

CAPITAL ONE FINANCIAL CORP

Form 424B2

October 27, 2015

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**Filed Pursuant to Rule 424(b)(2)**  
**Registration No.: 333-203125**

**CALCULATION OF REGISTRATION FEE**

<b>Title of each class of securities offered</b>	<b>Maximum aggregate offering price</b>	<b>Amount of registration fee</b>
4.200% Subordinated Notes due 2025	\$1,500,000,000	\$151,050(1)

(1) The total filing fee of \$151,050 is calculated in accordance with Rule 457(r) of the Securities Act of 1933.

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**PROSPECTUS SUPPLEMENT**

**(To prospectus dated March 31, 2015)**

**Capital One Financial Corporation**

**\$1,500,000,000 4.200% Subordinated Notes Due 2025**

We will pay interest on the 4.200% subordinated notes due 2025 (the notes) semi-annually in arrears on April 29 and October 29 of each year. We will make the first interest payment on the notes on April 29, 2016. The notes will mature on October 29, 2025.

We have the option to redeem the notes at a redemption price equal to 100% of the principal amount of the notes to be redeemed, plus accrued and unpaid interest thereon to the redemption date, in whole or in part at any time after September 29, 2025 (which is the date that is one month prior to the maturity date of the notes). Any early redemption of the notes will be subject to the receipt of the approval of the Board of Governors of the Federal Reserve System (the Federal Reserve), to the extent then required under applicable laws or regulations, including capital regulations. See Description of the Notes Optional Redemption.

The notes will be our unsecured obligations, will rank junior to all of our senior indebtedness and will be effectively junior to all indebtedness and other liabilities of our subsidiaries. Holders of the notes may be fully subordinated to interests held by the U.S. government in the event that we enter into a receivership, insolvency, liquidation or similar proceeding.

We will issue the notes in minimum denominations of \$2,000 and integral multiples of \$1,000 in excess thereof. There is no sinking fund for the notes. The notes are a new issue of securities with no established trading market. The notes will not be listed on any securities exchange.

**Investing in the notes involves risks. See Risk Factors beginning on page S-3 of this prospectus supplement.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus supplement or the accompanying prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

**The notes are not savings accounts, deposits or other obligations of a bank and are not insured or guaranteed by the Federal Deposit Insurance Corporation or any other governmental agency or instrumentality.**

	<b>Price to Public</b>	<b>Underwriting Discounts and Commissions</b>	<b>Proceeds to Capital One (Before Expenses)</b>
Per Note	99.992% <sup>(1)</sup>	0.450%	99.542%
Notes Total	\$ 1,499,880,000	\$ 6,750,000	\$ 1,493,130,000

(1) Plus accrued interest, if any, from October 29, 2015.

Delivery of the notes in book-entry form only will be made through the facilities of The Depository Trust Company and its participants, including Euroclear System and Clearstream Banking, S.A., on or about October 29, 2015.

Because our affiliate, Capital One Securities, Inc., is participating in the sale of the notes, the offering is being conducted in compliance with Financial Industry Regulatory Authority ( FINRA ) Rule 5121, as administered by FINRA.

***Joint Book-Running Managers***

**Citigroup      Credit Suisse      Deutsche Bank Securities      J.P. Morgan      Capital One Securities**  
***Co-Managers***

**Goldman, Sachs & Co.**

**RBC Capital Markets**

**The date of this prospectus supplement is October 26, 2015**

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**You should rely only on the information contained in or incorporated by reference in this prospectus supplement and the accompanying prospectus. We have not, and the underwriters have not, authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not, and the underwriters are not, making an offer to sell the notes in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus supplement (including any related free writing prospectus prepared by us or on our behalf, if any), the accompanying prospectus and the documents incorporated by reference herein and therein, is accurate only as of their respective dates. Our business, financial condition, results of operations and prospects may have changed since those dates.**

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**ABOUT THIS PROSPECTUS SUPPLEMENT**

We provide information to you about the notes in two separate documents: (1) this prospectus supplement (including any related free writing prospectus prepared by us or on our behalf, if any), which describes the specific terms of the notes and also adds to and updates information contained in the accompanying prospectus and the documents incorporated by reference in that prospectus and (2) the accompanying prospectus, which provides general information about securities we may offer from time to time, including securities other than the notes. If information in this prospectus supplement or any related free writing prospectus, if any, is inconsistent with the accompanying prospectus, you should rely on this prospectus supplement and any related free writing prospectus, if any.

