.

If checks deposited into multiple accounts are returned unpaid, we'll debit your account with the largest amount deposited. For equal deposit amounts, we'll debit the account that first received a deposit. If one of the deposits was to a Total Control Checking, Confidence Savings, or a 360 account, we'll always debit that account for the full amount. Please ask a banker if you have questions.

Foreign checks are handled as collection items only and are converted at our current daily rate and credited in U.S. dollars. Foreign checks sent for collection are exchanged at the exchange rate on the day of payment. All returned foreign checks will be charged back to your account at the rate used when initially credited and may be subject to a return fee and foreign bank charge (if applicable). Any payment(s) made to you from such items shall be provisionally credited to your account until we receive final payment from the foreign bank. Please note that while the foreign check collection process typically takes anywhere from four to six weeks, we have no control over the process once a check is sent for foreign collection. Accordingly, the process may take longer, depending on the foreign bank. You hereby waive notice of dishonor, nonpayment, or protest with respect to any items credited to or charged against your account.

**Receipts for Deposits.** We will give you a receipt for the total amount shown on your deposit ticket, but the amount must be verified before it is credited to your account. If an error is discovered in the amount of your deposit, we will adjust your account and notify you of the correction.

**Deposit Errors.** If we mistakenly credit your account for funds to which you are not the rightful owner, we may deduct those funds from your account, even if this causes your account to be overdrawn. We may do so at any time and without prior notice to you.

**Envelope Depository.** We may accept payments and/or deposits through the use of an "envelope depository" (a "drop" receptacle into which envelopes may be placed during business and nonbusiness hours). You authorize us to remove your payment and/or deposit from the envelope, count the funds and credit your account.

The envelope depository is provided as a convenience to our clients, and we are not responsible for any loss suffered by you resulting from your use of said envelope depository unless caused by our gross negligence or willful misconduct. If an error is discovered in the amount of your deposit, we will adjust your account and notify you of the correction.

**Withdrawals.** Withdrawals from your account may be made at the teller window only by authorized signer(s) on the account. We will not pay withdrawals to third parties. If you provide your ATM card or ATM/Debit card and personal access code to a third party, you have authorized the third party to withdraw funds from your account at a teller window, ATM machine or point of sale terminal.

**Account Transaction Limitations.** Commercial-purpose savings accounts (including savings accounts with check writing privileges and money market accounts) may be limited in the number of transfers or withdrawals allowed per monthly service charge cycle to a third party or to another account of the depositor at Capital One Bank by means of preauthorized, automatic, telephone or online transfers.

If you exceed the number of transactions permitted in a monthly service charge cycle as disclosed to you in the applicable product disclosure more than once during any twelve-month period, you may be charged a fee for each transaction in excess of the number permitted (an "Excessive Transaction Fee"). Please see the current Schedule of Fees and Charges applicable to your account for the amount of the Excessive Transaction Fee. If you exceed six (6) transfers or withdrawals from your account three (3) times in any twelve-month period you agree that we may, at our discretion, convert your savings or money market account to an account that is not subject to transaction limits (a "transaction account").

Consumer savings accounts are not currently subject to a transfer limit. You will be notified if we choose to re-impose a limit.

Unless your Account Disclosures provide otherwise, you may make any number of withdrawals from your account in

person or at any ATM; provided that you do not exceed daily ATM cash withdrawal limits. Please refer to our Electronic Fund Transfers Agreement and Disclosure ("EFT Disclosure") available on our Website or at any of our banking offices for the daily cash withdrawal and point of sale limits applicable to your ATM card or ATM/Debit card.

**Notice of Withdrawal.** We may allow withdrawals at any time, but reserve the right to require twenty-one (21) days written notice of intention to withdraw funds from any savings, money market and negotiable order of withdrawal (NOW) account.

**Large Cash Transactions.** We reserve the right to place a limit on the amount of cash that may be deposited or withdrawn in a business day. We may require advance notice of a large cash withdrawal, and we may require that the cash be obtained by an armored carrier (at your expense). We may also refuse to accept a cash deposit for a very large amount.

**Same-Day Transactions.** We are not responsible for paying items against deposits made the same day the items are presented for payment.

**Statements.** We will provide you with monthly or periodic statements for certain accounts. The postal (or electronic) address you provide to us will be deemed to be correct for purposes of delivering account statements and other notices to you, until we receive a change of address notification from you. If your statement is returned to us as a result of your failure to notify us of your change in address, we may stop sending account statements to you until a valid address is provided to us, but for all purposes it shall be considered as if we delivered your account statement to you as of the date that was or would have been printed on your account statement. If you enroll in Online Banking, your periodic statements will be accessible online from the date of enrollment. You must inspect your statement and any cancelled checks promptly after they are made available to you. You have a responsibility to review your account statement in a timely manner and to notify us promptly of any errors. Within sixty (60) days after your statement is postmarked or made available to you, or account transaction history is made available to you through Online Banking, you must notify us in writing of any errors, discrepancies or irregularities, including but not limited to, unauthorized signature, alterations, improper charges, unauthorized transfers or withdrawal of funds, nonreceipt of an expected statement, or that any deposit was not properly credited to your account. We will not be responsible for any loss suffered by you if you do not notify us in writing within these stated time periods. If we pay an item bearing an unauthorized signature, forged maker's signature or forged endorsement or alteration, our liability, if any, shall be limited to the face amount of the item.

**Claim of Loss.** If you claim a credit or refund because of a forgery, alteration, or any other unauthorized withdrawal, you agree to cooperate with us in the investigation of the loss. Your cooperation **may** include, but not be limited to, providing us with an affidavit containing whatever reasonable information we require concerning your account, the transaction and the circumstances surrounding the loss. You further agree to notify law enforcement authorities of any criminal act related to the claim. We will have a reasonable period of time to investigate the facts and circumstances surrounding any claim of loss. Unless we have acted in bad faith, we will not be liable for special or consequential damages, including loss of profits or opportunity, or for attorneys' fees incurred by you. You agree that you will not waive any rights you have to recover your loss against anyone who is obligated to repay, insure or otherwise reimburse you for your loss. You will pursue your rights or, at our option, assign them to us so that we may pursue them. Our liability will be reduced by the amount you recover or are entitled to recover from these other sources.

If you make a claim, or if we suspect that your account may be compromised, we may recommend that you close the account. For non-consumer accounts only, if you decline to close the account, you agree that we will not be liable to you for subsequent losses or damages on the account due to unauthorized activity.

**Transactions using Our IVR System.** Telephone transactions using the IVR System may require a combination of: 1) the entry of your social security number 2) the entry of the last four digits of your account number 3) the entry of your debit card number 4) the entry of your debit card pin or 5) automated phone number verification/matching to transfer funds between checking, savings and money market accounts bearing your name and linked to your social security number. All accounts must be maintained with us. You are solely responsible for the security of your debit card pin, which should be held under the strictest confidence and not revealed to other persons. If you know or suspect that another person knows your debit card pin, you should notify us immediately so that your debit card pin may be changed. You will be liable for unauthorized transactions to your accounts using your debit card pin to the extent allowed by applicable state or federal law. You hereby agree that the security procedure described in this section is commercially reasonable and authorize us to process transfers between your accounts via our automated telephone

service. Please consult our EFT Disclosure for the rules and regulations regarding telephone transfers and the limits of our liability.

**Processing Order of Credits and Debits.** We process credits and debits to your account in a specific order. We refer to this as the processing order and it is how we decide what posts first and last each day. The processing order also determines the order that you will see the items on your statement.

Our processing order might not be the same as the order you make transactions and could result in overdraft transactions. You can avoid overdrafts on your account by always making sure you have enough available funds in your account to cover your transactions. Please read the Deposit Availability Disclosure section of these Rules for more information on when we make funds available to you.

Credits, like a check or cash deposit, increase your account balance. Debits, like ATM withdrawals and debit card transactions, decrease your balance. We will process credits and debits as follows:

- All credits to your account that are received by the close of our business day will be processed to your account first. Any credits that we initiate to your account, like interest payments, will be processed last. Credits received after our business day cutoff time will be processed the next business day. We will post credits from the highest to lowest dollar amount, regardless of the order in which we receive or process them.
- After we have processed any credits to your account, we will process debits. First, we group any similar types of debits (like all checks) together into separate categories. Then, we process those debits within each category in a specific order such as by dollar amount. For some debits, we will know the time you made the transaction. This allows us to post the debit closer to the time you actually made the debit transaction instead of by dollar amount.

To help you better understand our debit processing, we have created the following table that includes both the category of debits to be processed and our processing order for each:

Processing Order	Debit Category	Examples	How Processed
1	Debits deferred from a prior day for manual review due to insufficient or unavailable funds and related fees	<ul style="list-style-type: none"> <li>• Manually approved checks and ACH transactions</li> <li>• Overdraft and nonsufficient funds (bounced check) fees from the prior business day</li> </ul>	Lowest dollar amount to highest.
2	Cash or cash-like withdrawals	<ul style="list-style-type: none"> <li>• Teller and ATM withdrawals</li> <li>• Wire Transfers</li> <li>• Capital One loan payments</li> </ul>	Date and time, if available. Everything else from lowest dollar amount to highest.
3	Customer initiated service charges and fees (except overdraft transfer protection fees)	<ul style="list-style-type: none"> <li>• Stop payment request</li> <li>• Check re-order fees</li> <li>• Wire transfer fees</li> </ul>	Date and time, if available. Everything else from lowest dollar amount to highest.
4	Debit card transactions and fees	<ul style="list-style-type: none"> <li>• One-time and recurring debit card transactions</li> </ul>	Date and time, if available. Everything else from lowest dollar amount to highest.

5	Automated Clearinghouse (ACH) transactions	<ul style="list-style-type: none"> <li>• Automatic payments you authorize, like mortgage payments or monthly utility bills</li> </ul>	Date and time, if available. Everything else from highest dollar amount to lowest.
6	Checks and other payment items	<ul style="list-style-type: none"> <li>• Check payments</li> <li>• Capital One Bank Online Bill Pay transactions</li> </ul>	Highest dollar amount to lowest.
7	Bank initiated transaction fees	<ul style="list-style-type: none"> <li>• Returned items chargeback fee</li> </ul>	Highest dollar amount to lowest.
8	Certain Capital One Bank account-to-account funding transfers and related fees	<ul style="list-style-type: none"> <li>• Overdraft protection account transfers</li> <li>• Sweep account transfers</li> </ul>	Highest dollar amount to lowest.
9	Credits and debits that we initiate	<ul style="list-style-type: none"> <li>• Account interest payments (credits)</li> <li>• Monthly account fees (debits)</li> </ul>	Credits first, then debits.

**Uncollected/Held Funds.** We reserve the right to return and/or refuse to pay any check, in-person withdrawal, ATM withdrawal or other electronic item or instruction which is presented for payment against uncollected/held funds. If you have a commercial account, a fee may be deducted from the account for any item drawing against uncollected funds, whether the item is paid or returned unpaid, in accordance with our current Schedule of Fees and Charges.

**Returning Items for Insufficient Funds.** You do not have the right to write a check or draft, to make an ATM or other withdrawal, or to initiate or have an automatic debit processed against your account for an amount that exceeds your available balance (If you're enrolled in an overdraft protection, we'll transfer available amounts to cover the transaction in accordance with the agreement governing your overdraft protection plan). At any time before final payment (as defined in the Uniform Commercial Code) we may return any check, draft, image, negotiable order of withdrawal, electronic debit or other item presented for payment against your account when there are insufficient available funds in your account to pay the item or if for some other reason the item is not good or payable. In addition, we may charge a fee for each item returned in accordance with our current Schedule of Fees and Charges.

**Overdrafts.** This section applies to consumer accounts. Business-purpose accounts may have different policies.

*What is an overdraft?*

An overdraft occurs when you do not have enough money in your account to cover a debit transaction, but we pay it anyway. Debit transactions include your checks, Automated Clearinghouse (ACH) transactions, bill payments, regularly scheduled repeating payments (like your mortgage or car payment) and other withdrawals you make.

*What overdraft services do we offer?*

For all checking accounts, we will consider paying your checks, ACH (such as your mortgage payment), bill payments, withdrawals and recurring debit card transactions (like your monthly gym payment) into overdraft rather than returning the item unpaid.

We also offer an additional overdraft service that you can opt into. If you opt into this service we will also consider

paying your everyday one-time debit card and ATM transactions.

You can also ask us to generally decline all transactions that would take your account into overdraft.

Regardless of the overdraft service you have, sometimes we are required to pay a transaction that may create an overdraft in your account. Here are two examples of when this could happen:

- For example, some merchants, like restaurants, hotels or gas stations—won't know the exact amount of your purchase when they request the authorization. That transaction could come in for more money and we would need to pay it even if you don't have enough money in your account.
- Or sometimes we authorize a debit card purchase when you have funds in your account, but if the merchant does not submit it for payment right away, another transaction could come in first (while the original debit card purchase transaction is still pending). Then when that debit card transaction comes in for payment there are no longer enough funds in your account to cover it and the payment makes your balance negative.

In either case, you still won't be charged a fee.

You can avoid overdrafts on your account by always making sure that you have sufficient funds in your account to cover all the transactions presented for payment.

#### *How do we handle overdraft items?*

You have no right to overdraw your account at any time, for any reason, and our decision to pay overdraft transactions is solely within our discretion. We may refuse to pay an overdraft transaction at any time, even though we may have previously paid overdrafts. If we choose to pay a transaction into overdraft, you must make a deposit into your account to cover the overdrawn amount. We will send you a notice to let you know that your account is overdrawn. You will receive the notice via mail if you have not agreed to receive electronic communications or if you have not provided us with a valid email address.

When deciding to pay transactions that cause an overdraft, we consider a variety of factors, including the amount of the transaction and/or your history with us, including whether you've previously had too many overdrafts on your account(s).

#### *What else do you need to know?*

Maintaining a negative balance in your account for 56 consecutive calendar days will result in account closure and this could affect your ability to open new accounts with us or other banks in the future. Also, we may report the account closure to a consumer reporting agency.

**Stop Payment Orders.** You or any one of the signers on your account may request us to stop payment on a check written on your account by providing us with the account number and the check number or check range. You understand that unless we have complete and accurate information from you, we may be unable to identify the check for which a stop payment has been requested which will result in the check being paid. We also require a reasonable amount of time to act on the request. If two or more signatures are required to transact business, we may accept any ONE authorized signature for a stop payment order.

Under certain circumstances, current transaction information may not be available, and the item upon which a stop payment has been requested may already have been paid. If the item upon which you have stopped payment has already been paid, we will refund the stop payment fee at your request. Written stop payment orders expire after six (6) months. All stop payment orders entered by you through Teleservice24<sup>SM</sup> expire six months from the date entered unless otherwise renewed by you in writing before they expire.

