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January 23, 2025

VIA ELECTRONIC SUBMISSION

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Ladies and Gentlemen:

On behalf of Capital One Financial Corporation, a Delaware corporation (the "**Company**"), and in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), we are filing this letter with respect to the shareholder proposal (the "**Proposal**") submitted by John Chevedden (the "**Proponent**") for inclusion in the proxy materials the Company intends to distribute in connection with its 2025 Annual Meeting of Shareholders (the "**2025 Proxy Materials**"). The Proposal is attached hereto as Exhibit A.

We hereby request confirmation that the Staff of the Division of Corporation Finance (the "**Staff**") will not recommend any enforcement action if, in reliance on Rule 14a-8, the Company omits the Proposal from the 2025 Proxy Materials.

In accordance with relevant Staff guidance, we are submitting this letter and its attachments to the Staff through the Staff's online Shareholder Proposal Form. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponent as notice of the Company's intent to omit the Proposal from the 2025 Proxy Materials. This letter constitutes the Company's statement of the reasons it deems the omission of the Proposal to be proper. We have been advised by the Company as to the factual matters set forth herein.

THE PROPOSAL

The Proposal states:

> Shareholders request that the Board seek shareholder approval of any senior manager's new or renewed pay package that provides for severance or termination payments with an estimated value exceeding 2.99 times the sum of the executive's base salary plus target short-term bonus. This proposal only applies to the Named Executive Officers. This provision shall at least be included in the Governess [*sic*] Guidelines of the Company or similar document and be readily accessible on the Company website.

"Severance or termination payments" include cash, equity or other pay that is paid out or vests due to a senior executive's termination for any reason. Payments include those provided under employment agreements, severance plans, and change-in-control clauses in long-term equity plans, but not life insurance, pension benefits, or deferred compensation earned and vested prior to termination.

"Estimated total value" includes: lump-sum payments; payments offsetting tax liabilities, perquisites or benefits not vested under a plan generally available to management employees, post-employment consulting fees or office expense and equity awards if vesting is accelerated, or a performance condition waived, due to termination.

REASONS FOR EXCLUSION OF THE PROPOSAL

The Company believes that the Proposal may be properly omitted from the 2025 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters related to the Company's ordinary business operations by seeking to micromanage the Company.

I. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because the Proposal Deals with Matters Related to the Company's Ordinary Business Operations by Seeking to Micromanage the Company.

Rule 14a-8(i)(7) allows a company to omit a shareholder proposal from its proxy materials if such proposal deals with a matter relating to the company's ordinary business operations. The general policy underlying the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." *See* Exchange Act Release No. 34-40018 (May 21, 1998) (the "**1998 Release**"). The 1998 Release also identified two central considerations that underlie this policy: (i) that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight" and (ii) the "degree to which the proposal seeks to 'micromanage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *See* Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("**SLB 14L**"). As demonstrated below, the Proposal implicates the second consideration.

A. The Proposal Seeks to Micromanage the Company by (1) Inappropriately Limiting the Discretion of the Board and (2) Probing Matters "Too Complex" for Shareholders, as a Group, to Make an Informed Judgment.

In SLB 14L, the Staff clarified that the determination of whether a proposal impermissibly micromanages the Company "will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management." The Staff further clarified that this approach is "consistent with the Commission's views on the ordinary business exclusion, which is designed to preserve management's discretion on ordinary business matters." SLB 14L. The 1998 Release further states that "[t]his consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies."

