

CAPITAL ONE FINANCIAL CORP
Form S-8 POS
November 23, 2005

As filed with the Securities and Exchange Commission on November 23, 2005

Registration No. 333-124428

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

POST-EFFECTIVE AMENDMENT NO. 2

ON

FORM S-8

TO

FORM S-4

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

CAPITAL ONE FINANCIAL CORPORATION

(Exact Name of Registrant as Specified in Its Charter)

Delaware

6141

54-1719854

(State or Other Jurisdiction of
Incorporation or Organization)

(Primary Standard Industrial Classification Code
Number)

(I.R.S. Employer Identification Number)

1680 CAPITAL ONE DRIVE

McLEAN, VIRGINIA 22102

(Address of Registrant's Principal Executive Offices)

Hibernia Corporation Long-Term Incentive Plan; Hibernia Corporation 1993 Director Stock Option Plan; Hibernia Corporation 2003 Long-Term Incentive Compensation Plan; and Hibernia Corporation Retirement Security Plan (the Plans)

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(Full Title of the Plan[s])

John G. Finneran, Jr., Esq.

Executive Vice President, General Counsel and Corporate Secretary

1680 Capital One Drive

McLean, Virginia

(703) 720-1000

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

with a copy to:

Victor I. Lewkow

Cleary Gottlieb Steen & Hamilton LLP

One Liberty Plaza

New York, NY 10006

(212) 225-2000

CALCULATION OF REGISTRATION FEE

| Title of Securities to be registered | Amount to Be Registered | Proposed Maximum Offering Price Per Share | Proposed Maximum Aggregate Offering Price | Amount of Registration Fee |
|--|--------------------------------|--|--|-----------------------------------|
| Common Stock, par value \$0.01 per share (1) | 4,231,000 (2) | (3) | (3) | (3) |

- (1) Includes the preferred share purchase rights associated with the Common Stock of Capital One Financial Corporation (the Registrant).
- (2) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Act), includes such additional number of shares as may be issued pursuant to the anti-dilution provisions of the Plans and, pursuant to Rule 416(c) under the Act, an indeterminate amount of interests to be offered or sold pursuant to the Hibernia Corporation Retirement Security Plan.
- (3) This Post-Effective Amendment No. 2 covers securities that were originally registered on the Registrant's registration statement on Form S-4 (File No. 333-124428), as amended by Amendment No. 1 to Form S-4 registration statement and by Post-Effective Amendment No. 1 to Form S-4 Registration Statement. All filing fees payable in connection with the issuance of these securities were previously paid in connection with the filing of the Form S-4 registration statement.

PART I

INTRODUCTION

This Post-Effective Amendment No. 2 on Form S-8 to the Form S-4 registration statement is filed by the Registrant, and relates to a total of 4,231,000 shares of Common Stock of the Registrant, all of which were originally registered by the Registrant on the Form S-4 registration statement filed on April 28, 2005, as amended by Amendment No. 1 to the Form S-4 registration statement filed by the Registrant on June 16, 2005 and which became effective on June 17, 2005 and as further amended by Post-Effective Amendment No. 1 to Form S-4 Registration Statement filed by the Registrant on September 21, 2005, which became effective on September 26, 2005.

In connection with the merger on November 16, 2005 of Hibernia Corporation (Hibernia) with and into the Registrant pursuant to the Agreement and Plan of Merger, dated as of March 6, 2005, between Hibernia and the Registrant, as amended by Amendment No. 1 to the Agreement and Plan of Merger, dated as of September 6, 2005, shares of the class A common stock of Hibernia, without par value (the Hibernia Common Stock), issuable upon the exercise or settlement of options, restricted shares, restricted units and other equity awards granted under the Hibernia Corporation Long-Term Incentive Plan, Hibernia Corporation 1993 Director Stock Option Plan, and Hibernia Corporation 2003 Long-Term Incentive Compensation Plan have been converted into corresponding awards covering the Common Stock of the Registrant. In addition, shares of the class A common stock of Hibernia that were available for purchase by, or issuance to, the Company Stock Fund under the Hibernia Corporation Retirement Security Plan were converted into shares of Common Stock of the Registrant.