Unless stop payment orders are renewed in writing, Capital One Bank assumes no responsibility if the item is paid after the expiration of the stop payment order. You will be charged a fee for initial and renewed stop payment orders.

You may not stop payment on a check that is used to purchase a Cashier's Check, on the purchased Cashier's Check (except as otherwise provided by applicable law), or on any item that has already cleared or has been paid.

**Automated Processing.** In accordance with general banking standards, we have adopted automated collection and

payment systems which rely on information encoded onto each check in magnetic ink. You agree that we may disregard all information on any check drawn on your account (front and back) other than your signature, the amount of the check and the information encoded in magnetic ink. You further agree that we shall not be deemed to have failed to exercise ordinary care in paying an item solely because our procedures do not require us to perform a sight examination of items with a face amount below a threshold level established by us from time to time.

**Postdated Checks.** If you write a post-dated check, we may pay it and charge it against your account, even if it is presented prior to the date of the check.

**Stale Checks.** We are not obligated to pay a check presented for payment more than six months after its date (a "Stale Check"). Notwithstanding the foregoing, you agree to hold us harmless if we pay a Stale Check. If you do not want us to pay a Stale Check, you must place a stop-payment order on the check.

**Restrictive Legends.** We are not required to honor any restrictive legend placed on checks you write. Examples of restrictive legends placed on checks are "must be presented within 90 days" or "not valid for more than \$1000.00". We are not responsible for any losses, claims, damages, or expenses that result from your placement of these or other special instructions on your checks.

**Drafts Which Do Not Bear Your Signature.** If we receive a draft drawn against your account which does not contain your signature as reflected on the signature card for your account we may, at our discretion, return the draft unpaid. If you wish to ensure that a draft drawn against your account but not bearing your signature will be paid, you must communicate to us in advance that you want the draft to be paid.

**Facsimile Signature/System-Generated Signatures.** If you authorize us to honor any facsimile or system-generated signature, you have the sole responsibility for maintaining the security of each signature affixing device or system. No facsimile or system-generated signature shall be deemed to be an unauthorized signature notwithstanding the lack of authority of the person(s) affixing such signature, and you shall be solely responsible for any and all losses incurred in connection with the use of the facsimile or system-generated signature.

**Checks Presented Over The Counter For Payment By a Non-Customer.** To the extent permitted by applicable law, you agree that if a check drawn against your account is presented over-the-counter for payment by a person who is not a deposit customer of Capital One Bank we may, in our sole discretion, refuse payment of the check or charge a fee for payment of the check.

**Power of Attorney.** Power of attorney is a legal arrangement in which a person (the principal), authorizes another person (the agent/ attorney(s)-in-fact) to act on his or her behalf with respect to certain matters. Such matters may include banking, retirement benefits, real estate, insurance, and other transactions. If you want someone other than an authorized signer on your account to transact business on your account, you must provide us with a form reasonably acceptable to us which identifies the person to whom you grant your power of attorney and each account for which you wish the agent to exercise the power of attorney.

We have no duty or agreement whatsoever to monitor or insure that the acts of the agent are for your benefit. We may continue to honor the transactions of the agent until: (a) we have received written notice or have actual knowledge of the termination of the authority or the death of the principal, and (b) we have had a reasonable opportunity to act on that notice or knowledge. You agree not to hold us responsible for any loss or damage you may incur as a result of our following instructions given by an agent acting under a valid power of attorney.

**Death or Incompetence.** If any person with a right to withdraw funds from your account(s) dies or becomes legally incompetent, we must be promptly notified. We may continue to honor your checks, items and instructions until (a) we know of your death or legal incompetence, and (b) we have had a reasonable opportunity to act on that knowledge. You agree that we may pay checks drawn on or before the date of death or legal incompetence unless ordered to stop payment by someone claiming interest in the account. We may restrict access to your account upon notice of your death or legal incompetence until the appropriate documentation is provided to us by your executor, administrator or other legal representative of your estate or person.

**Grant of Security Interest and Right to Set-Off.** To secure payment of any monies that you may owe us or any of our affiliates, for any reason, you grant us a continuing security interest in all funds that you may now and in the future maintain on deposit with us, with the exception of funds held in a trust or fiduciary account, or in an Individual Retirement Account, or in other qualified tax-deferred accounts. You agree that we may apply (set-off) funds that you

maintain on deposit with Capital One Bank, or any of its affiliates, against any amount that you may then owe us, or any of our affiliates, under a loan, or Overdraft, or guaranty, or for any other reason at any time and without prior notice to you. This right of set off does not apply if the debt is created under a consumer credit card plan. We may set-off your account at any time whether or not you are then in default in making payment to us, and we may exercise our right of set-off without liability to you even if it results in an interest penalty or dishonor of subsequent checks and other items with respect to your account. You further agree that the foregoing right extends to any federal or state benefit payments (including Social Security benefits) electronically deposited into your account. You understand and agree that if you do not want your benefits to be subject to our right of set-off, you may change your direct deposit instructions by providing notice to the benefits payor at any time. You also agree that any federal benefits or other payments deposited to your account after you are no longer eligible to receive benefits must be returned to the federal government or other payor, and we may set-off against any of your accounts if we are obligated to return funds to the payor. Our right to set-off your account is in addition to any other rights and remedies that we may have under law or under any other contractual agreement.

**Collection Expenses.** You agree to pay and reimburse us for our reasonable costs and expenses in attempting to collect amounts that you owe us arising out of transactions on your account. This includes payment and reimbursement of fees we incur for collecting such amounts, including, without limitation, attorneys' fees (including our in-house attorneys) and court costs.

**Adverse Claims.** If we receive conflicting instructions with respect to your account, or notice of an adverse claim of ownership, right to control, or access to funds in your account, or notice that the funds in your account may have been obtained through fraudulent or criminal acts, you agree that if any such dispute exists, we may place a hold on the funds in your account and refuse to honor all withdrawal and transfer requests, including checks written on the account, until all appropriate parties provide us with joint specific written instructions with respect to disposition of the funds. We are not required to determine whether a dispute has merit. Additionally, we shall have the right to close the account and deposit the funds held in the account into the registry of a court of proper jurisdiction, wherein the adverse claimants and/or appropriate parties shall be interpleaded and/or joined to the action for purposes of resolving the dispute regarding the funds. If we elect to take any action(s) described herein, you agree that we shall not be liable to you for damages of any kind, and you agree to pay and reimburse us for our reasonable costs and expenses including, without limitation, attorneys' fees (including our in-house attorneys) and court costs from the funds in the account prior to any distribution. If an adverse claim is made among joint depositors, the rights of the parties shall be determined in accordance with the section herein entitled Special Rules for Multiple Party Deposit Accounts.

**Legal Process Against Account.** If your account is attached, garnished, or otherwise subject to levy or seizure, in whole or in part, by legal action, we shall not be liable to you for any sums we may be required to pay because of such attachment, garnishment, levy or seizure, even if paying the money from your account leaves insufficient funds to pay a check you have written. We can restrain your account regardless of the location of the account and the location of service. For example, if a New York levy is properly served on us in New York, we may honor the New York levy even if your account was opened in Virginia. You hereby authorize us to comply with legal process, and we are not required to determine whether the court issuing the legal process had jurisdiction over you or over the account or otherwise had the authority to issue the legal process. If we incur any expenses, including without limitation, reasonable attorney fees, in responding to an attachment, garnishment, levy, or seizure that are not otherwise reimbursed, we may charge such expenses to your account without prior notice to you. Any such attachment, garnishment, levy or seizure is subject to our right of offset. If we are served with a notice of proceeding relating to a safe deposit box, and you are not a named defendant in the proceeding, we may deny you access to the box unless otherwise directed by an appropriate court or the judgment creditor.

**Unclaimed Property.** The law establishes procedures under which unclaimed property must be surrendered to the applicable State. The applicable State is usually the State listed in the address on your account statement. Generally, the funds in your account are considered unclaimed if you have not had any activity or communication with us regarding your account over a period of years. If your funds are surrendered to the State, you may be able to reclaim them, but your claim must be presented to the State. Once your funds are surrendered, we no longer have any liability or responsibility with respect to the funds.

**Closing an Account.** We may close any account in our sole discretion at any time, for any or no reason and without notice to you. For example, we may close your account with no notice of action if the account has a zero balance. If we close your account with a balance, we will notify you of our action and either transfer the funds to another internal account owned by you or an external account through an approved link or send you a check for the collected balance in

your account, less any amounts due to us for pending transactions. Capital One Bank is not liable for any damages or liabilities resulting from the termination of an account relationship. Subject to any rights we may have with respect to advance notice of withdrawal from your account, you may close your account at any time and for any reason. If we receive a debit or credit to your closed account, the account may be reopened to accept the debit or credit for you, even if doing so overdraws your account, and funds deposited therein will be subject to any and all rights we may have with respect to offset. If your account is overdrawn when we close it, you agree to promptly pay all amounts owed to us.

**Minor Accounts.** We may pay funds on deposit in an account in the name of a minor to the minor. Once the minor attains the age of majority he or she will be considered to be the owner of the account, capable of making any and all transactions on the account.

**Business Accounts.** If the account owner is not a natural person, such as a corporation, unincorporated association, limited liability company, partnership or any other entity holding an account in any capacity other than an individual capacity, and as may be required by Capital One Bank for the specific deposit account, each person who signs the signature card hereby certifies that they are fully authorized to execute all documents in their stated capacity. Additionally, and where applicable as set forth above, the individual who signs the signature card as Secretary hereby certifies that (1) she/he is the duly qualified Secretary or other authorized officer of the business entity identified on the signature card as the account holder; (2) such business entity is organized and existing under state or federal law; (3) all actions by shareholders, directors and all others necessary to execute this signature card and establish an account with Capital One Bank have been taken; and, (4) until further actual notice to Capital One Bank, each signer is authorized to transact on the account until Capital One Bank receives actual written notice in a form acceptable to us, executed by the number of Signers required to execute withdrawals on the account, and/or executed by others as required by us, that such Signer is no longer so authorized. To the extent a signature card is required for the specific deposit account, in the event any one or more of the signatures affixed to the front of this signature card, or otherwise provided to Capital One Bank as an authorized signature for the operation of this account, are facsimiles or made or reproduced by any mechanical means, Capital One Bank is authorized to rely upon and treat the same, in good faith, as a true and valid signature, and the account holder hereby holds Capital One Bank harmless and indemnifies it from and against any loss, damage or liability it may suffer or incur as a result of its said reliance.

**Multiple-Signer Business Accounts.** We are not required to comply with any multiple-signature requirement, even if your signature card specifies that multiple signatures are required or you have otherwise instructed us to do so. A multiple-signature requirement is for your internal control purposes.

**Online Account Consolidation Disclosure.** If you have more than one eligible Capital One account, we will link your eligible accounts so they appear when you are logged into your account through the website or mobile app. We will display only summary information about your connected accounts. To get any other information or conduct any activity on these account types, you must access the specific account servicing area for that account. All connected bank accounts will be visible when you log into your account through the website or mobile app. Keep in mind that certain features, information, types of transactions, or other services may not be available for all of your connected accounts. As long as you maintain your unique log in credentials, you will have access to view all of your individual accounts and shared accounts. People with whom you share accounts will only be able to view accounts that are shared with you, not your individual accounts.

**Payment Processing Restrictions on Internet Gambling Fund Transfers.** The Federal Reserve recently enacted regulations that require U.S. financial firms that participate in designated payment systems to establish and implement policies and procedures reasonably designed to prevent payments connected to unlawful Internet gambling. In light of the regulations, please be informed that restricted transactions (as defined in Federal Reserve Regulation GG / 12 CFR Part 233) are prohibited from being processed directly or indirectly through any account or relationship maintained with us. Restricted transactions generally include, but are not limited to, those in which credit, electronic fund transfers, checks or drafts are knowingly accepted by gambling businesses in connection with unlawful Internet gambling.

### **Specific Terms Applicable to the Following Account Ownerships.**

**Joint Account** – If two or more individuals are designated as owners of the accounts (without a fiduciary, beneficiary or other designation), then the account is a joint account and, unless your signature card states otherwise, all owners are considered to be joint tenants with right of survivorship. If there is more than one joint owner, the rights of survivorship will continue between the surviving joint owners. One joint owner is not authorized to remove another joint owner from the title of the joint account, but may withdraw all of the funds in the account or close the account.

**Trust** — An account established pursuant to a written trust agreement. Any funds placed in or added to this type of account are conclusively presumed to be a delivery at that time to the trust estate. Only the trustee is authorized to perform transactions on the trust account. If the original trustee dies or is replaced as trustee, we reserve the right to require documentation reasonably acceptable to us to which identifies the successor trustee. We have no duty whatsoever for enforcing the terms of the trust agreement and can rely on the statements and representations made to us by the trustee. The owners and beneficiaries of the trust agree that we shall not be held liable if the trustee breaches their fiduciary duty or fails to comply with the terms of the trust agreement.

**Uniform Transfers to Minors** — This type of account is established pursuant to the Uniform Transfers/Gifts to Minors Act in effect in the state where the account is opened and maintained, as may be amended from time to time. Only the Custodian is authorized to act on the account. As the Custodian you agree to comply with all applicable laws. When the minor reaches the age of majority, in accordance with applicable state law, the Custodian shall transfer any funds in the account to the minor. In the event we receive actual notice of the death, resignation or legal incapacity of the Custodian, we are directed to deliver this account to the Successor Custodian (as provided by law) who shall, in such event, have all of the rights and duties of the Custodian.

**“Payable on Death” (POD)** – You may designate an individual or joint account to be payable upon your death to a designated beneficiary or beneficiaries. POD accounts are also known as “In Trust For” (ITF), “As Trustee For” (ATF), “Transfer on Death” (TOD) or “Totten Trust” account and are governed by applicable state laws and regulations. You are solely responsible for meeting the requirements for establishing your account as a POD, including any titling requirements.

During your life, the funds in the account belong to you and, until your death, or if there are co-owners, upon the death of the last co-owner, the beneficiary(ies) have no interest in the account and cannot perform transactions on the account. You may withdraw all or part of the account balance, close the account, remove or add POD beneficiaries or change the account type or ownership. Upon the death of all owners, we will distribute the then remaining funds to such of the beneficiaries as shall be then-living, in equal shares, subject to our right to charge the account for any amount a deceased owner, co-owner or POD beneficiary owes us; if any beneficiary is under the age of 18 years at the time he would be entitled to receive property under the terms of the previous provision, we will pay such person’s share to any person who is the statutory or court-appointed custodian for the benefit of such person.

### **Special Rules for Multiple Party Deposit Accounts.**

If your account was opened or assigned to a branch in New Jersey, the provisions of the Multiple Party Account Act, N.J.S.A. 17:16i-1 et seq. apply.