The micromanagement element of the ordinary business exception under Rule 14a-8(i)(7) is also based on whether a proposal probes matters "too complex" for shareholders, as a group, to make an informed judgment. SLB 14L, citing the 1998 Release. According to SLB 14L, in making this determination as to whether a proposal probes matters "too complex" for shareholders, the Staff may consider "the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic," as well as "references to well-established national or international frameworks when assessing proposals related to disclosure, target setting, and timeframes as indicative of topics that shareholders are well-equipped to evaluate." The Staff has consistently granted no-action relief on micromanagement grounds for shareholder proposals that probe matters too complex for shareholders by substituting shareholder judgment for that of management with respect to complex day-to-day business operations that are beyond the knowledge and expertise of shareowners. *See, e.g.*, *NetApp, Inc.* (July 19, 2024) (proposal requiring director compensation to be fixed at $1 for any given fiscal year unless such compensation was disclosed to shareholders in advance of the fiscal year, submitted to shareholders for an approval vote at a meeting of shareholders and approved by shareholder vote); *Delta Air Lines, Inc.* (Apr. 24, 2024) (proposal requiring a report regarding "union suppression expenditures," including internal and external expenses); *Walmart Inc.* (Apr. 18, 2024) (proposal requiring a breakdown of GHG emissions for different categories of products in a manner inconsistent with existing reporting frameworks); and *Amazon.com, Inc.* (Apr. 7, 2023) (proposal requesting the company report Scope 3 emissions from "its full value chain" sought to micromanage the company "by imposing a specific method for implementing complex policy disclosure without affording discretion to management").

The Proposal is focused on dictating certain technical aspects of how the Company approaches severance benefits in different contexts. The Company's current severance and termination arrangements already provide reasonable, appropriate and market competitive post-termination compensation and the Compensation Committee reviews each executive officer's separation on a case-by-case basis, allowing the Company to tailor their terms for different termination scenarios. Each of the Company's named executive officers (each, an "**NEO**"), other than the Company's Chief Executive Officer (the "**CEO**"), participates in the Company's Executive Severance Plan and is entitled to receive the amounts set forth therein in the event that the executive undergoes a qualifying termination. Each of the Company's NEOs is additionally party to a change in control agreement pursuant to which the executive may receive certain payments upon an involuntary termination without cause or a voluntary termination for good reason within one year prior to but in anticipation of or within two years following a change in control of the Company. Three of the Company's NEOs for the year ended December 31, 2023 are each additionally party to a non-competition agreement pursuant to which those executives may receive payments related to non-competition covenants. These different arrangements are tailored to the needs of the Company with respect to the NEOs in light of the different termination scenarios that may occur. For example, retirement provisions generally provide for continued vesting, but a qualified termination in connection with a change in control generally results in accelerated vesting.

These severance and termination arrangements are carefully designed with oversight and approval by the Compensation Committee of the board of directors of the Company (such committee, the "**Compensation Committee**" and such board of directors, the "**Board**") to provide the NEOs with specified compensation if their employment is terminated for qualifying reasons. Qualifying terminations generally include involuntary terminations without cause, but a termination for cause is not a severance-qualifying termination. With respect to equity awards and/or in the event a termination is in connection with a change in control, qualifying terminations also include voluntary terminations for good reason. An NEO, other than the CEO, who voluntarily terminates employment may receive payments related to non-competition covenants. The Proposal's focus on dictating certain technical aspects of how the Company approaches severance benefits improperly interferes with the kind of management-level discretion the Commission sought to preserve with the ordinary business exclusion. The proposal goes well beyond providing "high level direction" for the Board to consider, and disregards the complex

process of negotiating, designing and implementing executive compensation benefits for a global business enterprise, which is particularly burdensome for the Company when it has made extensive efforts to tailor termination benefits to appropriate amounts based on the different termination scenarios.

The Proposal inappropriately limits the discretion of the Compensation Committee in determining executive compensation benefits, going beyond "seeking detail or seeking to promote a timeframe." SLB 14L. Instead, it seeks to have shareholders involved in weighing in on the ability to impose a strict limit on the amount of severance benefits that may be offered to senior managers, and a formula for determining that amount with defined terms that results in prescribing how the Company should manage its severance programs.