Part II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, which previously have been filed by the Registrant with the Securities and Exchange Commission (the Commission), are incorporated herein by reference and made a part hereof:

- (i) The Registrant's Annual Report on Form 10-K, for the fiscal year ended December 31, 2004, filed with the Commission on March 9, 2005;
- (ii) The Registrant's Quarterly Reports on Form 10-Q, for the fiscal quarters ended March 31, 2005, June 30, 2005 and September 30, 2005, filed with the Commission on May 3, 2005, August 4, 2005 and November 2, 2005, respectively;
- (iii) The Registrant's Current Reports on Form 8-K, filed with the Commission on January 19, 2005, January 27, 2005, February 18, 2005, March 7, 2005, March 9, 2005, April 20, 2005, May 4, 2005, June 6, 2005, July 20, 2005, August 9, 2005, September 1, 2005, September 7, 2005, September 8, 2005, September 15, 2005, October 21, 2005, October 21, 2005, November 10, 2005, November 18, 2005 and November 22, 2005 (other than the portions of these documents not deemed to be filed);
- (iv) The description of the Registrant's Common Stock set forth in the Registrant's registration statement on Form 8-A, filed with the Commission on April 17, 2002 and in Exhibit 4.2.2 to the Registrant's Annual Report on Form 10-K/A for fiscal year ending December 31, 1999, filed with the Commission on March 22, 2000, including any amendment or report filed for the purposes of updating such descriptions; and
- (v) Annual Report on Form 11-K of the Hibernia Corporation Retirement Security Plan for the fiscal year ended December 31, 2004, filed with the Commission on June 29, 2005 (File No. 001-10294).
- (vi) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act of 1934, as amended (the Exchange Act), since the end of the fiscal year covered by the registration document referred to in (i) above.

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

For purposes of this Registration Statement, any document or any statement contained in a document incorporated or deemed to be incorporated herein by reference shall be deemed to be modified or superseded to the extent that a subsequently filed document or a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated herein by reference modifies or supersedes such document or such statement in such document. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable

Item 5. Interests of Named Experts and Counsel.

Not applicable

Item 6. Indemnification of Directors and Officers.

Section 145(a) of the General Corporation Law of the State of Delaware (the Delaware Corporation Law) provides, in general, that a corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), because the person is or was a director or officer of the corporation. Such indemnity may be against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and if, with respect to any criminal action or proceeding, the person did not have reasonable cause to believe the person's conduct was unlawful.

Section 145(b) of the Delaware Corporation Law provides, in general, that a corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor because the person is or was a director or officer of the corporation, against any expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 145(g) of the Delaware Corporation Law provides, in general, that a corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director or officer of the corporation against any liability asserted against the person in any such capacity, or arising out of the person's status as such, whether or not the corporation would have the power to indemnify the person against such liability under the provisions of the law.

Article XI of Capital One Financial Corporation's Restated Certificate of Incorporation, as amended, and Section 6.7 of Capital One Financial Corporation's Bylaws provide, in general, for mandatory indemnification of directors and officers to the extent permitted by law, against liability incurred by them in proceedings instituted or threatened against them by third parties, or by or on behalf of Capital One Financial Corporation itself, relating to the manner in which they performed their duties unless they have been guilty of willful misconduct or of a knowing violation of the criminal law.

For the undertaking with respect to indemnification, see Item 9 below.

Item 7. Exemption From Registration Claimed.

Not applicable

Item 8. Exhibits.

The Exhibits to this Registration Statement are listed in the Exhibit Index beginning on page E-1 of this Registration Statement, which Index is incorporated herein by reference.

The Registrant or Hibernia will or has submitted the Hibernia Corporation Retirement Security Plan, as amended and restated and all amendments thereto, to the Internal Revenue Service (IRS) in a timely manner and will make or has made all changes required by the IRS to qualify such plan.

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

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

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

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

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

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

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

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

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of the employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

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

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Post-Effective Amendment on Form S-8 to the Registrant's registration statement filed on Form S-4, as amended, to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of McLean, Commonwealth of Virginia on the 21st day of November, 2005.

CAPITAL ONE FINANCIAL
CORPORATION

By: /s/ Frank R. Borchert, III

Name: Frank R. Borchert, III

Title: Senior Vice President, Deputy General Counsel and
Assistant Secretary

Pursuant to the requirements of the Securities Act of 1933, this Post Effective Amendment on Form S-8 to the Registrant's registration statement filed on Form S-4, as amended, has been signed below by the following persons in the capacities indicated on the 21st day of November, 2005.

| Signature | Title |
|----------------------------|---|
| * Richard D. Fairbank | Director, Chairman, Chief Executive Officer and President (Principal Executive Officer) |
| * Gary L. Perlin | Executive Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer) |
| * W. Ronald Dietz | Director |
| * Patrick W. Gross | Director |
| * Lewis Hay, III | Director |
| * Mayo A. Shattuck, III | Director |

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

Frank R. Borchert, III

Attorney-in-Fact

Hibernia Corporation Retirement Security Plan

Pursuant to the requirements of the Securities Act of 1933, the trustees (or other persons who administer the employee benefit plan) have duly caused this Post Effective Amendment on Form S-8 to the Registrant's registration statement filed on Form S-4, as amended, to be signed on its behalf, thereunto duly authorized, in the City of New Orleans, Louisiana on this 23rd day of November 2005.