1. We may treat each co-owner of a joint account as having full and complete authority to make deposits into such account, to request information with respect to such account and to place a hold on such account. Each co-owner owns his/her net contribution to such account. In the absence of proof of net contribution, and unless all of the co-owners have specifically otherwise agreed, each co-owner will own an equal share of such account. We are not required to determine net contributions.
2. Deposits: Each co-owner authorizes the other co-owners to endorse for deposit into the account any item payable to any or all of the co-owners, and you expressly authorize us to supply the endorsement of any co-owner necessary for such deposit.
3. Withdrawals:
  - A. You authorize us to recognize the signature, oral or electronic instruction of any co-owner for withdrawals, payments or funds transfer. We are not required to enforce multiple signature requirements that you may have agreed upon among yourselves.
  - B. We may continue to honor checks and withdrawal requests by any co-owner without liability to any other co-owner unless we receive written notice signed by one of you not to honor checks or withdrawals against the joint account. After we receive such a notice, we may require written authorization from all of you for any checks or withdrawals. If we receive a notice in writing as provided by this section 3(b), we shall be relieved of responsibility to each and every co-owner for failure or refusal to honor any check, draft or other demand for payment or withdrawal unless the action is authorized by all co-owners in writing.

4. Without notice to any party, we may withdraw or hold any or all of the money in the joint account and apply funds withdrawn to reduce any indebtedness of any party due and owing to Capital One Bank. A notice sent, mailed or delivered to any party constitutes notice to all.
5. We may make payment from the joint account, including payment of the entire account balance: (i) pursuant to any statutory or common law right of set-off, levy, attachment, or other valid legal process or court order, relating to the interest of any one or more of the co-owners or (ii) on request, to a trustee in bankruptcy, receiver in any state or federal insolvency proceeding or other duly authorized insolvency representative of any one or more of the co-owners.
6. **Overdrafts:** In the event that we pay a check drawn on a joint account and that payment causes an Overdraft, each party to that joint account will be jointly and severally liable to us for the amount of that Overdraft without regard to which party signed the check or for what purpose the proceeds of the check were used.
7. **Death of a Party:** You agree to notify us of the death of any joint owner and to reimburse us for any tax we must pay by reason of our payment or release of funds in the account to you. **Unless your signature card states otherwise, upon the death of any account owner, the funds in a multiple-owner account shall belong to the surviving owner(s).** We reserve the right to hold funds in the account until we receive documentation satisfactory to us, proving death and/or directing the disposition of such funds.
8. If you want to change the form of your account, you must notify us in writing, by certified or registered mail, return receipt requested, addressed to the branch where your account is maintained. If you wish to alter the form of an account, the altered form must be an account offered by Capital One Bank and written notice must be made by the proper completion of a document approved by Capital One Bank and delivery of that document to us. Written notice is not effective until received by us. You must also provide us with new completed signature cards within thirty (30) days from the date you forwarded written notice to us.
9. We will be protected from liability for all payments made from the multiple party deposit account, when made in accordance with applicable law.

**Limitations on Assignment and Transfer of Ownership.** You may not assign or transfer ownership of your deposit accounts with us without obtaining our prior written approval. In addition, you may not grant a security interest in funds held in your deposit accounts in favor of any other creditor without obtaining our prior written approval, which we have the right to withhold for any or no reason. If any ownership interest in an account is proposed to be transferred or if there is any change in account title, we may require that the account be closed and a new account be opened.

### **Deposit Availability Disclosure.**

#### General Deposit Availability:

Our general policy is to make funds from your deposits available to you on the first business day after the day we receive your deposits. Wire Transfers, and electronic deposits (such as ACH credit transfer direct deposits) will be available on the day we receive the deposit. Once funds are available, you may withdraw the funds in cash, and we will use the funds to pay checks that you have written. For the purpose of determining the availability of your deposits, every day is a business day except Saturdays, Sundays, and federal holidays. Banking office cutoff times may vary, but in no event shall a cutoff time be earlier than 2:00 p.m. local time. If you make a deposit in a branch before 2:00 p.m. local time, or such later time posted at the branch of deposit on a business day that we are open, we will consider that day to be the day of your deposit. If you make a deposit at one of our automated teller machines ("ATM") before 9:00 p.m. ET, we will consider the deposit to be made that day. However, if you make a deposit after these stated times, or on a day we are not open, we will consider the deposit to be made on the next business day that we are open. Deposits made through our night drop after 7:00 a.m. may be processed on the next business day.

Please remember that even after we have made deposited funds available to you, and you have withdrawn the funds, you are still responsible for checks you deposit that are returned to us unpaid and for any other problems involving your deposit. If you have any questions, contact a banking officer.

#### 1. **Government Checks and Cashier's Checks:**

Funds from the following deposits are available on the first business day after the day of your deposit: U.S.

Treasury Checks, USPS Money Orders, Federal Reserve Bank & Federal Home Loan Bank checks; and when deposited with a special deposit slip, State or Local government checks, Cashier's, Certified, Teller's and Travelers checks.

## 2. Longer Delays May Apply:

In some cases, we will not make all of the funds you deposit by check available to you on the first business day after the day of your deposit. Funds may not be available until the second business day after the day of your deposit. The first \$225 of your deposits, however, may be available on the first business day after the day of your deposit. If we are not going to make all of the funds from your deposit available on the first business day, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we will mail you the notice by the day after we receive your deposit.

If you will need the funds from a deposit right away, you should ask us when the funds will be available.

In addition, funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe the check you are depositing will not be paid.
- You deposit checks totaling more than \$5,525 on any day to any account(s) you maintain (alone or with others) at Capital One Bank.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account(s) repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. The funds will generally be available no later than the seventh business day after the day of your deposit.

## 3. Special Rules for New Accounts:

If you are a new customer, the following special rules will apply during the first thirty (30) days your account is open:

- Funds from wire transfers and electronic deposits (such as ACH credit transfer direct deposits) will be available on the day we receive the deposit.
- Funds from the following deposits are available on the first business day after the day of your deposit: U.S. Treasury Checks, USPS Money Orders, Federal Reserve Bank & Federal Home Loan Bank checks; and when deposited with a special deposit slip, State or Local government checks, Cashier's, Certified, Teller's and Travelers checks.
- Funds from all other check deposits will be available no later than the fifth business day after the day of your deposit.

## 4. Expedited Availability:

Based on your overall relationship with us, we may make a portion of your check deposits available to you on an expedited basis. We will periodically reevaluate the usage and handling of your account based on your customer history with Capital One Bank. This review could result in reducing the availability schedule currently applied to your check deposits. In the event of such a reduction, your funds will be made available to you as described in the preceding sections of this disclosure.

As described above, deposits made after the branch and/or ATM cut-off time will be considered next day deposits. In some instances, however, you may be able to access these deposits on the calendar day the deposit was made. In these instances, the funds will be accessible to you for withdrawal (at a branch or ATM), but will not be available to pay incoming ACH transactions or checks you have written.

## 5. Holds on Other Funds (Check Cashing):

If we cash a check for you that is drawn on another bank, we may withhold the availability of a corresponding amount of funds that are already in your account. (These funds will be available at the time that funds from the check we cashed would have been available if you had deposited the check.)

## 6. Holds on Other Funds (Other Accounts):

If we accept for deposit a check that is drawn on another bank, we may make funds from the deposit available for withdrawal immediately but delay your availability to withdraw a corresponding amount of funds that you have on deposit in another account with us. The funds in the other account would then not be available for withdrawal until the time periods that are described elsewhere in this disclosure. Please ask a Relationship Banker if you are unsure about when funds from a deposit will be available.

**Substitute Checks and Your Rights.** Federal rules for Check 21 allow banks to replace original checks with “substitute checks”. Below are the details and your rights:

### *What is a substitute check?*

To make check processing faster, federal law permits banks to replace original checks with “substitute checks.” These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a substitute check states: “This is a legal copy of your check. You can use it the same way you would use the original check.” You may use a substitute check as proof of payment just like the original check.

Some or all of the checks that you receive back from us may be substitute checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under other law with respect to those transactions.

### *What are my rights regarding substitute checks?*

In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (for example, bounced check fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your account is an interest-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other law. If you use this procedure, you may receive up to \$2,500 of your refund (plus interest if your account earns interest) within 10 business days after we received your claim and the remainder of your refund (plus interest if your account earns interest) not later than 45 calendar days after we received your claim.

We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

### *How do I make a claim for a refund?*

If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact your local branch or call us at 1-800-262-5689. You must contact us within 40 calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances.

Your claim must include:

- A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect);
- An estimate of the amount of your loss;
- An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss; and
- A copy of the substitute check and/or the following information to help us identify the substitute check: the account number, the check number, the name of the person to whom you wrote the check, the date paid, and the

amount of the check.

Substitute checks should only be generated by banks during the check collection process. If you deposit a substitute check that was not generated or previously handled by Capital One Bank, you agree to provide the substitute check warranties as required by Check 21, and represent that the substitute check:

- is properly generated and accurately, clearly and completely represents all the information on the front and back of the original check as of the time the original check was truncated
- bears a MICR encoded line that is suitable for automated processing in the same manner as the original check
- has not previously been paid by the drawee bank, and
- is not fraudulent

A breach of any Check 21 warranty may result in the substitute check being charged back against your account.

**Telephone Solicitation.** If you provide our routing number and your account number to a telephone solicitor pursuant to your acceptance of an offer of goods or services made by the solicitor, you agree that any and all subsequent transactions made to your account by the entity which the solicitor represents are considered authorized transactions. We shall not be liable for any transactions you later allege are unauthorized unless you have placed a stop payment order, and we have had a reasonable time to act upon your stop payment request.

**Communications.** You agree that we may communicate with you by mail, telephone, email, fax, prerecorded message, automated voice, text message or other means allowed by law regarding your Account. You agree that we may contact you at any telephone number (including a mobile telephone number that you provide us), and use an automated telephone dialing system or similar device to do so. You agree that we may monitor or record any conversation or other communication with you.

**Correspondents.** Capital One Bank may forward items to correspondent banks and will not be liable for the wrongful conduct of the correspondent bank. Each correspondent will be liable only for its own negligence. We will not be liable for the loss of items in transit.

**Address Changes for Deposit Accounts governed by this document<sup>1</sup>** You are responsible for notifying us of any change in your address. Your Privacy and Security is important to us so having the most current address on file is required. Unless we agree otherwise, changes of address must be made online, over the phone, or in a branch by at least one of the account holders. Informing us of your address on a check reorder form is not sufficient. We will attempt to communicate with you only by use of the most recent address you have provided to us. In the event mail we attempt to deliver to you is returned as a result of your failure to notify us of your change in address, we may charge a fee to your account in accordance with our Schedule of Fees and Charges.

We may change your postal address of record if we receive an address change notice from the U.S. Postal Service or if we receive information from a third party vendor in the business of providing correct addresses, that our records no longer correspond to your address.

<sup>1</sup> For example, if you have a line of credit with us or a 360 checking account, please follow the account agreement given to you.

**Cash Transaction Reporting.** The law requires all financial institutions to gather and report information on certain types of cash transactions. If the information required to complete the report is not provided, we are required to refuse to process the transaction.

**Obtaining Credit Reports.** We may request a consumer (credit) report in connection with your account(s). Upon your request, you will be informed whether or not a consumer (credit) report was requested, and if such report was requested, informed of the name and address of the consumer (credit) reporting agency that furnished the report. We may also request subsequent consumer (credit) reports for all legitimate purposes in connection with updating, renewing, reviewing, modifying, and/or taking collection action on your account(s).

**Reporting Information to Credit Bureaus and Check Verification Systems.** We may report information about your account to credit bureaus and/or check verification systems. Defaults on your account may be reflected in your credit report. This could affect your ability to open accounts in the future.

In the event we report your account to a check verification system, you acknowledge that even if you pay us all amounts owed, we are not required to remove an accurate report of account mishandling from any such check verification system.

**Business Day.** Any day, excluding Saturdays, Sundays and federal holidays.

**Reproduction of Bank Records.** If you request us to research and/or reproduce any of your records (statements, checks, deposits, withdrawals, etc.) we may charge a fee, and you agree to pay this fee. If the expected fee is large, you may be asked to pay the fee in advance. We reserve the right to provide any account holder with an imaged item in lieu of the original item.

**Governing Law/Waiver of Jury Trial.** Applicable federal law will decide any questions under these Rules, or if no federal law exists, applicable state law (the state where your account was established). Any action you commence against us, arising out of or concerning these Rules, shall be heard by a judge sitting without a jury. In any such action, Capital One Bank shall be entitled to its reasonable attorney's fees (including in-house attorney's fees) and court costs if it is the prevailing party.

**Notices.** We shall deem any and all notices to us effective upon receipt by us. Any notice that we give to you will be effective when mailed or electronically transmitted to you at the mailing/email address reflected in our records. Even though we may have provided you account opening disclosures in a language other than English, we may continue to provide you with notices/communications in English. Notice to any one owner of an account constitutes notice to all owners of that account.

**Severability.** If any provision of these Rules is deemed to be invalid or unenforceable, such invalidity or unenforceability will not affect the validity and enforceability of the remaining provisions of these Rules or of any agreements, disclosures or other documents incorporated by reference herein.

**Liability.** You agree that we shall be not be liable for acting upon your instructions or failing to act upon your instructions when we reasonably believe that doing so would expose us to civil or criminal liability or conflict with industry standard banking practices. You agree further, that except as otherwise provided by applicable law, IN NO EVENT SHALL WE BE LIABLE FOR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR FOR ATTORNEY'S FEES INCURRED BY YOU, REGARDLESS OF THE FORM OF THE ACTION, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**Waiver of Rights.** We reserve the right to waive any one or more of our rights hereunder in our sole discretion, however, any such waiver shall only apply to that specific instance. Any such waiver of rights can also be terminated at any time, in our sole discretion.

**Caption Headings.** The caption headings in these Rules are for convenience purposes only and are not to be construed as a summary of each provision of these Rules.

**Privacy Policy.** We understand how important privacy and confidentiality are to you. Please consult our Online Privacy Policy and our U.S. Consumer Policy Notice for information about our commitment to you and your privacy rights. A copy of our Online Privacy Policy and our U.S. Consumer Policy Notice is available on our Website. Information regarding mobile banking security can also be found on our Website ([capitalone.com/privacy](https://capitalone.com/privacy)).

**Electronic Funds Transfers.** Special provisions relating to electronic funds transfers are set forth in our EFT Disclosure which is available at any of our banking offices.

**Wire and ACH Transfers.** Special provisions relating to wire transfers are set forth in our Wire Transfer Agreement and Disclosure, provided to you at account opening and available at any of our banking offices. For Treasury Management clients, ACH and Wire transfer terms are set forth in the applicable Treasury Management agreements. This provision supplements those agreements. You agree that we are not required to provide you with a separate notice of incoming or outgoing wire/ACH transfers. We notify you by listing the wire/ACH transfer on your account statement. We can deduct our fees for handling wire/ACH transfers from the amount of the transfer. You can verify whether a wire/ACH transfer has been processed to your account by calling us at 1-800-655-2265.