It is important for you to read and consider all of the information contained in this prospectus supplement and any related free writing prospectus, if any, and the accompanying prospectus in making your investment decision. You also should read and consider the information in the documents we have referred you to in the section entitled **Where You Can Find More Information** beginning on page S-23 of this prospectus supplement and page 3 of the accompanying prospectus.

We include cross-references in this prospectus supplement and the accompanying prospectus to captions in these materials where you can find additional related discussions. The table of contents in this prospectus supplement provides the pages on which these captions are located.

Unless the context requires otherwise, references to **Capital One**, **issuer**, **we**, **our**, or **us** in this prospectus supplement refer to Capital One Financial Corporation, a Delaware corporation.

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**FORWARD-LOOKING STATEMENTS**

This prospectus supplement, the accompanying prospectus and the documents incorporated by reference herein and therein contain forward-looking statements. Statements that are not historical facts, including statements about our beliefs and expectations, are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act ), and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act ). Forward-looking statements include, among other things, information relating to our strategies, goals, outlook or other non-historical matters; projections, revenues, income, returns, expenses, capital measures, accruals for claims in litigation and for other claims against us; earnings per share or other financial measures for us; future financial and operating results; our plans, objectives, expectations and intentions; and the assumptions that underlie these matters. Forward-looking statements also include statements using words such as expect, anticipate, hope, intend, plan, believe, estimate, will or similar expressions. We have based these forward-looking statements on our current plans, estimates and projections, and you should not unduly rely on them. To the extent that any of the information in this prospectus supplement, the accompanying prospectus and the documents incorporated by reference herein and therein is forward-looking, it is intended to fit within the safe harbor for forward-looking information provided by the Private Securities Litigation Reform Act of 1995.

Numerous factors could cause our actual results to differ materially from those described in such forward-looking statements, including, among other things:

general economic and business conditions in the U.S., the U.K., Canada or our local markets, including conditions affecting employment levels, interest rates, collateral values, consumer income and confidence, spending and savings that may affect consumer bankruptcies, defaults, charge-offs and deposit activity;

an increase or decrease in credit losses (including increases due to a worsening of general economic conditions in the credit environment);

financial, legal, regulatory, tax or accounting changes or actions, including the impact of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act ) and the regulations promulgated thereunder and regulations governing bank capital and liquidity standards, including Basel-related initiatives and potential changes to financial accounting and reporting standards;

developments, changes or actions relating to any litigation matter involving us;

the inability to sustain revenue and earnings growth;

increases or decreases in interest rates;

our ability to access the capital markets at attractive rates and terms to capitalize and fund our operations and future growth;

the success of our marketing efforts in attracting and retaining customers;

increases or decreases in our aggregate loan balances or the number of customers and the growth rate and composition thereof, including increases or decreases resulting from factors such as shifting product mix, amount of actual marketing expenses we incur and attrition of loan balances;

the level of future repurchase or indemnification requests we may receive, the actual future performance of mortgage loans relating to such requests, the success rates of claimants against us, any developments in litigation and the actual recoveries we may make on any collateral relating to claims against us;

the amount and rate of deposit growth;

changes in the reputation of, or expectations regarding, the financial services industry or us with respect to practices, products or financial condition;

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any significant disruption in our operations or technology platform;

our ability to maintain a compliance and technology infrastructure suitable for the nature of our business;

our ability to develop digital technology that addresses the needs of our customers;

our ability to control costs;

the amount of, and rate of growth in, our expenses as our business develops or changes or as it expands into new market areas;

our ability to execute on our strategic and operational plans;

any significant disruption of, or loss of public confidence in, the United States mail service affecting our response rates and consumer payments;

any significant disruption of, or loss of public confidence in, the internet affecting the ability of our customers to access their accounts and conduct banking transactions;

our ability to recruit and retain talented and experienced personnel to assist in the development, management and operation of new products and services;

changes in the labor and employment markets;

fraud or misconduct by our customers, employees or business partners;

competition from providers of products and services that compete with our businesses; and

other risk factors listed from time to time in reports that we file with the SEC.