Hibernia Corporation Retirement Security Plan

By: /s/ Michael S. Zainey

Name: Michael S. Zainey

Title: Executive Vice-President

EXHIBIT INDEX

| Exhibit No. | Description | Method of Filing |
|--------------------|---|--|
| 4.1 | Restated Certificate of Incorporation of Capital One Financial Corporation and Certificate of Amendment to Restated Certificate of Incorporation of Capital One Financial Corporation | Incorporated herein by reference to Exhibits 3.1.1 and 3.1.2 of the Registrant's Current Report on Form 8-K, filed January 16, 2001 |
| 4.2 | Amended and restated By-laws of Capital One Financial Corporation (as amended on November 18, 1999) | Incorporated herein by reference to Exhibit 3.2 to the Registrant's Annual Report on 10-K/A for the fiscal year ended December 31, 1999, filed on March 22, 2000 |
| 4.3 | Hibernia Corporation Long-Term Incentive Plan, Amended and Restated as of March 12, 1997 | Filed herewith |
| 4.4 | Amendments to Hibernia Corporation Long-Term Incentive Plan dated November 19, 2002 and February 26, 2003 | Filed herewith |
| 4.5 | Amendment to Hibernia Corporation Long-Term Incentive Plan dated August 23, 2005 | Filed herewith |
| 4.6 | Hibernia Corporation 1993 Director Stock Option Plan, Amended and Restated as of January 27, 1999 | Filed herewith |
| 4.7 | Amendment to Hibernia Corporation 1993 Director Stock Option Plan dated August 24, 2005 | Filed herewith |
| 4.8 | Hibernia Corporation 2003 Long-Term Incentive Compensation Plan | Filed herewith |
| 4.9 | Amendment to Hibernia Corporation 2003 Long-Term Incentive Compensation Plan dated September 22, 2004 | Filed herewith |
| 4.10 | Amendment No. 2 to Hibernia Corporation 2003 Long-Term Incentive Compensation Plan dated August 24, 2005 | Filed herewith |

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|------|--|--|
| 4.11 | Amendment No. 3 to Hibernia Corporation 2003 Long-Term Incentive Plan, dated October 26, 2005 | Filed herewith |
| 4.12 | Resolution of the Board of Directors of Hibernia Corporation in Connection with Long-Term Incentive Plan, 2003 Long-Term Incentive Compensation Plan and 1993 Director Stock Option Plan | Filed herewith |
| 4.13 | Hibernia Corporation Retirement Security Plan | Filed herewith |
| 4.14 | EGTRRA Model Amendment Retirement Security Plan, dated May 30, 2002 | Filed herewith |
| 4.15 | Amendment No. 1 to Retirement Security Plan, dated March 10, 2003 | Filed herewith |
| 4.16 | Amendment No. 2 to Retirement Security Plan, dated June 9, 2005 | Filed herewith |
| 4.17 | Retirement Security Plan Amendment (Full Vesting), dated June 29, 2005 | Filed herewith |
| 4.18 | Amendment No. 4 to Retirement Security Plan, dated August 25, 2005 | Filed herewith |
| 4.19 | Amendment No. 5 to Retirement Security Plan, dated October 5, 2005 | Filed herewith |
| 5.1 | Opinion of Cleary Gottlieb Steen & Hamilton LLP regarding the validity of the Registrant's common share registered hereunder | Filed herewith |
| 8.1 | Opinion of Wachtell, Lipton, Rosen & Katz | Filed herewith |
| 23.1 | Consent of Ernst & Young LLP, Independent Auditors | Filed herewith |
| 23.2 | Consent of Ernst & Young LLP, Independent Auditors for the Retirement Security Plan | Filed herewith |
| 23.3 | Consent of Cleary Gottlieb Steen & Hamilton LLP | Filed herewith |
| 23.4 | Consent of Wachtell, Lipton, Rosen & Katz | Filed herewith |
| 24.1 | Powers of Attorney | Incorporated herein by reference to the signature page of the Registrant's registration statement on Form S-4 filed April 28, 2005 |