For international wire transfers involving non-U.S. currencies, exchange rates can vary and we do not guarantee any rate. The exchange rates we use for your transactions will typically be the customary retail exchange rates in effect at

the time of the transaction. This rate is not necessarily the bank-to-bank negotiated exchange rate or other potentially more favorable rate. FDIC deposit insurance does not insure against any loss due to foreign currency fluctuations. Consult your attorney or investment advisor regarding the potential risks associated with foreign exchange transactions.

**Amendments and Fee Changes.** We reserve the right to change our fees, these Rules and any or all of the agreements, disclosures, and other documents incorporated by reference at any time. If we change these Rules, the then-current version of these Rules supersedes all prior versions and contains the terms governing your account. We will provide prior notice of changes to you as required by applicable law. You agree that continued use of your account(s) will constitute your agreement to any and all new fees, Rules, agreements, disclosures and other documents incorporated by reference. If you choose to close your account and do so prior to the effective date of any amendment, you will not be bound by such amendment.

**Copy Received.** You acknowledge receipt of a copy of these terms and conditions and agree to be bound by them.

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## ELECTRONIC FUND TRANSFER AGREEMENT AND DISCLOSURE FOR PERSONAL AND COMMERCIAL ACCOUNTS:

Effective February 9, 2022

Welcome to Capital One, N.A. (hereinafter referred to as "Capital One Bank," "us," "our," or "we"). In this Agreement, "you," "your," and "yours" mean the authorized person or persons who conduct electronic fund transfers, including but not limited to persons to whom a Capital One Bank ATM or Debit Card is issued. Capital One Bank provides various electronic banking services to you. These services include, but are not limited to:

- Automated Teller Machine ("ATM") transactions.
- Telephone transfers.
- Point-of-Sale ("POS") transactions, whether or not initiated through an electronic terminal.
- Pre-authorized transfers to or from an account ("ACH").
- Smartphone or other mobile device transfers.
- Online banking (see the Online Banking Terms and Conditions at [www.capitalone.com/corporate/terms/](http://www.capitalone.com/corporate/terms/)).

This Electronic Fund Transfer Agreement and Disclosure ("Agreement") contains disclosures required by Regulation E that apply to consumer accounts in addition to disclosures that apply to commercial accounts as they relate to electronic banking services, and it contains our terms and conditions with respect to these services. A consumer account is an account held by an individual and used primarily for personal, family, or household purposes.

- 1. Your Access Device and Your Personal Identification Number:** An access device is a card, personal identification number ("PIN"), or other code used to initiate an electronic fund transfer ("EFT") to or from your account. The Capital One Bank, ATM card, platinum Debit Card, or Business Debit Card (hereinafter referred to collectively as "ATM/Debit Card") that you have requested is an access device.

You have selected or have been provided with a special PIN, a code you must enter into the ATM or that you may be required to enter into the POS terminal whenever you use your ATM/Debit Card. For your own protection, please memorize the PIN, and do not keep any notation of the PIN on the ATM/Debit Card or in the same wallet or purse as the ATM/Debit Card, and do not disclose the PIN to anyone who is not authorized to use your ATM/Debit Card.

**Important Information Concerning International Use of Your ATM or Debit Card:** Capital One Bank employs fraud monitoring and protection capabilities to help protect you from ATM/Debit Card fraud. These protection systems are designed to block transactions that occur outside of our customers' ordinary transaction patterns and may block transactions originating in countries that are experiencing a high incidence of card fraud.

- 2. Accounts That May Be Accessed:** The accounts you link to your ATM/Debit Card are referred to in this Agreement as "designated accounts." You may access only the designated accounts. If you requested access to multiple accounts, you chose one checking account and one savings account as your primary checking and savings accounts. We may limit the number of accounts that can be linked to an ATM/Debit Card. If you wish to

access additional accounts or change your primary accounts, please contact your banking officer.

You may use your ATM/Debit Card and PIN to access the following types of designated accounts:

- A. Checking account.
- B. NOW account.
- C. Savings account.
- D. Money Market account\*

\* At certain ATMs, when accessing your Money Market accounts you may need to select the 'checking' option rather than the 'savings' option.

3. **Types of Transactions That Can Be Completed:** You may use your ATM/Debit Card at any Capital One Bank ATM. You may also use your ATM/Debit Card to complete transactions at non-Capital One Bank ATMs that are members of the EFT networks in which we participate.

Purchases may also be made using your ATM/Debit Card at merchant locations that are members of the POS networks in which we participate. You may also use your Debit Card or Business Debit Card to make purchases at locations that accept Debit MasterCard™ Cards. (Note: Your Debit Card or your Business Debit Card is not a MasterCard credit card, and this Agreement does not replace or affect any MasterCard account agreement that you may have with us or any other financial institution.)

Please note that some of the below services may not be available at all ATMs.

A. **Cash Withdrawals:** You can use your ATM/Debit Card and PIN at ATMs to obtain cash withdrawals from your designated accounts. At certain ATMs, cash withdrawals may only be made from your primary savings and primary checking account. Withdrawals made at ATMs owned and operated by other entities will be automatically deducted from your designated primary checking or savings account. Each time you use your ATM/Debit Card, we may place a hold on a corresponding amount of funds in your account until the transaction is posted against your account.

B. **Deposits:** You can use your ATM/Debit Card and PIN at Capital One Bank-branded ATMs to make deposits into your designated accounts. Deposits made at an ATM may not be available for immediate withdrawal. Please refer to the Deposit Availability Disclosure contained in our Rules Governing Deposit Accounts Agreement to determine when the deposit will be credited to your account and when funds will be available for withdrawal or for paying transactions on your account.

C. **Transfers Between Your Capital One Accounts:** You can use your ATM/Debit Card and PIN at a Capital One Bank-branded ATM to transfer available funds between your designated accounts. Transfers made at a non-Capital One Bank ATM can only be made between your designated primary checking and primary savings accounts.

You may also transfer funds between your Capital One Bank accounts via the telephone, online banking, or by establishing an automatic transfer schedule.

D. **Purchases:** You can use your ATM/Debit Card and PIN to make purchases at merchant locations that are members of POS networks in which we participate.

You may also use your ATM/Debit Card without your PIN to make purchases at merchant locations accepting Debit MasterCard Cards. The merchant may request a preauthorization for the transaction. If we authorize the transaction, the funds will be debited from your primary checking account immediately, or a hold may be placed on your account for up to several days after the purchase transaction has occurred, depending upon the promptness with which the merchant processes your transaction.

Some purchases may result in a longer hold. Sometimes the preauthorization requests may be in amounts different from the total amount of the transaction. For example, a gas station typically requests authorization in the amount of \$1.00. Also, restaurants typically request authorization for 20% more than the price of the meal. If

the preauthorization request varies from the amount of the actual transaction, payment of the transaction may not remove the preauthorization hold immediately. Generally, the preauthorization hold may remain on your account for up to three (3) business days after the date of the transaction and may affect the availability of funds from your designated account for other transactions. We will not be responsible for damages for wrongful dishonor of an item resulting from a preauthorization hold. You agree not to withdraw, write checks, or make point-of-sale purchases against funds that are needed to pay ATM/Debit Card transactions that have not yet posted against your account.

**E. Inquiries:** You can use your ATM/Debit Card and PIN at ATMs to check the balance in your designated accounts. At non-Capital One Bank ATMs, you may only make balance inquiries on your designated primary checking or savings account. You may also check the balance in your designated accounts via our telephone or online banking service.

**F. Transfers Between Your Capital One Bank Accounts and Accounts at Other Financial Institutions (or Third Parties) and Check Conversion:** You can authorize a third party to initiate transfers between your accounts and the third party's accounts by providing the third party with our routing number and your account number.

You may also authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check to: (i) pay for purchases, or (ii) pay bills.

When you provide a check as payment, you authorize us to use information from your check to make a one-time electronic fund transfer from your account. In certain circumstances, such as for technical or processing reasons, we may process your payment as a check transaction. When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account on the same day you make your payment.

You should only provide your financial institution and account information (whether over the phone, the Internet, or via some other method) to trusted third parties whom you have authorized to initiate electronic fund transfers.

**4. Limitations on Transactions:** There are certain limitations on the use of electronic banking services. These include, but are not limited to, the following:

**A. Designated Accounts:** You may only access your designated accounts with Capital One Bank.

**B. Daily Limitation:** A daily spending limitation exists on all ATM/Debit Cards. This limitation combines three categories: cash withdrawals, cash advances and point-of-sale purchases. You may not aggregate transactions during any one (1) day (including either cash withdrawals, purchases, cash advances or a combination of the three) that exceed the established card limit. See the chart below for the limits established for the card product that you have. The limits listed below are the current default limits for our standard ATM/Debit Card products. Some cards might have different prevailing limits for their product at time of issuance. We do offer specialty ATM/Debit Cards with different default limits. If you have received a Wealth Management debit card or a Deposit Only ATM card, please refer to the documentation you received when you opened your account for details about limits for these cards.

	Established Card Limit	Cash Limit	POS Limit
Platinum Debit	\$2,500	\$600	\$2,500
Business Debit	\$5,000	\$800	\$5,000
ATM Card	\$2,500	\$600	\$2,500

Other ATM owners and operators may impose lower dollar limitations on the amount of cash withdrawals made at their ATMs.

**C. Online Banking External Funds Transfer Limitation:** You may enroll in online banking to perform electronic transfers. When you enroll, you will be provided with additional terms and conditions that apply to electronic transfers using our online banking services. The below charts provide the default limits established for online banking transfers into and out of your designated accounts. Different limits may be assigned on a case-by-case basis. These limits do not apply to internal transfers between accounts opened in a Capital One Bank branch and accounts opened with Capital One Direct Banking accounts (both National Direct Bank [NDB] and 360 accounts), bill pay transfers, or pre-authorized third party payments.

The below limits apply to High Yield Checking and High Interest Checking accounts:

	Per Transfer Limit	Daily Limit	Monthly Limit
Inbound Transfer	\$10,000	\$10,000	\$25,000
Outbound Transfer	\$10,000	\$10,000	\$25,000
Total Transfer Limit (Combined Inbound and Outbound)		\$20,000	\$50,000

The below limits apply to all other products (excluding High Yield Checking and High Interest Checking):

	Per Transfer Limit	Daily Limit	Monthly Limit
Inbound Transfer	\$3,000	\$3,000	\$6,000
Outbound Transfer	\$3,000	\$3,000	\$6,000
Total Transfer Limit (Combined Inbound and Outbound)		\$6,000	\$12,000

Small Business accounts have different limits that change based on multiple factors.

**D. Third Party Transaction Limitation:** Our savings and money market accounts permit no more than six (6) transfers per statement cycle to a third party or to any of your other deposit accounts at Capital One. There is no limit in the number of transfers that you may make into your account. Note: We are currently not enforcing the transfer limits on consumer accounts. You'll be notified if we choose to re-impose these limits.

**E. Other Reasons:** We and other ATM owners and operators may limit or refuse to complete your ATM/Debit Card transactions for security or technical reasons.

We may also suspend your ATM/Debit Card if we consider your designated account to be inactive or dormant.

5. **Overdraft Situations:** An overdraft occurs when you do not have enough money in your designated account to cover a transaction, but we pay it anyway. Generally, we will not authorize and pay overdrafts for ATM

withdrawals and everyday debit card transactions against your designated account unless you have authorized us to do so.\* You understand and agree that even if you have authorized us to do so, you have no right to overdraw your account at any time, for any reason, and our decision to pay overdraft items is solely within our discretion. You further agree that if we elect to pay overdraft items, you must deposit additional funds into your designated account immediately in an amount sufficient to cover the overdraft. Available credit on an overdraft protection line of credit associated with the designated account may be used to fund ATM/Debit Card transactions when you do not have sufficient collected funds in your designated account(s). If the amount of the overdraft causes you to exceed the balance in the overdraft protection deposit account linked to the overdrawn deposit account, you agree to pay the amount by which the deposit account has been overdrawn \*Applies only to consumer accounts.

6. **Transactions That Are Not Completed:** If we do not complete a transfer to or from your account on time or in the correct amount according to our Agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- A. If, through no fault of ours, you do not have enough money in your account to make the transfer;
- B. if we have terminated this Agreement for any reason;
- C. if the funds in your designated accounts are subject to legal process or other encumbrance restricting the transaction;
- D. if circumstances beyond our control (such as fire or flood) prevent the transaction from being completed despite reasonable precautions that we have taken;
- E. if an ATM does not have enough cash to complete the transaction;
- F. if there is a technical malfunction in the ATM that is known to you when you try to perform the transaction;
- G. if we have reason to believe that you or someone else is using our electronic banking services for fraudulent or illegal purposes;
- H. if you exceed the transfer limits listed in Section 4, "Limitations on Transactions," of this Agreement;
- I. if your ATM/Debit Card has deteriorated or has been damaged so that it does not function properly;
- J. if your ATM/Debit Card or PIN has been reported lost or stolen;

You agree that we will not be liable for any damages resulting from a refusal for any reason to authorize a transaction that you have attempted. You further agree that we will not be responsible or liable for a merchant's refusal to accept your ATM/Debit Card.

7. **Charges for ATM/Debit Card Transactions:** When you use your ATM/Debit Card at a non-Capital One Bank branded ATM, the ATM owner/operator may charge you a fee for your use of their ATM, and you may be charged a fee for a balance inquiry, even if you do not complete a cash withdrawal or funds transfer. You may also be charged a fee by us, as disclosed in our then current Schedule of Fees and Charges, for each cash withdrawal, funds transfer, or balance inquiry that you may make using a non-Capital One Bank branded ATM.

For international transactions, MasterCard's currency conversion procedure includes use of either a government mandated exchange rate, or a wholesale exchange rate selected by MasterCard for the processing cycle in which the transaction is processed. The currency conversion rate used by MasterCard on the processing date may differ from the rate that would have been used on the purchase date or cardholder statement posting date.

Withdrawals from an ATM outside of the United States, Puerto Rico, and U.S. Virgin Islands may incur an international transaction fee, as disclosed in our then current Schedule of Fees and Charges.

8. **Receipts and Account Statement:** You will be given a receipt for transactions made with your ATM/Debit Card at ATMs owned by Capital One Bank unless you decline to receive the receipt. Your periodic account statement(s) for your designated accounts will also detail electronic transfer activity on the designated account. Generally, if you have a consumer account, you will receive a monthly statement if you have an EFT in that

month. In any case, you will get the statement at least quarterly.

9. **In Case of Errors or Questions About Your Electronic Transfers:** (For information pertaining to the error resolution process for international wire transfers, please refer to the Wire Funds Transfer Disclosure Statement and related disclosures.)