In addition, the Proposal applies broadly "to a senior executive's termination *for any reason*" (emphasis added), and thus would cover situations such as death or disability, as well as retirement or termination in connection with restructurings and spin-offs, layoffs, or business acquisitions or dispositions. The Proposal also appears to include life insurance payments in the calculation of severance benefits if the payment is made by the Company as an out-of-pocket expense, but it excludes those payments if made pursuant to an insurance policy purchased by the Company. The Proposal also appears to include payments made in settlement of wrongful termination claims as severance, without taking into account any value received by the Company in making such settlements, such as the value of an associated release from the executive.

In sum, the Proposal seeks to tightly circumscribe the Compensation Committee's discretion across this range of possible scenarios by establishing a severance formula and exhaustively defining what must be included in the calculation of severance or termination payments under the formula, as set forth in the table below:

Compensation Provided	Impact on Severance Payment Calculation
Cash	Included
Deferred compensation	Sometimes Excluded
Equity – accelerated vesting	Included
Equity – waiver of performance conditions	Included
Equity – other benefits	Excluded
Life Insurance	Excluded
Lump-sum payments	Included
Other pay	Included
Pension benefits	Excluded
Perquisites or benefits not vested under a plan generally available to management	Included

Perquisites or benefits vested under a plan generally available to management	Excluded
Post-employment consulting fees	Included
Post-employment office expenses	Included
Tax-offsetting payments	Included

The definition of “severance or termination benefits” specified in the Proposal, as summarized by the foregoing table, is not a definition that could be considered part of a well-established known and recognized framework, as companies have adopted myriad approaches to defining severance benefits. As further demonstration of the complexity of this topic, certain laws or regulations impose their own definitions of what constitutes severance benefits. For example, under U.S. federal tax laws, certain portions of a settlement payment made to a former executive who claimed wrongful termination would be treated as severance for tax purposes, but other parts of any such settlement would not be considered compensation at all, and certain severance benefits may be subject to an excise tax, depending on whether it is received in connection with a change in control transaction.

Furthermore, the Company has already significantly addressed this complex topic through its existing policies and practices that already place parameters on severance compensation but in a different manner. The Company’s severance arrangements and equity compensation plan are subject to the ongoing oversight of the Compensation Committee. The Compensation Committee has evaluated and approved the compensation to be paid upon a termination scenario well in advance of the occurrence of such termination. The Compensation Committee also engages an independent compensation consultant to review external benchmarking data and assist the Company in developing the Company’s executive compensation and benefit programs (including the post-employment compensation and benefits that are the subject of the Proposal) within reasonable and appropriate parameters.

In addition, applicable regulatory guidance specifically cautions financial institutions that “in all cases, a banking organization should ensure that the structure and terms of any golden parachute arrangement entered into by the organization” are appropriate from a safety and soundness perspective. The Compensation Committee currently reviews each executive officer’s separation on a case-by-case basis and exercises its business judgment, with the approval of the other independent directors, to customize the terms of separation in consideration of relevant circumstances, including the reasons for the separation, market competitive practices for comparable separation scenarios and potential benefits to the Company (such as retaining its competitive advantage, maintaining a positive reputation internally and externally, and preserving its ability to recruit highly talented executives). Rather than a formulaic approach to compensation as suggested by the Proposal, the Company recognizes that judgment about what is best for a business is sometimes required, and that judgment is properly exercised by the Compensation Committee. Thus, the Company’s robust governance and compensation setting processes and procedures provide reasonable and appropriate oversight and parameters on the post-employment compensation and benefits afforded to the Company’s NEOs. The Proposal’s presumed imposition of a strict and prescriptive limit on the amount of severance benefits that may be offered to senior managers without obtaining shareholder approval, coupled with the highly detailed and specific method by which the value of severance benefits is to be determined, supplants the Compensation Committee’s discretion to determine both the appropriate executive severance benefits and the appropriate conditions for seeking

shareholder approval. By imposing a specific method to address the complex issue of executive compensation design and administration, the Proposal would, in the words of SLB 14L, "inappropriately limit[] discretion of the board or management" and is properly excludable under Rule 14a-8(i)(7) because it seeks to micromanage the Company.