You should carefully consider the factors referred to above in evaluating these forward-looking statements.

When considering these forward-looking statements, you should keep in mind these risks, uncertainties and other cautionary statements made in this prospectus supplement, the accompanying prospectus and in the documents incorporated by reference. See the factors set forth under the **Risk Factors** section beginning on page S-3 of this prospectus supplement and in any other documents incorporated or deemed to be incorporated by reference herein, including our Annual Report on Form 10-K for the year ended December 31, 2014, as such discussion may be



amended or updated in other reports filed by us with the SEC, for additional information that you should consider carefully in evaluating these forward-looking statements.

**Forward-looking statements are not guarantees of future performance. They involve risks, uncertainties and assumptions, including the risk factors referred to above. Our future performance and actual results may differ materially from those expressed in forward-looking statements. Many of the factors that will determine these results and values are beyond our ability to control or predict. Any forward-looking statements made by us or on our behalf speak only as of the date that they are made or as of the date indicated, and we undertake no obligation to update forward-looking statements as a result of new information, future events or otherwise.**

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**Table of Contents****SUMMARY OF THE OFFERING**

*The following summary highlights selected information from this prospectus supplement and the accompanying prospectus about the notes and this offering. This description is not complete and does not contain all of the information that you should consider before investing in the notes. You should read this prospectus supplement and the accompanying prospectus, including the documents we incorporate by reference, carefully to understand fully the terms of the notes as well as other considerations that are important to you in making a decision about whether to invest in the notes. You should pay special attention to the Risk Factors section beginning on page S-3 of this prospectus supplement and the Risk Factors section in our Annual Report on Form 10-K for the year ended December 31, 2014, as such discussion may be amended or updated in other reports filed by us with the SEC, to determine whether an investment in the notes is appropriate for you. This prospectus supplement includes forward-looking statements that involve risks and uncertainties. For a more complete understanding of the notes, you should read the section entitled Description of the Notes beginning on page S-7 of this prospectus supplement as well as the section entitled Description of Debt Securities beginning on page 6 of the accompanying prospectus. To the extent the information in this prospectus supplement is inconsistent with the information in the accompanying prospectus, you should rely on the following information.*

<b>Issuer:</b>	Capital One Financial Corporation
<b>Securities Offered:</b>	\$1,500,000,000 aggregate principal amount of 4.200% subordinated notes due 2025.
<b>Maturity Date:</b>	The notes will mature on October 29, 2025.
<b>Interest Payment Dates:</b>	The notes will bear interest at the rate of 4.200% per year from the original issuance date. We will pay interest on the notes semi-annually in arrears each April 29 and October 29. We will make the first interest payment on April 29, 2016.
<b>Use of Proceeds:</b>	We intend to use the net proceeds from the sale of the notes for general corporate purposes in the ordinary course of our business. General corporate purposes may include repayment of debt, acquisitions, additions to working capital, capital expenditures and investments in our subsidiaries. See Use of Proceeds in this prospectus supplement.
<b>Optional Redemption:</b>	We have the option to redeem the notes at a redemption price equal to 100% of the principal amount of the notes to be redeemed, plus accrued and unpaid interest thereon to the redemption date, in whole or in part at any time after September 29, 2025 (which is the date that is one month prior to the maturity date of the notes). Any early redemption of the notes will be subject to the receipt of the approval of the Federal Reserve, to

the extent then required under applicable laws or regulations, including capital regulations.

See Description of the Notes Optional Redemption.

**Ranking:**

The notes will be unsecured and subordinated to the payment of our senior indebtedness, will be effectively subordinated to all of the existing and future liabilities and obligations of our subsidiaries, and

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will rank equal in right of payment to all our existing and future unsecured and subordinated indebtedness. As of September 30, 2015, Capital One Financial Corporation had approximately \$8.3 billion in senior and subordinated notes outstanding that mature in varying amounts from 2015 to 2025, of which approximately \$7.3 billion in aggregate principal amount was senior debt securities and approximately \$1.0 billion in aggregate principal was subordinated debt securities. As of September 30, 2015, our consolidated banking subsidiaries, Capital One Bank (USA), National Association ( COBNA ) and Capital One, National Association ( CONA ) had outstanding approximately \$6.0 billion and \$7.4 billion in senior and subordinated debt securities, respectively.