Call us at: 1-866-536-9023; Small Business: 1-833-368-5386

Write to us at:

Capital One, N.A.

7933 Preston Rd.

Plano, TX 75024

Attn: Customer Service Center

Log into your account at [capitalone.com](https://capitalone.com) and click on the transaction.

Contact us as soon as you can if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt.

***The following section applies only to consumer accounts:*** We must hear from you no later than sixty (60) days after we sent you the FIRST statement on which the problem or error appeared.

1. Tell us your name and account number.
2. Describe the error or transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
3. Tell us the dollar amount of the suspected error.

If you tell us verbally, we may require that you send us your complaint or question in writing within ten (10) business days.

We will determine whether an error occurred within ten (10) business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to forty-five (45) days (ninety (90) days for those transactions at merchant POS terminals, processed on a new account, or initiated outside the United States) to investigate your complaint or question. If we decide to do this, we will credit your account within ten (10) business days for the amount you think is in error so that you will have full use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within ten (10) business days, we may not credit your account.

For errors involving new accounts (an account where the first deposit to the account occurs less than 30 days before the error), we may take up to twenty (20) business days to credit your account for the amount you think is in error.

We will tell you the results within three (3) business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

The following section applies only to commercial accounts: If you are a business or other entity that is not a natural person, the above referenced procedures do not apply to any accounts held by you. If you believe that an unauthorized transaction has occurred, we must hear from you within twenty four (24) hours of the time the transaction posts to your account. We will require you to submit an affidavit of unauthorized activity in connection with any such transaction immediately thereafter.

## 10. **Pre-Authorized Payments:**

**A. Right to stop payment:** If you have authorized regular payments out of your account, you can stop any of these payments. If the account requires multiple signatures to transact the withdrawal of funds, it is understood that we will recognize and accept stop payment instructions from any one authorized signer. Here is how: Visit your nearest Capital One Bank location. You may also:

Call us at: 1-800-655-2265

Write us at:

Capital One, N.A.

7933 Preston Rd.

Plano, TX 75024

Attn: Customer Service Center

We must receive your request at least three (3) business days before the payment is scheduled to be made. If you call us, we may also require you to put your request in writing to the above address and to get it to us within fourteen (14) days after you call. If you do not, then your verbal request will expire after fourteen (14) days. We will charge you a fee as disclosed in our then current Schedule of Fees and Charges for each stop payment order you give.

Merchants may allow returns or refunds on purchases; however, except as provided above for recurring payments, you cannot stop a one-time payment on any ATM/Debit Card transactions. For this reason, you should inquire about the merchant's return or refund policy before entering into a purchase transaction. Merchandise purchased using your ATM/Debit Card that is subsequently returned will be reflected as a credit on your designated account statement, provided you elect to have the return credited to your designated account. Please refer to Section 9 for information on error resolution.

**B. Varying amounts:** If these regular payments vary in amount, the person you are paying must tell you ten (10) days before each payment when it will be made and how much it will be. If you do not know this information, you may be unable to have the payment stopped without closing your account. (If we are required to provide this notice, you may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.)

**C. Liability:** If you order us to stop one of these payments three (3) business days or more before the transfer is scheduled, and we do not do so, we will be liable for your actual losses or damages, unless you failed to give us proper instructions that would enable us to stop the transfer. We will pay other damages only as required by applicable law. *We will not be liable for any consequential or special losses or damages unless we act in bad faith. In addition, we will not be liable if the merchant or other third party initiating the transaction changes the dollar amount of the transaction or makes other changes so that we do not recognize it as the payment you stopped.*

11. **Verifying Pre-Authorized Deposits:** You can verify whether a direct deposit has been processed to your account by calling us at 1-800-655-2265.
12. **Joint Accounts:** If more than one person signed your request for electronic banking services, each person who signed will be bound by this Agreement and will be responsible for paying all amounts owed as a result of this Agreement. If two (2) signatures are required to transact business on a designated account, any ONE (1) signer may initiate an electronic banking transaction on the account.
13. **Liability for Unauthorized Transfers on Consumer Accounts Only:**
  - A. Notify us immediately if you believe your ATM/Debit Card has been lost or stolen, or if you believe that an electronic fund transfer has been made without your permission. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your designated accounts (plus any available revolving line of credit, if applicable). If you tell us within two (2) business days after you learn of the loss or theft, you can lose no more than \$50.00 if someone used your ATM/Debit Card without your permission.
  - B. If you DO NOT tell us within two (2) business days after you learn of the loss or the theft of your ATM/Debit Card, and we can prove we could have stopped someone from using your ATM/Debit Card without your permission if you had told us, you could lose as much as \$500.00.
  - C. If you think that a transfer or withdrawal shown on your periodic statement is incorrect, or if you believe an unauthorized transfer or withdrawal has taken place, including those made by your ATM/Debit Card, code, or other means, contact us at once. We must be notified within sixty (60) days after the first statement we mailed to

you on which the suspected problem appeared. If you do not contact us within this sixty (60) day time period, you could be held responsible for all unauthorized transfers and withdrawals that occurred between the end of the sixty (60) day period and the time you actually notified us if the transaction could have been prevented if we had been notified.

D. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we may extend the above time periods.

E. If you believe that your ATM/Debit Card has been lost or stolen or that someone has transferred or may transfer money from your account without your permission, you may:

Call us at: 1-800-655-2265

Write us at:

Capital One, N.A.

7933 Preston Rd.

Plano, TX 75024

Attn: Customer Service Center

14. **MasterCard Zero Liability:** You may have additional rights under the MasterCard rules. Provided that the PIN is not used as the cardholder verification method, you will not be responsible for unauthorized use of the Platinum Debit and Business Debit Cards under the following conditions:

A. Your account is in good standing;

B. You have exercised reasonable care in safeguarding your card from any unauthorized use. Unauthorized use means that you did not provide directly, by implication or otherwise, the right to use your card, and you received no benefit from the "unauthorized" purchase; and

C. You have not reported two or more unauthorized events in the past 12 months.

If you have questions regarding zero liability coverage or you suspect unauthorized use of your debit card, contact us IMMEDIATELY.

15. **Evidence:** If we go to court for any reason, we can use a copy, microfilm, or microfiche of any document or electronic documentation, e-mail, or database information to prove what you owe or that a transaction has taken place. These facsimiles will have the same validity as the original documents.
16. **Our Rules and Regulations and Other Agreements:** The designated deposit accounts are also subject to other agreements that you may have with us including, but not limited to, our Rules Governing Deposit Accounts and Online Banking Terms and Conditions.
17. **Disclosure of Information About Your Account:** In the ordinary course of business, we may disclose information to third parties about your designated accounts or the transfers you make:
- Where it is necessary for completing transfers or resolving errors involving transfers;
  - In order to verify the existence and condition of your account for a third party, such as a consumer reporting agency or a merchant;
  - In order to comply with orders or subpoenas of government agencies or courts;
  - If you give us your written permission;
  - As disclosed in our Privacy Notice; or
  - As otherwise permitted by law.
18. **Our Business Days:** For purposes of this Agreement, our business days are Monday through Friday. Federal holidays or other days we are closed are not considered business days.
19. **Terminating This Agreement:** You can terminate this Agreement at any time by notifying us in writing. We reserve the right to deactivate any ATM/Debit Card that has not been used for an extended period of time. We can also terminate this Agreement at any time. The termination of this Agreement by either party will not affect

your obligations under this Agreement, even if we allow any transaction to be completed after this Agreement has been terminated.

20. **Changing This Agreement:** We have the right to change the terms of this Agreement from time to time. We will notify you at least twenty-one (21) days before the change will take effect if the change will cause you greater costs or liability or if it will limit your access to your designated accounts. We will not have to notify you in advance, however, if the change is necessary for security reasons.
  21. **Notices:** All notices from us will be effective when we have e-mailed them, mailed them or delivered them to the last address that we have for you in our records. Notices from you will generally be effective when received at the appropriate address specified in this Agreement, but notices under Section 14 ("Liability for Unauthorized Transfers on Consumer Accounts Only") will be effective once you have done whatever is reasonably necessary to give us the information we need. A mailed notice will be considered delivered to us when it is received by us at the notice address in Section 14 of this Agreement. If more than one person signs your request for electronic banking services, notice to or from one of the people who signed the request will be effective for everybody who signed.
  22. **Collection Expenses:** If we have to file a lawsuit to collect whatever you owe us, you will pay our reasonable expenses, including attorney's fees.
  23. **Governing Law:** Any questions under this Agreement will be decided by applicable federal law, or, if no federal law exists, applicable state law. If any term of this Agreement cannot legally be enforced, the Agreement is to be considered changed to the extent necessary to comply with the law.
  24. **Acceptance of This Agreement:** You have agreed to be bound and obligated under the terms of this Agreement and any subsequent amendments to this Agreement by using our electronic banking services.
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## WIRE FUNDS TRANSFER DISCLOSURE STATEMENT

Effective September 17, 2020

In this Wire Funds Transfer Disclosure Statement and Agreement (this "Agreement"), the words "you" and "your" mean a Capital One Bank account owner, and the words "us," "we," and "our" mean Capital One Bank. Capital One Bank is used as a trade name for Capital One, N.A. This Agreement defines your responsibilities and our responsibilities with respect to transfers of funds from your account(s) with us by wire transfer for credit to an account at another financial institution or another account with us ("Funds Transfers"), whether such transfers are domestic or international, made pursuant to: (a) written instructions, signed by you or your authorized representative ("Authorized Representative"), which we receive (i) in person from you or from someone present on your behalf, (ii) via facsimile transmission, (iii) via email, or (b) instructions we receive via our telephone wire request channel [(a) and (b) are collectively referred to herein as the "Funds Transfer Service"; (b) referred to herein as "Remote Channel"]. You understand that, except as specifically modified by this Agreement, your account(s) will continue to be governed by the terms and conditions contained in other agreements and/or disclosures that you have been provided with in connection with your account(s), which are incorporated herein by reference. Unless otherwise defined herein, the terms used in this Agreement shall have the same meaning as set forth in Article 4A of the Uniform Commercial Code and, to the extent applicable, the Electronic Fund Transfer Act (EFTA) and its implementing regulations.

1. **How to Make a Funds Transfer:** You may request or authorize a Funds Transfer ("Funds Transfer Request") either in person, through our Telephone Wire Request Service, or strictly for an outbound international wire from a business account, by email. All Funds Transfer Requests delivered in person, by email, or by facsimile must be in writing, signed by you or your Authorized Representative and must contain detailed and specific instructions in a form acceptable to us in our sole discretion. Your Authorized Representative may be: (1) any joint owner on your account; (2) an authorized attorney-in-fact of an individual or joint owner on the account, acting pursuant to a power of attorney recognized by us; (3) an authorized fiduciary, such as a trustee, executor, administrator, custodian, guardian or conservator; (4) an authorized signatory on a business account, or (5) an individual indicated on a business resolution as someone authorized to initiate a Funds Transfer.
2. **Method Used to Make the Funds Transfer:** We may select any means for the transmission of funds that we

consider suitable, including but not limited to Fedwire. We may make use of correspondents, agents, subagents and funds transfer and communication systems. Such third parties shall be deemed your agents and we shall not be liable for any errors, delay, misdelivery, or failure of delivery by any of them unless applicable law says otherwise.

3. **Cut-Off Times:** We have cut-off hours for processing Funds Transfers. Cut-off times vary depending on the location. Check with your local branch or contact the call center for cut-off hours. We may treat any Funds Transfer Request received at or after our cut-off time as if it were received that business day or we may treat it as if it were received at the opening of the next business day.
4. **Security Procedures:** You agree and consent to the use of certain security procedures by us to confirm the validity of the Funds Transfer Request made pursuant to this Agreement. You understand the security procedures are not designed to detect errors in the content of the Funds Transfer Request or to prevent duplicate transfers.

Some elements of the procedures will vary depending upon the method used to initiate a Funds Transfer. You hereby agree that your utilization of any security procedure established hereunder shall constitute your agreement to its use and affirmative acknowledgment of its commercial reasonableness. You further agree that any Funds Transfer Request that is acted upon in good faith by us in compliance with these security procedures, whether or not in fact authorized by you, shall constitute an authorized Funds Transfer.

The following security procedures shall apply to this Agreement: Before accepting any such Funds Transfer Requests, we will: (1) perform verification on the individuals initiating the Funds Transfer Request that is designed to ensure they are the individuals previously authorized to initiate a Funds Transfer for the account in question; (2) apply fraud-related screens to the wire instructions; (3) contact you using information from your account records to verify the Funds Transfer for wires that are not initiated in person (this contact may be through a method different than the one you used to request the Funds Transfer (e.g., phone versus e-mail) or it may be through the same channel to obtain a password or other information that only you should have); and (4) request and receive any other proof of identification or any other documentation from you or your Authorized Representative which we may, in our sole discretion, require under the circumstances.

5. **International Funds Transfer:** For commercial transactions involving an international Funds Transfer (also known as a "remittance transfer"), you are responsible for providing us with the name and address of an intermediary bank at the time of the Funds Transfer. If you do not supply us with an intermediary bank, we will select one of our choosing. We will not be held liable if we have not confirmed the intermediary bank with you. For a consumer international Funds Transfer, we will select the intermediary bank through which the Funds Transfer is transmitted.

**Selection of currency:** Unless you state otherwise on the Funds Transfer Request form, Funds Transfers sent to foreign countries may be converted to the currency of the destination country at our rate of currency exchange for remittance transfers. Even if you tell us that you want the Funds Transfer sent in U.S. dollars, we cannot guarantee that the beneficiary/designated recipient will receive the funds in U.S. currency. The actual amount that the beneficiary/designated recipient receives may be reduced by fees and taxes imposed by the beneficiary bank, or a correspondent bank, including currency conversion charges.

**Refund:** Refunds of U.S. dollar consumer international Funds Transfer Requests shall be in U.S. dollars in the total amount of funds provided by you at the time of the Funds Transfer; refunds of commercial U.S. dollar international Funds Transfer Requests shall be in U.S. dollars in the amount of U.S. dollar payment that we receive from the bank returning the funds to us at such bank's rate of currency exchange, less any fees therefore. Refunds of foreign currency consumer international Funds Transfer Requests shall be in the total amount of foreign currency funds provided by you at the time of the Funds Transfer; refunds of commercial foreign currency international Funds Transfer Requests shall be in the amount of U.S. dollars that can be bought by us for the applicable non-U.S. dollar currency amount at our then current rate of currency exchange. You shall bear all risk of loss due to fluctuation in the currency exchange rate.

**Conversion rate:** For international Funds Transfers involving non-U.S. currencies, the exchange rates we use for your transactions are not necessarily the bank-to-bank negotiated exchange rate or other potentially more favorable rate. FDIC deposit insurance does not insure against any loss due to foreign currency fluctuations.