The Staff has concurred with the exclusion of proposals that, similar to the Proposal, seek to supplant the board's discretion on a matter of executive compensation based on micromanagement under Rule 14a-8(i)(7). For example, in *AT&T Inc. (Gaglione)* (avail. Mar. 15, 2023), the Staff concurred with the exclusion of a proposal requesting the board adopt a policy of obtaining shareholder approval for any future agreements and corporate policies that could oblige the company to make payments or awards following the death of a senior executive in the form of unearned salary or bonuses, accelerated vesting or the continuation in force of unvested equity grants, perquisites or other payments made in lieu of compensation. There, the company argued that the proposal inappropriately limited the board's discretion in determining executive compensation benefits, going beyond "seeking detail or seeking to promote a timeframe" and instead imposed a singular method by which the company could approve payments or awards to certain executives in the event of their death. Although the proposal in *AT&T* did not include a threshold for seeking shareholder approval, the Proposal seeks to implement a policy that in certain ways is both more prescriptive than that considered in *AT&T* (due to the Proposal's extensive and granular calculation of severance benefits) and broader in scope (as it is not limited to the rare instance of an executive's termination due to death and instead applies to a "termination *for any reason*" (emphasis added)).

Exclusion of the Proposal also is consistent with a long line of precedents where the Staff has concurred that attempts to dictate precise terms of executive compensation arrangements seek to micromanage a company to an extent inconsistent with Rule 14a-8(i)(7). *See e.g., Rite Aid Corp.* (avail. Apr. 23, 2021, *recon. denied* May 10, 2021) (concurring with the exclusion of a proposal requesting that the board adopt a policy prohibiting equity compensation grants to senior executives when the company's common stock had a market price lower than the grant date market price of any prior equity compensation grants to such executives, where the company argued that the proposal both prescribed specific limitations on the ability of its compensation committee "to make business judgments, without any flexibility or discretion," and restricted it from "making any equity compensation grants to senior executives in certain instances without regard to circumstances and the committee's business judgment"); *Gilead Sciences, Inc.* (avail. Dec 23, 2020) (concurring with the exclusion of a proposal recommending that the company reduce its named executive officer pay ratios each year until they reached 20 to 1, where the company argued the prescriptive terms of the proposal would unduly limit the ability of management and the board to manage complex matters with a level of flexibility necessary to fulfill fiduciary duties to shareholders); *Comcast Corp.* (avail. Apr. 1, 2020) (concurring with the exclusion of a proposal reducing a company's CEO pay ratio by 25-50%); *JPMorgan Chase & Co.* (avail. Mar. 22, 2019) (concurring with the exclusion of a proposal requesting that the board adopt a policy prohibiting the vesting of equity-based awards for senior executives who voluntarily resigned to enter government service); *AbbVie Inc.* (avail. Feb. 15, 2019) (concurring with the exclusion of a proposal requesting a policy to prohibit financial performance metric adjustments to exclude legal or compliance costs for the purposes of determining senior executive incentive compensation, noting that the proposal "would prohibit any adjustment of the broad categories of expenses covered by the [p]roposal without regard to specific circumstances or the possibility of reasonable exceptions").

We acknowledge that the Staff was unable to concur with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that a company adopt an executive severance benefits shareholder approval policy similar to that described in the Proposal. *See FedEx Corp.* (avail. Aug. 2, 2021). There, the Staff concluded that the proposal did not "probe too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." While the Proposal

similarly relates to compensation available only to senior executives and seeks to prohibit certain payments above a specified threshold without obtaining shareholder approval, the shareholders in *FedEx* were not asked to adopt a proposal that would revise and supplant the company's existing policies, because FedEx had not adopted policies analogous to the Company's severance and termination arrangements. For example, FedEx did not maintain a severance plan, but rather only individual agreements with executives. The Company maintains a severance plan that applies to each NEO other than the CEO. The Proposal is essentially asking the Company's shareholders to critique the Company's policies, particularly with respect to certain aspects of the severance and termination arrangements, including the Executive Severance Plan, to impose a strict and prescriptive limit on severance and post-termination compensation.