**Listing:**

The notes will not be listed on any securities exchange.

**Conflicts of Interest:**

One of the underwriters, Capital One Securities, Inc., is our affiliate. The distribution arrangements for this offering comply with the requirements of FINRA Rule 5121 regarding a FINRA member firm's participation in the distribution of securities of an affiliate. In accordance with Rule 5121, no FINRA member that has a conflict of interest under Rule 5121 may make sales in this offering to any discretionary account without the prior approval of the customer. Capital One Securities, Inc. may use this prospectus supplement and the accompanying prospectus in connection with offers and sales of the notes in the secondary market. Capital One Securities, Inc. may act as principal or agent in those transactions. Secondary market sales will be made at prices related to market prices at the time of sale. Capital One Securities, Inc. is not primarily responsible for managing this offering.

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**RISK FACTORS**

*Investing in the notes involves risks, including the risks described below that are specific to the notes and those that could affect us and our business. You should not purchase notes unless you understand these investment risks. Please be aware that other risks may prove to be important in the future. New risks may emerge at any time, and we cannot predict such risks or estimate the extent to which they may affect our financial performance. Before purchasing any notes, you should consider carefully the risks and other information in this prospectus supplement and the accompanying prospectus and carefully read the risks described in the documents incorporated by reference in this prospectus supplement and the accompanying prospectus, including the discussion under the Risk Factors section in our Annual Report on Form 10-K for the year ended December 31, 2014, as such discussion may be amended or updated in other reports filed by us with the SEC.*

***The notes are subordinated obligations and we cannot make payments under the notes if we default on our obligations that are more senior.***

Our obligations under the notes are unsecured and rank junior to our senior indebtedness, as described under Description of the Notes Ranking. This means that we cannot make payments under the notes if we default on payments under any of these obligations, unless, by their terms, the obligations are equal with or junior to the notes. If we liquidate, go bankrupt or dissolve, we would be able to make payments under the notes only after we have paid all of our liabilities that are senior to the notes. In such an event, creditors under our senior indebtedness may receive more, ratably, and holders of subordinated notes having a claim pursuant to those notes may receive less, ratably, than our other creditors. As of September 30, 2015, we had outstanding approximately \$7.3 billion in debts that ranked senior to the notes, excluding obligations of our subsidiaries. There is no limitation on our ability to incur additional debt senior to or on parity with the notes. For more information on the subordination of payments under the notes, see Description of the Notes Ranking. **In addition, holders of the subordinated notes may be fully subordinated to interests held by the U.S. government in the event that we enter into a receivership, insolvency, liquidation or similar proceeding.**

***The notes are our unsecured obligations and not obligations of our subsidiaries and will be effectively subordinated to the claims of our subsidiaries' creditors.***

The notes are exclusively our obligations and not those of our subsidiaries. We are a holding company and, accordingly, substantially all of our operations are conducted through our subsidiaries. As a result, our cash flow and our ability to service our debt, including the notes, depend upon the earnings of our subsidiaries. In addition, we depend on the distribution of earnings, loans or other payments by our subsidiaries to us.

Our subsidiaries are separate and distinct legal entities. Our subsidiaries have no obligation to pay any amounts due on the notes or to provide us with funds to pay our obligations, whether by dividends, distributions, loans or other payments. In addition, any payment of dividends, distributions, loans or advances by our subsidiaries to us would be subject to regulatory or contractual restrictions. Payments to us by our subsidiaries also will be contingent upon those subsidiaries' earnings and business considerations.

Our right to receive any assets of any of our subsidiaries upon their liquidation or reorganization, and, therefore, the right of the holders of the notes to participate in those assets, will be effectively subordinated to the claims of those subsidiaries' creditors, including senior and subordinated debtholders and general trade creditors. In the event of any such distribution of assets of our bank subsidiaries, the claims of depositors and other general or subordinated creditors would be entitled to priority over the claims of holders of the notes. In addition, even if we were a creditor of any of our subsidiaries, our rights as a creditor would be subordinate to any security interest in the assets of those

subsidiaries and any indebtedness of those subsidiaries senior to that held by us.