Consult your attorney or investment advisor regarding the potential risks associated with foreign exchange transactions.

6. **Force Majeure:** We will not be liable for our inability to perform our obligations under this Agreement when such inability arises out of causes beyond our control, including but not limited to, any act of God, accident, labor disputes, power failures, system failure, equipment malfunction, suspension of payment by another bank, refusal or delay by another bank to accept the funds transfer, war, emergency conditions, fire, earthquake or the failure of any third party to provide any electronic or telecommunication service used in connection with the execution or cancellation of a Funds Transfer.
7. **Inconsistency of Name and Account Number:** You acknowledge and agree that when you (or your Authorized Representative), provide us with a name and account number in order for us to process a Funds Transfer, payment may be made by the beneficiary's/designated recipient's bank solely on the basis of the account number, even if the account number identifies a person different from the beneficiary so named. We or an intermediary bank may send a Funds Transfer to an intermediary bank or beneficiary's/designated recipient's bank based solely on the bank identifying number, even if the payment order indicates a different name. We may rely on all information contained in the Funds Transfer Request, regardless of who may have provided the information. You further agree that your obligation to pay the amount of a Funds Transfer to us is not excused in such circumstances. Except as provided by applicable law, any losses resulting from an incorrect account number or your misidentification of the beneficiary/designated recipient is your responsibility and not ours.
8. **Acceptance and Execution of Request by Capital One Bank:** A Funds Transfer Request is considered accepted by us when we execute it. There is a deadline for each type of Funds Transfer Request. Please contact your Capital One Bank branch or Capital One Call Center for this information. If a Funds Transfer Request is received prior to the deadline, it will be executed by us that business day, provided we are able to validate your request that same business day as described in Section 4. A Funds Transfer Request received after the cut-off time may be executed on the next business day, again provided we are able to validate your request that next business day as described in Section 4. You can verify whether your Funds Transfer Request has been executed by calling us at [1-800-655-BANK \(2265\)](tel:1-800-655-BANK).
9. **Payment to Capital One Bank:** You must pay us the amount of the Funds Transfer, plus any applicable fees, before we will execute the Funds Transfer Request. Please contact your Capital One Bank branch or Capital One Call Center for fees applicable to Funds Transfers and any other related pre-payment disclosures.
10. **Rejection of Funds Transfer:** We have no responsibility to accept any incoming Funds Transfer(s) for your benefit. Likewise, we have a right to reject any Funds Transfer Request(s) for an outgoing Funds Transfer for reasons including, but not limited to, insufficient or uncollected funds in the account specified in the Funds Transfer Request, a request that fails the security procedures outlined in Section 4, our inability to execute the Funds Transfer for the reasons set out in the Section of this Agreement entitled Method Used to Make the Funds Transfer above, or if we are unable to verify the authenticity of the Funds Transfer Request.
11. **Notice of Funds Transfer Not Executed:** If we determine, in our sole discretion, not to honor, execute or accept a Funds Transfer Request, we will endeavor to notify you, but we shall have no liability for delay or failure to do so. We will also endeavor to notify you promptly if a Funds Transfer is returned to us after its execution but shall have no liability by reason of our delay or failure to do so. We shall have no obligation to resend a Funds Transfer if we complied with the original Funds Transfer Request and such Funds Transfer was returned to us.
12. **Cancellation or Amendment of Funds Transfer:**
  - A. **Domestic Funds Transfers:** Once we receive a domestic Funds Transfer Request, it may not be able to be canceled or amended. However, at our discretion, we may use reasonable efforts to act on any request for cancellation or amendment, provided that the method by which we are notified of a request for cancellation or amendment complies with our security procedures. However, we shall have no liability if such cancellation or amendment is not effected. You agree to indemnify and hold us harmless from any and all liabilities, claims, damages, costs and expenses we may incur in attempting to cancel or amend the Funds Transfer. Any cancellation or amendment of a Funds Transfer by us shall relieve us of any obligation to act on the original Funds Transfer Request.

- B. Consumer International Funds Transfers:** Cancellation requests for consumer international Funds Transfers, must be received no later than 30 minutes after payment is made for the Funds Transfer. Cancellation requests received outside of this time frame may not be able to be processed.
13. **Account Statements:** Except as provided by applicable law, you agree that we are not required to provide you with a separate notice of incoming or outgoing Funds Transfer. All Funds Transfers will be reflected on your periodic bank statement. You should review your statement for any discrepancies, unauthorized transactions or errors in connection with any Funds Transfers. Except as otherwise provided herein, if you think a Funds Transfer is wrong or if you need more information about a Funds Transfer, you must contact us in writing upon discovery of the error or within fourteen (14) days from the date your statement is postmarked or otherwise made available to you, whichever is earlier. Failure to do so will relieve us of any obligation to pay interest on the amount of an unauthorized or erroneous Funds Transfer for which we are liable. Furthermore, you will also be liable to us for any damages or losses we may incur as a result of your failure to notify us within the time period stated in this Section.
14. **Change in Authorized Representative:** Any changes in the authority of persons authorized to make a Funds Transfer on your behalf shall not be binding upon us until we have received written notice from you. The notice must be in a form acceptable to us and be given within a reasonable period of time for us to act upon the change.
15. **Duty of Reasonable Care:** We shall exercise good faith and reasonable care in processing Funds Transfer Requests. You shall similarly exercise good faith and reasonable care in observing and maintaining security procedures, in communicating Funds Transfer Requests to us, and in reviewing periodic bank statements for any discrepancies.
16. **Liability of Capital One Bank:** We shall be responsible only for performing the Funds Transfer Service expressly provided for in this Agreement; provided however, we shall be liable only for our own gross negligence or willful misconduct in performing such service. We shall not be liable to any third party or for any act or omission of yours or any third party, including, but not limited to, third parties used by us in executing a Funds Transfer or performing a related act and no such third party shall be deemed to be our agent. IN NO EVENT SHALL WE BE LIABLE FOR ANY DAMAGES OF ANY KIND INCLUDING WITHOUT LIMITATION DIRECT, INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS, LOSSES OR EXPENSES ARISING OUT OF OR IN CONNECTION WITH THE FUNDS TRANSFER SERVICE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SAME. Except as otherwise provided by applicable law, the maximum period for which we shall be liable for interest on any amount to be refunded or paid to you with respect to an unauthorized, erroneous or other Funds Transfer Request is thirty days.

**Interest Compensation:** In the event we are liable to you for interest compensation under this Agreement, or applicable law, interest shall be calculated at the average of the federal funds rate published by the Federal Reserve Bank for the period involved; or at such other rate that we may agree to, in writing, from time to time.

**Consumer International Wire Fund Transfer Error Resolution:** In case of errors contact us at 866-536-9023, or write us at:

Capital One Bank  
Claims Processing Center  
PO Box 85039  
Richmond, VA 23285-5039

You must contact us within 180 days of the funds availability date on your Funds Transfer receipt, or within 60 days of the date we provided you with any requested documentation, additional information or clarification concerning a Funds Transfer.

When you do, please tell us:

- (1) Your name and address [or telephone number];
- (2) The error or problem with the transfer, why you believe it is an error or problem and, if possible, the date of the error;
- (3) The name of the designated recipient of the funds and, if possible, the designated recipient's telephone number and address;

- (4) The dollar amount of the transfer; and
- (5) The confirmation code or number of the transaction.

We will determine whether an error occurred within 90 days after you contact us and report the results to you within three (3) business days of completing our investigation. If we determine an error occurred, we will notify you of the available remedies and will correct the error promptly and in accordance with the remedy you select.

If we determine no error occurred, we will send you a written explanation. You may ask for copies of the documents on which we relied for our determination.

17. **Liability of the Customer:** Except as otherwise provided by law, you shall be liable for any loss or damage to which your negligence contributed or which resulted in unauthorized, fraudulent or dishonest acts by your current and/or former Authorized Representatives. Such liability includes instances when a current or former Authorized Representative effects one or more Funds Transfers or improper use of telephone security procedures to effect a Funds Transfer to your detriment.

18. **Compliance with Anti-Money Laundering and Exchange Control Regulations and OFAC Enforced Sanctions:**

A. You covenant with us to observe all Anti-Money Laundering and Exchange Control laws and regulations including economic and trade sanctions promulgated by the Office of Foreign Assets Control of the U.S. Department of Treasury in relation to any Funds Transfer and you will use all reasonable endeavors to assist us to do likewise. In particular, you covenant that the information given to us by you is accurate. We may disclose any information given to us that we in our sole discretion think necessary or desirable to disclose; except we will only disclose confidential information if required by law, a court, or legal, regulatory, or governmental authority, or as permitted by law in order to combat, prevent, or investigate issues arising under anti-money laundering laws, economic sanctions, or criminal law.

B. Sometimes legal, regulatory, or governmental authorities require additional information, either in respect of individuals, entities, or particular transactions. You agree to promptly supply all such information, which any such authority may require, and/or which we may be required to supply, in relation to the individual, entity, or particular transaction.

C. If you, or your Authorized Representative, breach any such laws or regulations, you irrevocably agree that we may retain any monies or funds transmitted to us pursuant to this Agreement and/or not fulfill any Funds Transfer Request if we are required to take or refrain from such action by any legal, regulatory or governmental authority or if we reasonably believe that such action may violate any laws or regulations described herein, and such monies shall not bear interest against us. You further agree that we may pay such monies to the appropriate legal, regulatory or governmental authority, if and when required by law.

19. **Indemnification:** In consideration of Capital One Bank agreeing to accept Funds Transfer Requests in the manner set forth herein, you shall forever indemnify and hold Capital One Bank, its officers, directors, shareholders, employees, successors, predecessors, representatives, principals, agents, assigns, parents, subsidiaries and/or insurers, harmless from and against all liability, claims, damages, costs, claims or expenses (including reasonable attorneys' fees) that we may incur, without regard to the merit or lack thereof, arising out of, or related in any way to the matters set forth herein, or to the Funds Transfer Service, which shall be provided pursuant to the terms of this Agreement. Your agreement to indemnify us and hold us harmless shall survive the expiration and/or termination of this Agreement and all provisions contained herein.
20. **Recording of Communication:** You agree that all telephone conversations made in connection with the Agreement may be recorded and retained by us.
21. **Termination of Agreement:** We may terminate the right to make Funds Transfers at any time or amend or change the terms of this Agreement or cancel this Agreement without advance notice to you.
22. **Agreement Controls:** Both you and Capital One Bank will be bound by this Agreement. If there is a conflict between this Agreement and something said by one of our employees, you agree that this Agreement controls. This Agreement and the terms of the Account Agreement(s) related to your deposit accounts, which are incorporated herein by reference, constitute the entire Agreement between you and us regarding your use of the

Funds Transfer Service. If any inconsistency exists between the account disclosure statements and agreement(s) and this Agreement, then the terms of this Agreement shall control. No representation or statement not expressly contained in this Agreement or in any amendment hereto shall be binding upon you or us.

23. **Governing Law:** All actions arising out of or concerning the Funds Transfer Service or these terms and conditions shall be heard by a judge sitting without a jury. In any such action, Capital One Bank shall be entitled to its reasonable attorneys' fees. The Funds Transfer Service and these terms and conditions shall be governed by the internal laws of the State of Virginia without regard to its conflicts of rules and the laws of the United States.
24. **Severability:** In the event that any court or tribunal of competent jurisdiction determines that any provision of the Agreement is illegal, invalid or unenforceable, the remainder of this Agreement shall not be effected thereby.



IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO. 2022-008014-CA-01

BERNARD MENSAH, individually and on behalf of  
all others similarly situated,

CLASS ACTION

*Plaintiff,*

JURY TRIAL DEMANDED

vs.

CAPITAL ONE, N.A.,

*Defendant.*

\_\_\_\_\_ /

**SUMMONS**

THE STATE OF FLORIDA:  
To Each Sheriff/Certified Process Server of the State:

**YOU ARE COMMANDED** to serve this summons and a copy of the Complaint, in this  
action on Defendant:

Capital One, N.A.  
1680 Capital One Drive  
Mclean, VA 22102

Each Defendant is required to serve written defenses to the Complaint or petition on:  
**Andrew Shamis, Esq, Shamis & Gentile, P.A., 14 NE 1st Ave STE 705, Miami, Florida  
33132**, within **twenty (20) days** after service of this summons on that Defendant, exclusive of  
the date of service, and to file the original of the defenses with the Clerk of this Court either  
before service on Plaintiff's attorney or immediately thereafter. If a Defendant fails to do so, a  
default will be entered against that Defendant for the relief demanded in the complaint or  
petition.

Dated this \_\_\_\_\_ day of \_\_\_\_\_.

As Clerk of the Court

By: \_\_\_\_\_  
As Deputy Clerk







**Defendant's Notice of Removal**

**Exhibit C**

**Defendant's Notice to State Court of Removal to Federal Court**

*Mensah v. Capital One, N.A.*  
**United States District Court**  
**Southern District of Florida, Miami Division**

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

**BERNARD MENSAH**, individually, and on  
behalf of all others similarly situated,

Plaintiff,

v.

**CAPITAL ONE, N.A.**,

Defendant.

No. 2022-008014-CA-01

**DEFENDANT CAPITAL ONE, N.A.'S NOTICE OF REMOVAL**

**TO THE CLERK OF THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI DADE COUNTY, FLORIDA:**

PLEASE TAKE NOTICE that Defendant Capital One, N.A. ("Capital One") has filed a Notice of Removal of this action with the United States District Court for the Southern District of Florida for the removal of this action from this Court to federal court for trial and determination. A copy of Capital One's Notice of Removal and its accompanying exhibits is attached to this Removal Notice as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. § 1446, the filing of the Notice of Removal in the United States District Court accomplishes removal of this action, and this Court may proceed no further in this case unless and until the case is remanded.

Dated: June 1, 2022

Respectfully submitted,

**MCGUIREWOODS LLP**

/s/ Emily Y. Rottmann

Emily Y. Rottmann  
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flservice@mcguirewoods.com

*Attorneys and Trial Counsel for Defendant  
Capital One, N.A.*

**CERTIFICATE OF SERVICE**

I hereby certify this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on June 1, 2022, and sent via U.S. Mail and/or email to participants not registered with the CM/ECF system:

Andrew J. Shamis, Esq.  
Edwin E. Elliot, Esq.  
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ashamis@shamisgentile.com  
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Scott Edelsberg, Esq.  
Christopher Gold, Esq.  
**Edelsberg Law, P.A.**  
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Aventura, Florida 33180  
scott@edelsberglaw.com  
chris@edelsberglaw.com

*Attorneys for Plaintiff Bernard Mensah  
and proposed class*

/s/ Emily Y. Rottmann

Attorney

**Defendant's Notice of Removal to Federal Court**

**Exhibit A**

**Notice of Removal**

***Mensah v. Capital One, N.A.***  
**Case No.: 2022-008014-CA-01**  
**Circuit Court, Eleventh Judicial Circuit, Miami-Dade County**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**BERNARD MENSAH**, individually, and on  
behalf of all others similarly situated,

Plaintiff,

v.