Notably, the Staff recently concurred with the exclusion of proposals that sought to micromanage a company by changing or revising a company's existing policies on or approach to complex matters. For example, in *Chevron Corp. (As You Sow Foundation Fund)* (avail. Mar. 29, 2024), the Staff concurred with the exclusion of a proposal requesting that the company report on divestitures of assets with a material climate impact, including whether each asset purchaser disclosed its GHG emissions and had 1.5°C-aligned or other greenhouse gas reduction targets, where the company already provided extensive disclosures on the emissions impacts of its divestitures, and the proposal sought to micromanage the way the company addressed a complex matter by seeking to prescribe a different method of disclosure. *See also JP Morgan Chase & Co* (Mar. 29, 2024) (proposal asking the company to adopt a specific methodology for sector-by-sector achievement of emissions targets within its investment portfolios); *Morgan Stanley* (Mar. 29, 2024) (same); *Wells Fargo & Co.* (Mar. 6, 2024) (same); *The Goldman Sachs Group, Inc.* (Mar. 4, 2024) (same); *Bank of America Corp.* (Feb. 29, 2024) (same); *Tractor Supply Co.* (Mar. 18, 2024) (proposal requesting disclosure of GHG emissions from Use of Sold Products, including a breakdown of emissions by product category). Likewise, in *Tesla, Inc. (Stephen)* (avail. Mar. 27, 2024), the Staff concurred with the exclusion of a proposal requesting that the company "*redesign* vehicle tires to avoid pollution from harmful chemicals such as 6PPD-Q," noting that "[i]n our view, the [p]roposal seeks to micromanage the [c]ompany" (emphasis added). The company argued that the determination of how to engineer its products involved a wide array of complex business considerations, and that the management of the allocation and development of internal resources and products was complex and involved the consideration of many factors. *See also The Home Depot, Inc.* (Mar. 21, 2024) (proposal requesting a report assessing the benefits and drawbacks of permanently committing not to sell certain company paint products containing titanium dioxide); and *The Sherwin-Williams Co.* (Feb. 21, 2024) (same); *Amazon.com, Inc.* (avail. Apr. 7, 2023, *recon. denied* Apr. 20, 2023) (concurring with the exclusion of a proposal requesting that the company measure and disclose Scope 3 GHG emissions where the proposal sought to change which Scope 3 emissions the company reported); and *Chubb Limited* (Mar. 27, 2023) (proposal requiring the board to adopt and disclose a policy for the timebound phaseout of underwriting risks associated with new fossil fuel exploration and development projects). As in *Chevron*, *Tesla*, and *Amazon*, the Proposal seeks to change the manner in which the Company has already determined to address a complex, multifaceted issue by dictating a different and prescriptive standard for when the Company must seek shareholder approval of severance benefits.

Moreover, the Staff's position that proposals unduly limiting the discretion of the board or management are excludable under Rule 14a-8(i)(7) is longstanding, regardless of whether the proposal raises important policy considerations. For example, in *Wendy's Co.* (avail. Mar. 2, 2017), the company received a proposal urging the board to join the Fair Food Program. The company argued that the selection of suppliers and management of supplier relationships was a complex process that shareholders were not in a position to make an informed judgment about and that the proposal sought to substitute management's existing practices and processes. The Staff concurred with exclusion of the proposal, noting the proposal

sought “to micromanage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” In *SeaWorld Entertainment, Inc.* (avail. Mar. 30, 2017, recon. denied Apr. 17, 2017), the Staff concurred with exclusion based on micromanagement where the company received a proposal which urged the board to retire the current resident orcas to seaside sanctuaries and replace the captive-orca exhibits with innovative virtual and augmented reality or other types of non-animal experience. There, the company argued that its management and board invested significant time and effort in determining which experiences to offer, while also striving to generate an attractive return to company shareholders, and that plans for new exhibits and attractions are within the purview of management.