As of September 30, 2015, our consolidated banking subsidiaries had outstanding approximately \$13.5 billion in senior notes and \$212.9 billion in deposit liabilities that would effectively rank senior to the notes in

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case of liquidation or reorganization, in addition to other obligations such as those of the type listed under Description of the Notes Ranking .

In addition, the notes will not be secured by any of our assets. As a result, they will be effectively subordinated to all of our secured indebtedness to the extent of the value of the assets securing such indebtedness. The indenture governing the notes does not limit the amount of senior indebtedness and other financial obligations or secured obligations that we or our subsidiaries may incur.

### ***The notes are subject to limited rights of acceleration.***

Payment of principal on the notes may be accelerated only in the case of certain events of our bankruptcy or insolvency, whether voluntary or involuntary. Thus, you have no right to accelerate the payment of principal on the notes if we fail to pay interest on the notes or if we fail in the performance of any of our other obligations under the notes. In addition, holders of senior notes may accelerate the due date of those notes if an event of default shall occur and be continuing, which may adversely impact our ability to pay obligations on subordinated notes.

### ***The notes will not be guaranteed by the FDIC or any other governmental agency.***

The notes are not bank deposits and are not insured by the FDIC or any other governmental agency, nor are they obligations of, or guaranteed by, a bank. The notes will be obligations of Capital One Financial Corporation only and will not be guaranteed by any of our subsidiaries, including COBNA or CONA, our principal banking subsidiaries.

### ***The indenture governing the notes does not contain any limitations on our ability to incur additional indebtedness, sell or otherwise dispose of assets, pay dividends or repurchase our capital stock.***

Neither we nor any of our subsidiaries is restricted from incurring additional indebtedness or other liabilities, including additional senior or subordinated indebtedness, under the indenture governing the terms of the notes. If we incur additional indebtedness or liabilities, our ability to pay our obligations on the notes could be adversely affected. We expect that we will from time to time incur additional indebtedness and other liabilities. In addition, we are not restricted under the indenture governing the notes from paying dividends or issuing or repurchasing our securities.

In addition, there are no financial covenants in the indenture. You are not protected under the indenture in the event of a highly leveraged transaction, reorganization, default under our existing indebtedness, restructuring, merger or similar transaction that may adversely affect you, except to the extent set forth under Description of Debt Securities Covenants and Consolidation, Merger and Sale of Assets in the accompanying prospectus would apply to the transaction.

### ***Government regulation may affect the priority of the notes in the case of a bankruptcy or liquidation.***

The Dodd-Frank Act created a new resolution regime known as the orderly liquidation authority . Under the orderly liquidation authority, the FDIC may be appointed as receiver for an entity, including a bank holding company, for purposes of liquidating the entity if the Secretary of the Treasury, following a process set out in the Dodd-Frank Act, determines that the entity is in default or danger of default and that the entity's failure and its resolution under otherwise applicable law would have serious adverse effects on the financial stability of the United States.

If the FDIC is appointed as receiver under the orderly liquidation authority, then the Dodd-Frank Act, rather than applicable insolvency laws, would determine the powers of the receiver, and the rights and obligations of creditors and other parties who have dealt with the institution. There are substantial differences in the rights of

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creditors under the orderly liquidation authority compared to those under the U.S. Bankruptcy Code, including the right of the FDIC to disregard the strict priority of creditor claims in some circumstances, the use of an administrative claims procedure to determine creditors' claims (as opposed to the judicial procedure utilized in bankruptcy proceedings) and the right of the FDIC to transfer claims to a bridge entity. As a consequence of the rights of the FDIC under the orderly liquidation authority, the holders of the notes may be fully subordinated to interests held by the U.S. government in the event that we enter into a receivership, insolvency, liquidation or similar proceeding. Although the FDIC has issued regulations to implement the orderly liquidation authority, not all aspects of how the FDIC might exercise this authority are known and additional rulemakings are likely. Further, it is uncertain how the FDIC might exercise its discretion under the orderly liquidation authority in a particular case.