**CAPITAL ONE, N.A.**,

Defendant.

Case No.

(Removal from the Circuit Court of the  
Eleventh Judicial Circuit in and for Miami-  
Dade County, Florida)

**DEFENDANT CAPITAL ONE, N.A.’S NOTICE OF REMOVAL**

Defendant Capital One, N.A. (“Capital One”) hereby files this Notice of Removal of the above captioned action from the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida to the United States District Court for the Southern District of Florida, based on the District Court’s jurisdiction under 28 U.S.C. §§ 1332, 1441, 1446, and 1453.

In support of this Notice of Removal, Capital One states as follows:

**I. BACKGROUND**

1. On May 2, 2022, Plaintiff Bernard Mensah (“Plaintiff”) filed this putative class action, captioned *Mensah v. Capital One, N.A.*, Dkt. No. 2022-008014-CA-01 (the “State Court Action”), in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, attached hereto as **Exhibit A**.

2. Plaintiff purports to bring a class action on behalf of himself and a nationwide class consisting of “[a]ll persons with a Capital One account who signed up for the Zelle Service and incurred unreimbursed losses due to fraud (the ‘Class’)” and on behalf of Florida subclass

consisting of “[a]ll Florida persons with a Capital One account who signed up for the Zelle Service and incurred unreimbursed losses due to fraud (the ‘Florida Subclass’).” Ex. A at ¶ 56.

3. Capital One was served with a copy of the Complaint in the State Court Action on May 9, 2022.

4. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of the Complaint and all process, pleadings, and orders on file with the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida are attached hereto as **Exhibit B**.

5. In accordance with 28 U.S.C. § 1446(d), Capital One has contemporaneously filed a Notice of Removal with the Clerk of the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. A copy of Capital One’s Notice to State Court of Removal to Federal Court without exhibits is attached hereto as **Exhibit C**.

6. In accordance with 28 U.S.C. § 1446(d), Capital One has also provided written notice to the Plaintiff by contemporaneously serving this Notice of Removal on Plaintiff’s counsel.

## II. BASIS FOR REMOVAL UNDER CAFA

7. The State Court Action is removable under the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4.

8. There is no presumption against removal under CAFA, “which Congress enacted to facilitate adjudication of certain class actions in federal court.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014).

9. CAFA provides that federal district courts “shall have original jurisdiction of any civil action” (1) which is a “class action” (2) “in which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant,” and (3) “the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs,” provided that (4) the members of the putative class number at least 100. 28 U.S.C. § 1332(d)(2), (5).

**A. The Complaint Is a Class Action.**

10. Plaintiff brings this putative class action pursuant to Florida Rules of Civil Procedure 1.220(b)(2) and (b)(3) on behalf of himself and “[a]ll persons with a Capital One account who signed up for the Zelle Service and incurred unreimbursed losses due to fraud (the ‘Class’)” and on behalf of “[a]ll Florida persons with a Capital One account who signed up for the Zelle Service and incurred unreimbursed losses due to fraud (the ‘Florida Subclass’)”. Ex. A at Compl. ¶ 56.

11. Plaintiff also states that the members of the classes are “so numerous that joinder of all members would be unfeasible and impracticable.” *Id.*

12. Accordingly, this case is a “class action,” defined under CAFA as “any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B).

**B. There is Minimal Diversity Between the Parties.**

13. The putative classes include “citizen[s] of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

14. For diversity purposes, “[a]ll national banking associations shall, for the purposes of all other actions by or against them, be deemed citizens of the States in which they are respectively located.” 28 U.S.C. § 1348.

15. Capital One is a national banking association with its main office located in McLean, Virginia. Ex. A at ¶ 14; *see also* Capital One’s Amended and Restated Articles of Association attached hereto as **Exhibit D**; Office of the Comptroller of the Currency List of National Banks Active as of April 30, 2022 (“OCC List”), available at

<https://www.occ.gov/topics/charters-and-licensing/financial-institution-lists/national-by-name.pdf>.

16. Therefore, Capital One is a citizen of Virginia for diversity purposes. *See Wachovia v. Schmidt*, 546 U.S. 303, 307 (2006) (holding that national banking associations be deemed citizens of the state designated in its articles of association as the locus of its main office); *Hunt v. Nationstar Mortg., LLC*, 684 F. App'x 938, 942 (11th Cir. 2017) (same); Exhibit D (listing main office as located in McLean, Virginia); OCC List (same).

17. Plaintiff is a resident of Florida and purports to bring suit on behalf of a nationwide class of and a Florida subclass of Capital One customers who have signed up for the Zelle service. Ex. A at ¶ 56; *see also Beach Terrace Condo. Ass'n, Inc. v. Goldring Investments, Inc.*, No. 8:15-CV-1117-T-33TBM, 2015 WL 3770401, at \*1 (M.D. Fla. June 17, 2015) (“there is a presumption that the state in which a person resides at any given time is also that person’s domicile”). Therefore, Plaintiff is a Florida citizen for diversity jurisdiction purposes. *See, e.g., Huchon v. Jankowski*, No. 06-10094-CIV, 2007 WL 221421, at \*2 (S.D. Fla. Jan. 25, 2007) (finding defendant properly alleged plaintiff’s citizenship by asserting in notice of removal plaintiff “was and is a Florida resident domiciled in Monroe County, Florida”).

18. Thus, Section 1332(d)(2)(A)’s requirement of minimal diversity is met.

**C. The Amount in Controversy Exceeds \$5 Million.**

19. Under CAFA, the claims of individual class members are aggregated to determine the amount in controversy. See 28 U.S.C. § 1332(d)(6). The amount in controversy is “an estimate of how much will be put at issue during the litigation,” rather than “a prediction of how much the plaintiffs are ultimately likely to recover.” *S. Fla. Wellness, Inc. v. Allstate Ins. Co.*, 745 F.3d 1312, 1315 (11th Cir. 2014) (internal citations and quotation marks omitted). Defendant’s “notice

of removal need include only a *plausible allegation* that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin*, 574 U.S. at 89 (emphasis added).

20. The Complaint asserts causes of action for violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201, et seq., breach of contract; and breach of the covenant of good faith and fair dealing. Ex. A. at ¶¶ 59-73.

21. Plaintiff also seeks to recover compensatory and punitive damages, restitution, disgorgement of ill-gotten gains, attorneys’ fees, costs, and interest. *Id.* at Prayer for Relief.

22. Capital One does not concede in any way that Plaintiff’s claims are valid in any respect and states solely for the purposes of estimating the amount in controversy on Plaintiff’s theory of the case that the amount in controversy well exceeds \$5 million if Plaintiff’s allegations as stated in the Complaint are taken as true.

23. Plaintiff alleges that he brings a suit on behalf of himself and “thousands of similarly situated customers of Capital One who have signed up for the Zelle money transfer service and who: have been the victim of fraud on the Zelle service.” *Id.* at ¶ 1.

24. Plaintiff further alleges that he and these “thousands” of putative class members “incurred losses due to that fraud that has not been reimbursed by Capital One; and who were entitled by the marketing representations of Capital One regarding the Zelle service and by the Capital One’s contract promises to full reimbursement of losses caused by fraud on the Zelle Service.” *Id.*

25. Plaintiff avers that he suffered actual losses of \$2,000 from his “personal bank account using the Zelle service” due to fraud. *Id.* at ¶¶ 47, 51.

26. Plaintiff further alleges that the Zelle “fraud problem” is “widespread” and he claims that “many people” have been defrauded for “thousands of dollars” using Zelle. *Id.* at ¶¶ 10, 26.

27. Additionally, Plaintiff claims that he and the putative class members are entitled to punitive damages, attorneys’ fees, restitution, and an injunction, all of which are included in calculating the amount in controversy. *Id.* at Prayer for Relief; *see S. Fla. Wellness*, 745 F.3d at 1316; *McDaniel v. Fifth Third Bank*, 568 F. App’x 729, 731 (11th Cir. 2014).

28. Accepting these allegations as true, even if the putative class consisted of only 2,000 members who incurred a loss of \$3,500 each (including out-of-pocket loss, attorney’s fees, punitive damages<sup>1</sup> and costs), it is clear that the amount in controversy well exceeds the \$5 million requirement.

29. Accordingly, the requirement of 28 U.S.C. § 1332(d)(2) for an amount in controversy of at least \$5 million is satisfied.

**D. Class Membership Exceeds 100 Persons.**

30. Plaintiff alleges that he brings a suit on behalf of himself and “thousands of similarly situated customers of Capital One who have signed up for the Zelle money transfer service and who: have been the victim of fraud on the Zelle service.” *Id.* at ¶ 1. Thus, the aggregate number of putative class members is at least 100 for purposes of § 1332(d)(5)(B); *cf. Perret v. Wyndham Vacation Resorts, Inc.*, No. 11-CV-61904, 2012 WL 592171, at \*2 (S.D. Fla. Feb. 22, 2012) (concluding plaintiff’s allegation that “potentially thousands” of class members existed was sufficient on its face to establish jurisdiction in case removed under CAFA).

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<sup>1</sup> In fact, punitive damages can reach three times any compensatory award. *McDaniel*, 568 F. App’x at 732; Fla. Stat. § 768.73(1)(a).

31. Plaintiff further purports to bring suit on behalf of himself and putative classes, which he estimates is “greater than one hundred individuals.” *Id.* at ¶ 59.

32. Accordingly, the numerosity requirement of 28 U.S.C. § 1332(d)(5) is satisfied.

### **III. ALL OTHER REQUIREMENTS FOR REMOVAL ARE MET**

33. Capital One was served with a copy of the Complaint in this State Court Action on May 9, 2022. Thus, Capital One’s Notice of Removal is timely because it is filed within thirty (30) days of Capital One’s receipt of the Complaint as required under 28 U.S.C. § 1446(b).

34. The court in which this State Court Action is pending is located within the Southern District of Florida, as required by 28 U.S.C. §§ 1446(a) and 1441(a).

35. Immediately following the filing of this Notice of Removal, written notice of the filing will be served on Plaintiff’s counsel, the only adverse party in this case, as required by 28 U.S.C. § 1446(d).

36. Capital One will promptly file this Notice of Removal with the Clerk of the Circuit Court of the Eleventh Judicial Circuit, Florida, where the State Court Action was pending as required by 28 U.S.C. § 1446(d). A copy of the Notice of Filing of Removal is attached hereto as Exhibit C.

37. By removing this action to this Court, Capital One does not waive any defenses, objections, or motions under state or federal law. *See, e.g., Kostelac v. Allianz Glob. Corp. & Specialty AG*, 517 F. App’x 670, 675 n.6 (11th Cir. 2013) (“The removal of an action from state to federal court does not waive any Rule 12(b) defenses”).

### **IV. CONCLUSION**

WHEREFORE, for the reasons stated above, Capital One hereby removes the State Court Action to the United States District Court for the Southern District of Florida, Miami Division, in accordance with 28 U.S.C. §§ 1332, 1441, 1446, and 1453.

Dated: June 1, 2022

Respectfully submitted,

**MCGUIREWOODS LLP**

/s/ Emily Y. Rottmann

Emily Y. Rottmann

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*Attorneys and Trial Counsel for Defendant  
Capital One, N.A.*

**CERTIFICATE OF SERVICE**

I hereby certify this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on June 1, 2022, and sent via U.S. Mail and/or email to participants not registered with the CM/ECF system:

Andrew J. Shamis, Esq.  
Edwin E. Elliot, Esq.  
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*Attorneys for Plaintiff Bernard Mensah  
and proposed class*

/s/ Emily Y. Rottmann  
Attorney

**Defendant's Notice of Removal**

**Exhibit D**

**Amended and Restated Articles of Association  
of Capital One, National Association**

***Mensah v. Capital One, N.A.***  
**United States District Court**  
**Southern District of Florida, Miami Division**

**AMENDED AND RESTATED  
ARTICLES OF ASSOCIATION  
of  
CAPITAL ONE, NATIONAL ASSOCIATION**

For organizing an association to perform any lawful activities of national banks, the undersigned enter into the following Amended and Restated Articles of Association:

FIRST. The title of this association shall be Capital One, National Association (hereinafter, the "association" or the "bank").

SECOND. The main office of the association shall be located in the city of McLean, in the County of Fairfax, Commonwealth of Virginia.

The general business of the association shall be conducted at its main office and its branches.

THIRD. The board of directors of this association shall consist of not less than five nor more than twenty-five persons, unless the Comptroller of the Currency ("OCC") has exempted the bank from the 25-member limit. The exact number is to be fixed and determined from time to time by resolution of a majority of the full board of directors or by resolution of a majority of the shareholders at any annual or special meeting thereof. Each director shall own common or preferred stock of the association or of a holding company owning the association, with either an aggregate par, fair market, or equity value of \$1,000. Determination of these values may be determined as of either (i) the date of purchase or (ii) the date the person became a director, whichever value is greater. Any combination of common or preferred stock of the association or holding company may be used.

Any vacancy in the board of directors may be filled by action of a majority of the remaining directors between meetings of shareholders. The board of directors may not increase the number of directors between meetings of shareholders to a number which:

- (1) exceeds by more than two the number of directors last elected by shareholders when the number was 15 or less; or
- (2) exceeds by more than four the number of directors last elected by shareholders where the number was 16 or more, but in no event shall the number of directors exceed 25, unless the OCC has exempted the bank from the 25-member limit.

Directors shall be elected for terms of one year and until their successors are elected and qualified. Terms of directors, including terms of directors selected to fill vacancies, shall expire at the next regular meeting of shareholders at which directors are elected, unless they resign or are removed from office.

Despite the expiration of a director's term, the director shall continue to serve until his or her successor is elected and qualifies or until there is a decrease in the number of directors and his or her position is eliminated.

Honorary or advisory members of the board of directors, without voting power or power of final decision in matters concerning the business of the association, may be appointed by resolution of a majority of the full board of directors, or by resolution of shareholders at any annual or special meeting. Honorary or advisory directors shall not be counted to determine the number of directors of the association or the presence of a quorum for any board action, and shall not be required to own qualifying shares.

FOURTH. There shall be an annual meeting of the shareholders to elect directors and transact whatever other business may be brought before the meeting. It shall be held at the main office or any other convenient place the board of directors may designate, on the day of each year specified therefore in the Bylaws, or if that day falls on a legal holiday in the state in which the association is located, on the next following banking day. If no election is held on the day fixed or in the event of a legal holiday on the following banking day, an election may be held on any subsequent day within 60 days of the day fixed, to be designated by the board of directors, or, if the directors fail to fix the day, by shareholders representing two-thirds of the shares issued and outstanding. In all cases at least 10 days advance notice of the meeting shall be given to the shareholders by first class mail, unless such notice is waived by all shareholders or by the OCC upon its determination that an emergency circumstance exists.