As discussed above, the Proposal interferes with the management-level discretion the Commission sought to preserve with the ordinary business exclusion, going well beyond providing “high level direction” for the Board to consider, and attempting instead to prescribe how, when and on what terms the Company may offer severance benefits to its named executive officers, and disregarding the detailed considerations required to negotiate, design and implement competitive executive compensation benefits that are consistent with best practices and the interest of shareholders. As described above, the Proposal thus seeks to impose a specific method for designing a significant component of executive compensation benefits with a “level of granularity” that “inappropriately limits discretion of the board or management.” As such, consistent with the 1998 Release, SLB 14L and the aforementioned precedent, the Proposal is properly excludable under Rule 14a-8(i)(7) because it seeks to micromanage the Company.

CONCLUSION

Because the Proposal seeks to micromanage the Company by limiting the discretion of the Board and probing matters “too complex” for its shareholders, as a group, to make an informed judgment, the Company believes that the Proposal may be excluded from its 2025 Proxy Materials pursuant to Rule 14a-8(i)(7).

Respectfully yours,

Ning Chiu

Attachment

cc w/ att: Matthew W. Cooper, Capital One Financial Corporation

John Chevedden

Exhibit A

Proposal 4 - Shareholder Vote regarding Lavish Golden Parachutes

Shareholders request that the Board seek shareholder approval of any senior manager's new or renewed pay package that provides for severance or termination payments with an estimated value exceeding 2.99 times the sum of the executive's base salary plus target short-term bonus. This proposal only applies to the Named Executive Officers. This provision shall at least be included in the Governess Guidelines of the Company or similar document and be readily accessible on the Company website.

"Severance or termination payments" include cash, equity or other pay that is paid out or vests due to a senior executive's termination for any reason. Payments include those provided under employment agreements, severance plans, and change-in-control clauses in long-term equity plans, but not life insurance, pension benefits, or deferred compensation earned and vested prior to termination.

"Estimated total value" includes: lump-sum payments; payments offsetting tax liabilities, perquisites or benefits not vested under a plan generally available to management employees, post-employment consulting fees or office expense and equity awards if vesting is accelerated, or a performance condition waived, due to termination.

The Board shall retain the option to seek shareholder approval after material terms are agreed upon.

Unfortunately some companies only limit cash golden parachutes to the 2.99 figure which means that there is no limit on noncash golden parachutes for which shareholders have no voting power.

This proposal is relevant even if there are current golden parachute limits. A limit on golden parachutes is like a speed limit. A speed limit by itself does not guarantee that the speed limit will never be exceeded. Like this proposal the rules associated with a speed limit provide consequences if the limit is exceeded.

With this proposal the consequences are a non-binding shareholder vote is required for unreasonably rich golden parachutes.

This proposal places no limit on long-term equity pay or any other type pay. This proposal thus has no impact on the ability to attract executive talent and does not discourage the use of long-term equity pay because it places no limit on golden parachutes. It simply requires that overly rich golden parachutes be subject to a non-binding shareholder vote at a shareholder meeting already scheduled for other matters.

This proposal is relevant because the annual say on executive pay vote does not have a separate section for approving or rejecting golden parachutes.

This proposal topic also received between 51% and 65% support at:
FedEx (FDX)
Spirit AeroSystems (SPR)
Alaska Air (ALK)
AbbVie (ABBY)
Fiserv (FISV)

Please vote yes:

Shareholder Vote regarding Lavish Golden Parachutes - Proposal 4