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**USE OF PROCEEDS**

We estimate that the net proceeds from this offering, after deducting the underwriting discounts and commissions and offering expenses payable by us, will be approximately \$1.491 billion. We intend to use the net proceeds from the sale of the notes for general corporate purposes in the ordinary course of our business. General corporate purposes may include repayment of debt, acquisitions, additions to working capital, capital expenditures and investments in our subsidiaries.

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**DESCRIPTION OF THE NOTES**

The following is a description of the particular terms of the notes offered pursuant to this prospectus supplement. This description supplements and, to the extent inconsistent, modifies the description of the general terms and provisions of subordinated debt securities set forth in the accompanying prospectus under Description of Debt Securities. To the extent the description in this prospectus supplement is inconsistent with the description contained in the accompanying prospectus, you should rely on the description in this prospectus supplement. The following description is qualified in its entirety by reference to the provisions of the subordinated indenture dated as of August 29, 2006, between us and The Bank of New York Mellon Trust Company, N.A., as indenture trustee, which we refer to as the subordinated indenture. A copy of the subordinated indenture is filed as an exhibit to the registration statement of which this prospectus supplement and the accompanying prospectus are a part. Capitalized terms not defined in this section have the meanings assigned to such terms in the accompanying prospectus or in the subordinated indenture.

**General**

The notes offered hereby constitute a separate series of subordinated debt securities described in the accompanying prospectus to be issued under the subordinated indenture. The notes will be our direct, unsecured obligations.

The notes are initially offered in the principal amount of \$1,500,000,000. We may, without the consent of existing holders, increase the principal amount of the notes by issuing more notes in the future, on the same terms and conditions (other than any differences in the issue date, the price to the public and the first interest payment date) and with the same CUSIP number (if appropriate), as the notes being offered by this prospectus supplement. We do not plan to inform existing holders if we reopen the series of notes to issue and sell additional notes in the future.

**Payments**

The notes will mature on October 29, 2025. The notes will bear interest from October 29, 2015 at the annual rate of 4.200%. We will pay interest on the notes semi-annually in arrears on each April 29 and October 29. We will make the first interest payment on April 29, 2016.

We will pay interest to the person in whose name the note is registered at the close of business on April 14 and October 14, next preceding the relevant interest payment date, except that we will pay interest payable at the maturity date of the notes to the person or persons to whom principal is payable. Interest on the notes will be paid on the basis of a 360-day year comprised of twelve 30-day months. If any date on which interest is payable on the notes is not a business day, the payment of the interest payable on that date will be made on the next day that is a business day, without any interest or other payment in respect of the delay, with the same force and effect as if made on the scheduled payment date.

The notes will not have the benefit of a sinking fund that is, we will not deposit money on a regular basis into any separate custodial account to repay the notes.

**Optional Redemption**

The notes are not subject to repayment at the option of the holders at any time prior to maturity.

On or after September 29, 2025 (which is the date that is one month prior to the maturity date of the notes), the notes will be redeemable upon not less than 15 nor more than 45 days prior notice given to the holders of the notes to be redeemed, at a redemption price equal to 100% of the principal amount of the notes to be redeemed plus accrued and

unpaid interest to the date of redemption.

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If money sufficient to pay the redemption price of and accrued interest on the notes (or portions thereof) to be redeemed on the redemption date is deposited with the Trustee or paying agent on or before the redemption date and certain other conditions are satisfied, then on and after the redemption date, interest will cease to accrue on such notes (or such portion thereof) called for redemption and such notes will cease to be outstanding. If any redemption date is not a business day, we will pay the redemption price on the next business day without any interest or other payment due to the delay.

If fewer than all of the notes are to be redeemed, the depository will select the notes for redemption on a pro rata basis, by lot or by such other method in accordance with the depository's procedures. No notes of \$1,000 or less will be redeemed in part.

Any early redemption of the notes will be subject to the receipt of the approval of the Federal Reserve, to the extent then required under applicable laws or regulations, including capital regulations.

## **Denominations**

The notes will be issued in minimum denominations of \$2,000 and in integral multiples of \$1,000 in excess thereof.

