

CAPITAL ONE FINANCIAL CORP
Form 8-K
November 18, 2008

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of

The Securities Exchange Act of 1934

Date of Earliest Event Reported: November 13, 2008

CAPITAL ONE FINANCIAL CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

1-13300
(Commission File Number)

54-1719854
(IRS Employer
Identification No.)

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1680 Capital One Drive,

McLean, Virginia
(Address of principal executive offices)

22102
(Zip Code)

Registrant's telephone number, including area code: (703) 720-1000

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01. Entry into a material definitive agreement.

Pursuant to a Letter Agreement dated November 14, 2008, and the Securities Purchase Agreement Standard Terms attached thereto (the Securities Purchase Agreement), Capital One Financial Corporation (the Company) issued to the United States Department of the Treasury (Treasury Department) 3,555,199 shares of the Company s Fixed Rate Cumulative Perpetual Preferred Stock, Series A, par value \$0.01 per share (the Series A Preferred Stock), having a liquidation amount per share equal to \$1,000, for a total price of \$3,555,199,000. The Series A Preferred Stock pays cumulative dividends at a rate of 5% per year for the first five years and thereafter at a rate of 9% per year. The Company may not redeem the Series A Preferred Stock during the first three years except with the proceeds from a qualified equity offering (as defined in the Certificate of Designations filed as Exhibit 4.1 hereto). After three years, the Company may, at its option, redeem the Series A Preferred Stock at the liquidation amount plus accrued and unpaid dividends. The Series A Preferred Stock is generally non-voting. Prior to November 14, 2011, unless the Company has redeemed the Series A Preferred Stock or the Treasury Department has transferred the Series A Preferred Stock to a third party, the consent of the Treasury Department will be required for the Company to increase its common stock dividend or repurchase its common stock or other equity or capital securities, other than in certain circumstances specified in the Securities Purchase Agreement. The Securities Purchase Agreement is attached as Exhibit 10.1 hereto and is incorporated herein by reference.

As part of its purchase of the Series A Preferred Stock, the Treasury Department received a warrant (the Warrant) to purchase 12,657,960 shares of the Company s common stock at an initial per share exercise price of \$42.13. The Warrant provides for the adjustment of the exercise price and the number of shares of the Company s common stock issuable upon exercise pursuant to customary anti-dilution provisions, such as upon stock splits or distributions of securities or other assets to holders of the Company s common stock, and upon certain issuances of the Company s common stock at or below a specified price relative to the then current market price of the Company s common stock. The Warrant expires ten years from the issuance date. If, on or prior to December 31, 2009, the Company receives aggregate gross cash proceeds of not less than the purchase price of the Series A Preferred Stock from one or more qualified equity offerings announced after October 13, 2008, the number of shares of common stock issuable pursuant to the Treasury Department s exercise of the Warrant will be reduced by one-half of the original number of shares, taking into account all adjustments, underlying the Warrant. Pursuant to the Securities Purchase Agreement, the Treasury Department has agreed not to exercise voting power with respect to any shares of common stock issued upon exercise of the Warrant. The Warrant is attached as Exhibit 4.2 hereto and is incorporated herein by reference.

Both the Series A Preferred Stock and Warrant will be accounted for as components of Tier 1 capital.

The Series A Preferred Stock and the Warrant were issued in a private placement exempt from registration pursuant to Section 4(2) of the Securities Act of 1933, as amended. The Company has agreed to register the Series A Preferred Stock, the Warrant and the shares of common stock underlying the Warrant (the Warrant Shares), as soon as practicable after the date of the issuance of the Series A Preferred Stock and the Warrant. Neither the Series A Preferred Stock nor the Warrant will be subject to any contractual restrictions on transfer, except that the Treasury Department may only transfer or exercise an aggregate of one-half of the Warrant Shares prior to the earlier of the date on which the Company receives aggregate gross cash proceeds of not less than the purchase price of the Series A Preferred Stock from one or more qualified equity offerings and December 31, 2009.

The Company agreed, pursuant to the Securities Purchase Agreement, to certain restrictions on executive compensation that could limit the tax deductibility of compensation the Company pays to certain executives. The Company also agreed that, until such time as the Treasury Department ceases to own any securities acquired from us pursuant to the Securities Purchase Agreement, it will take all necessary action to ensure that its benefit plans with respect to its senior executive officers comply with Section 111(b) of the Emergency Economic Stabilization Act of 2008 (EESA) as implemented by any guidance or regulation under Section

111(b) of EESA that has been issued and is in effect as of the date of issuance of the Series A Preferred Stock and the Warrant and not adopt any benefit plans with respect to, or that cover, the Company's senior executive officers that do not comply with EESA. The applicable executives have consented to the foregoing.

Item 3.02. Unregistered sales of equity securities.

The information set forth under Item 1.01 Entry into a Material Definitive Agreement is incorporated herein by reference.

Item 3.03. Material modification to rights of securityholders.

Prior to November 14, 2011, unless the Company has redeemed the Series A Preferred Stock or the Treasury Department has transferred the Series A Preferred Stock to a third party, the consent of the Treasury Department will be required for the Company to (1) declare or pay any dividend or make any distribution on its common stock (other than regular quarterly cash dividends of not more than \$0.375 per share of common stock) or (2) redeem, purchase or acquire any shares of its common stock or other equity or capital securities, other than in connection with benefit plans consistent with past practice and certain other circumstances specified in the Securities Purchase Agreement.

In addition, under the Certificate of Designations, the Company's ability to declare or pay dividends or repurchase its common stock or other equity or capital securities will be subject to restrictions in the event that it fails to declare and pay (or set aside for payment) full dividends on the Series A Preferred Stock.

Item 5.02. Departure of directors or certain officers; election of directors; appointment of certain officers; compensatory arrangements of certain officers.

The information concerning executive compensation set forth under Item 1.01 Entry into a Material Definitive Agreement is incorporated by reference into this Item 5.02.

Item 5.03. Amendment to articles of incorporation or bylaws; change in fiscal year.

On November 13, 2008, the Company filed with the Secretary of State of the State of Delaware a Certificate of Designations to its Restated Certificate of Incorporation establishing the terms of the Series A Preferred Stock. This Certificate of Designations is attached as Exhibit 4.1 hereto and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
4.1	Certificate of Designations for the Series A Preferred Stock
4.2	Warrant to Purchase Common Stock
10.1	Letter Agreement, dated November 14, 2008, between Capital One Financial Corporation and the United States Department of the Treasury, which includes the Securities Purchase Agreement-Standard Terms attached thereto, with respect to the issuance and sale of the Series A Preferred Stock and the Warrant

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Company has duly caused this Current Report on Form 8-K to be signed on its behalf by the undersigned hereunto duly authorized.

CAPITAL ONE FINANCIAL CORPORATION

Dated: November 17, 2008

By: /s/ John G. Finneran, Jr.
John G. Finneran, Jr.
General Counsel and Corporate Secretary

EXHIBIT INDEX

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