In all elections of directors, the number of votes cast by each common shareholder will be determined by multiplying the number of shares he or she owns by the number of directors to be elected. Those votes may be cumulated and cast for a single candidate or may be distributed among two or more candidates in the manner selected by the shareholder. If, after the first ballot, subsequent ballots are necessary to elect directors, a shareholder may not vote shares that he or she has already fully cumulated and voted in favor of a successful candidate. On all other questions, each common shareholder shall be entitled to one vote for each share of stock held by him or her.

A director may resign at any time by delivering written notice to the board of directors, its chairperson, or otherwise as specified in the Bylaws, which resignation shall be effective when the notice is delivered unless the notice specifies a later effective date.

Subject to applicable law, a director may be removed at any time, with or without cause, by the affirmative vote of the holder or holders of a majority of all outstanding shares of capital stock entitled to vote at an election of directors, provided that, however, a director may not be removed if the number of votes sufficient to elect him or her under cumulative voting is voted against his or her removal.

FIFTH. The authorized amount of capital stock of this association shall be 10,000,000 shares of common stock of the par value of \$10.00 dollars each; but said capital stock may be increased or decreased from time to time, according to the provisions of the laws of the United States.

No holder of shares of the capital stock of any class of the association shall have any preemptive or preferential right of subscription to any shares of any class of stock of the association, whether now or hereafter authorized, or to any obligations convertible into stock of the association, issued, or sold, nor any right of subscription to any thereof other than such, if any, as the board of directors, in its discretion, may from time to time determine and at such price as the board of

directors may from time to time fix. Preemptive rights also must be approved by a vote of holders of two-thirds of the bank's outstanding voting shares.

Unless otherwise specified in these Articles of Association or required by law: (1) shareholders owning a majority voting interest in the outstanding voting stock must approve all matters requiring shareholder action, including amendments to these Articles of Association, and (2) each shareholder shall be entitled to one vote per share.

Unless otherwise specified in these Articles of Association or required by law, all shares of voting stock shall be voted together as a class, on any matters requiring shareholder approval. If a proposed amendment would affect two or more classes or series in the same or a substantially similar way, all the classes or series so affected, must vote together as a single voting group on the proposed amendment.

The 10,000,000 shares of common stock shall be subject to the following dividend, voting, liquidation, preemptive, conversion, assessment, and other rights.

All shares of common stock shall be identical with each other in every respect. The shares of common stock shall entitle the holders thereof to one vote for each share upon all matters upon which shareholders have the right to vote.

Subject to the preferences, privileges and powers with respect to each class of capital stock of the association having any priority over the common stock, and the restrictions and qualifications thereof, the holders of the common stock shall have and possess all rights pertaining to capital stock of the association.

Shares of one class or series may be issued as a dividend for shares of the same class or series on a pro rata basis and without consideration. Shares of one class or series may be issued as share dividends for a different class or series of stock if approved by a majority of the votes entitled to be cast by the class or series to be issued, unless there are no outstanding shares of the class or series to be issued. Unless otherwise provided by the board of directors, the record date for determining shareholders entitled to a share dividend shall be the date authorized by the board of directors for the share dividend.

Unless otherwise provided in the Bylaws, the record date for determining shareholders entitled to notice of and to vote at any meeting is the close of business on the day before the first notice is mailed or otherwise sent to the shareholders, provided that in no event may a record date be more than 70 days before the meeting.

If a shareholder is entitled to fractional shares pursuant to preemptive rights, a stock dividend, consolidation or merger, reverse stock split or otherwise, the association may: (a) issue fractional shares; (b) in lieu of the issuance of fractional shares, issue script, or warrants entitling the holder to receive a full share upon surrendering enough script or warrants to equal a full share; (c) if there is an established and active market in the association's stock, make reasonable arrangements to allow the shareholder to realize a fair price through sale of the fraction, or purchase of the additional fraction required for a full share; (d) remit the cash equivalent of the fraction to the shareholder; or (e) sell full shares representing all the fractions at public auction or to the highest bidder after having solicited and received sealed bids from at least three licensed

stock brokers; and distribute the proceeds pro rata to shareholders who otherwise would be entitled to the fractional shares. The holder of a fractional share is entitled to exercise the rights for a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the association upon liquidation, in proportion to the fractional interest. The holder of script or warrants is not entitled to any of these rights, unless the script or warrants explicitly provide for such rights. The script or warrants may be subject to such additional conditions as: (1) that the script or warrants will become void if not exchanged for full shares before a specified date; and (2) that the shares for which the script or warrants are exchangeable may be sold at the option of the association and the proceeds paid to scripsholders.

The association, at any time and from time to time, may authorize and issue debt obligations, whether or not subordinated, without the approval of the shareholders. Obligations classified as debt, whether or not subordinated, which may be issued by the association without the approval of shareholders, do not carry voting rights on any issue, including an increase or decrease in the aggregate number of the securities, or the exchange or reclassification of all or part of securities into securities of another class or series.

SIXTH. The board of directors shall appoint one of its members president of this association, and one of its members chairperson of the board and shall have the power to appoint one or more vice presidents, a secretary who shall keep minutes of the directors' and shareholders' meetings and be responsible for authenticating the records of the association, and such other officers and employees as may be required to transact the business of this association. A duly appointed officer may appoint one or more officers or assistant officers if authorized by the board of directors according to the Bylaws.

The board of directors shall have the power to:

- (1) Define the duties of the officers, employees, and agents of the association.
- (2) Delegate the performance of its duties, but not the responsibility for its duties, to the officers, employees, and agents of the association.
- (3) Fix the compensation and enter into employment contracts with its officers and employees upon reasonable terms and conditions consistent with applicable law.
- (4) Dismiss officers and employees.
- (5) Require bonds from officers and employees and to fix the penalty thereof.
- (6) Ratify written policies authorized by the association's management or committees of the board.
- (7) Regulate the manner in which any increase or decrease of the capital of the association shall be made, provided that nothing herein shall restrict the power of shareholders to increase or decrease the capital of the association according to law, and nothing shall raise or lower from two-thirds the percentage required for shareholder approval to increase or reduce the capital.

- (8) Manage and administer the business and affairs of the association.
- (9) Adopt initial Bylaws for managing the business and regulating the affairs of the association that are not inconsistent with law or these Articles of Association.
- (10) Amend or repeal the Bylaws, except to the extent that these Articles of Association reserve this power in whole or in part to shareholders.
- (11) Make contracts.
- (12) Generally perform all acts that are legal for a board of directors to perform.

SEVENTH. The board of directors shall have the power to change the location of the main office to any authorized branch within the limits of McLean, without the approval of the shareholders, or with a vote of shareholders owning two-thirds of the stock of such association for a relocation outside such limits and upon receipt of a certificate of approval from the OCC, to any other location within or outside the limits of McLean, but not more than 30 miles beyond such limits. The board of directors shall have the power to establish or change the location of any branch or branches of the association to any other location permitted under applicable law, without approval of shareholders, subject to approval by the OCC.

EIGHTH. The corporate existence of this association shall continue until termination according to the laws of the United States.

NINTH. Special meetings of shareholders for any purpose or purposes may be called at any time by the chairperson of the board, the president, the secretary, the board, a committee of the board which has been duly designated by the board whose powers and authority as expressly provided in a resolution of the board include the power to call such meetings, and shall be called by any of these upon demand by a group of shareholders owning, in the aggregate, not less than fifty percent (50%) of all the shares then outstanding and entitled to vote on the matter for which the special meeting is to be called. Unless otherwise provided by the Bylaws or the laws of the United States, or waived by all shareholders, or waived by the OCC if it determines that an emergency exists, notice of the time, place and purpose of every special meeting of the shareholders shall be given by first-class mail, postage prepaid, mailed at least 10 and no more than 60 days prior to the date of the meeting to each shareholder of record at his or her address as shown upon the books of this association. Unless otherwise provided by the Bylaws or these Articles of Association, any action requiring approval of the shareholders must be effected at an annual or special meeting. If action requiring approval of the shareholders is effected at an annual or special meeting, the meeting must be duly called.

TENTH. Section 1. Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit, or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she or a person of whom he or she is the legal representative is or was, at any time during which this Article is in effect (whether or not such person continues to serve in such capacity at the time any indemnification or advancement of expenses pursuant hereto is sought or at the time any proceeding relating thereto exists or is brought), a director, officer or employee of the association or is or was at any such time serving at the request of the association as a director, officer,

employee, trustee or agent of any other corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans maintained or sponsored by the association (hereinafter, a "Covered Person"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee, trustee or agent or in any other capacity while serving as a director, officer, employee, trustee or agent, shall be (and shall be deemed to have a contractual right to be) indemnified and held harmless by the association (and any successor of the association by merger or otherwise) to the fullest extent authorized by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended or modified from time to time (but, in the case of any such amendment or modification, only to the extent that such amendment or modification permits the association to provide greater indemnification rights than said law permitted the association to provide prior to such amendment or modification), against all expense, liability and loss (including, without limitation, attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, employee, trustee or agent and shall inure to the benefit of his or her heirs, executors and administrators; *provided* that such indemnification complies with the requirements of 12 C.F.R. 7.2014, 12 U.S.C. 1828(k) and 12 C.F.R. Part 359; and *provided further* that except as provided in Section 3 of this Article with respect to proceedings seeking to enforce rights to indemnification, the association shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) initiated by such person was authorized by the board of directors of the association.

Section 2. To the fullest extent authorized by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended or modified from time to time (but, in the case of any such amendment or modification, only to the extent that such amendment or modification permits the association to provide greater rights to advancement of expenses than said law permitted the association to provide prior to such amendment or modification), each Covered Person shall have (and shall be deemed to have a contractual right to have) the right, without the need for any action by the board of directors, to be paid by the association (and any successor of the association by merger or otherwise) the expenses reasonably incurred in connection with any proceeding in advance of its final disposition, such advances to be paid by the association within twenty (20) days after the receipt by the association of a statement or statements from the claimant requesting such advance or advances from time to time; *provided* that such advancement of expenses is consistent with the requirements of 12 C.F.R. 7.2014, 12 U.S.C. 1828(k) and 12 C.F.R. Part 359; and *provided further*, that if 12 C.F.R. 7.2014, 12 U.S.C. 1828(k), 12 C.F.R. Part 359 or the General Corporation Law of the State of Delaware requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the association of an undertaking (hereinafter, the "undertaking") by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right of appeal (a "final disposition") that such director or officer is not entitled to be indemnified for such expenses under this Article or otherwise.

Section 3. (1) If a claim for indemnification under this Article is not paid in full by the association within thirty (30) days after a written claim has been received by the association, or (2) if a request for advancement of expenses under this Article is not paid in full by the association within twenty (20) days after a statement pursuant to Section 2 of this Article and the required undertakings, if any, have been received by the association, the claimant may at any time thereafter bring suit against the association to recover the unpaid amount of the claim for indemnification or request for advancement of expenses and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action that the claimant has not met the standards of conduct which make it permissible under the General Corporation Law of the State of Delaware for the association to indemnify the claimant for the amount claimed or that the claimant is not entitled to the requested advancement of expenses, but (except where the required undertaking, if any, has not been tendered to the association) the burden of proving such defense shall be on the association. Neither the failure of the association (including its board of directors, independent legal counsel or stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the General Corporation Law of the State of Delaware, nor an actual determination by the association (including its board of directors, independent legal counsel or stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

Section 4. All rights to indemnification, the payment of expenses incurred in connection with a proceeding in advance of its final disposition, and otherwise that are conferred in this Article shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of these Articles of Association, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

Section 5. The association may maintain insurance, at its expense, to protect itself and any current or former director, officer, employee, trustee or agent of the association or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the association would have the power to indemnify such person against such expense, liability or loss under the General Corporation Law of the State of Delaware; *provided* that payments for such insurance are consistent with the requirements of 12 C.F.R. 7.2014.

Section 6. The association may, subject to 12 C.F.R. 7.2014, 12 U.S.C. 1828(k) and 12 C.F.R. Part 359, to the extent authorized from time to time by the board of directors, grant rights to indemnification, and rights to be paid by the association the expenses incurred in connection with any proceeding in advance of its final disposition, to any current or former agent of the association to the fullest extent of the provisions of this Article with respect to the indemnification and advancement of expenses of directors, officers and employees of the association.

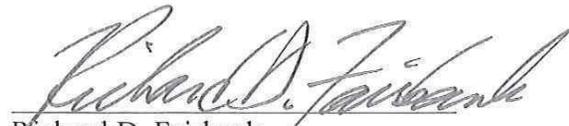
Section 7. All rights to indemnification, the payment of expenses incurred in connection with a proceeding in advance of its final disposition and otherwise, that are conferred in this Article shall be contract rights between the association and each Covered Person to whom such rights are extended that vest at the commencement of such Covered Person's service to or at the

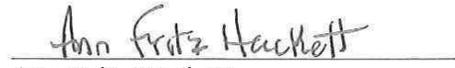
request of the association and (i) any amendment or modification of this Article that in any way diminishes or adversely affects any such rights shall be prospective only and shall not in any way diminish or adversely affect any such rights with respect to any actual or alleged state of facts, occurrence, action or omission occurring prior to the time of such amendment or modification, or proceeding previously or thereafter brought or threatened based in whole or in part upon any such actual or alleged state of facts, occurrence, action or omission, and (ii) all of such rights shall continue as to any such Covered Person who has ceased to be a director, officer or employee of the association or ceased to serve at the association's request as a director, officer, trustee, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, as described herein, and shall inure to the benefit of such Covered Person's heirs, executors and administrators.

Section 8. If any provision or provisions of this Article shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (1) the validity, legality and enforceability of the remaining provisions of this Article (including, without limitation, each portion of any paragraph of this Article containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (2) to the fullest extent possible, the provisions of this Article (including, without limitation, each such portion of any paragraph of this Article containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

ELEVENTH. These Articles of Association may be amended at any regular or special meeting of the shareholders by the affirmative vote of the holders of a majority of the stock of this association, unless the vote of the holders of a greater amount of stock is required by law, and in that case by the vote of the holders of such greater amount. The association's board of directors may propose one or more amendments to these Articles of Association for submission to the shareholders.

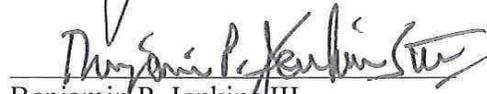
In witness whereof, we have hereunto set our hands this 31<sup>st</sup> day of October, 2013.

  
Richard D. Fairbank

  
Ann Fritz Hackett

  
Sanjiv Yajnik

  
Mayo A. Shattuck III

  
Benjamin P. Jenkins III

  
Lewis Hay III

  
Stephen S. Crawford

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