## **Ranking**

Payments on the notes will rank junior in right of payment to all of our existing and future senior indebtedness. The term senior indebtedness means, with respect to us:

- (1) the principal of, and premium, if any, and interest, whether outstanding now or incurred later, on (a) all indebtedness for money borrowed by us, including indebtedness of others guaranteed by us, other than any subordinated debt securities, junior subordinated debt securities and other indebtedness that is expressly stated as not senior, and (b) any amendments, renewals, extensions, modifications and refundings of any indebtedness, unless in any such case the instrument evidencing the indebtedness provides that it is not senior in right of payment to the notes;
- (2) all of our capital lease obligations and any synthetic lease or tax retention operating lease;
- (3) all of our obligations issued or assumed as the deferred purchase price of property, and all conditional sale or title retention agreements, but excluding trade accounts payable in the ordinary course of business;
- (4) all of our obligations, contingent or otherwise, in respect of any letters of credit, bankers acceptances, security purchase facilities and similar credit transactions;
- (5) all of our obligations in respect of interest rate swap, cap or similar agreements, interest rate future or options contracts, currency swap agreements, currency future or option contracts, commodity contracts and other similar agreements;
- (6) all obligations of the type referred to in clauses (1) through (5) of other persons for the payment of which we are responsible or liable as obligor, guarantor or otherwise, whether or not such obligation is classified as a liability on a balance sheet prepared in accordance with generally accepted accounting principles, and direct credit substitutes; and
- (7) all obligations of the type referred to in clauses (1) through (6) of other persons secured by any lien on any of our property or assets whether or not such obligation is assumed by us;

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except that senior indebtedness will not include:

(A) subordinated debt securities;

(B) any indebtedness that by its terms is subordinated to, or ranks on an equal basis with, subordinated debt securities; and

(C) any indebtedness between or among us and our affiliates that constitutes or involves (1) any junior subordinated debt securities, (2) trust preferred securities guarantees or (3) all other debt securities and guarantees in respect of those debt securities, issued to any trust, or a trustee of such trust, partnership or other entity affiliated with us that is our financing vehicle in connection with the issuance by such financing vehicle of trust preferred securities or other securities guaranteed by us pursuant to an instrument that ranks on an equal basis with, or junior to, trust preferred securities guarantees.

The notes will be subordinated in right of payment to all of our senior indebtedness. No payment may be made on the notes if a payment default or any other default allowing for acceleration has occurred and is continuing with respect to any senior indebtedness. In the event of any insolvency, dissolution, assignment for the benefit of our creditors, reorganization, restructuring of debt, marshaling of assets and liabilities or similar proceedings or any liquidation or winding-up of or relating to our company as a whole, whether voluntary or involuntary, all holders of senior indebtedness will be entitled to be paid in full before you are entitled to receive any payment in respect of the notes. In the event of any such proceedings, after payment in full of all sums owing with respect to senior indebtedness, the holders of the notes, together with the holders of any of our obligations ranking equally with the notes, will be entitled to be paid from our remaining assets the unpaid principal thereof and interest thereon before any payment or other distribution is made on our capital stock or any other obligation ranking junior to the notes. Because of such subordination, if we become insolvent, holders of senior indebtedness may receive more, ratably, and holders of the subordinated notes having a claim pursuant to these notes may receive less, ratably, than our other creditors. **In addition, holders of the notes may be fully subordinated to interests held by the U.S. government in the event that we enter into a receivership, insolvency, liquidation or similar proceeding.**

As of September 30, 2015, Capital One Financial Corporation had approximately \$8.3 billion in senior and subordinated notes outstanding that mature in varying amounts from 2015 to 2025, of which approximately \$7.3 billion in aggregate principal amount was senior debt securities and approximately \$1.0 billion in aggregate principal was subordinated debt securities. As of September 30, 2015, our consolidated banking subsidiaries, COBNA and CONA had outstanding approximately \$6.0 billion and \$7.4 billion in senior and subordinated debt securities, respectively. The notes are not secured, are not guaranteed by any of our affiliates and are not subject to any other arrangement that legally or economically enhances the ranking of the subordinated notes in relation to more senior claims. **The notes do not contain any limitation on the amount of senior indebtedness that we or any of our subsidiaries may hereafter incur.**

We may, without the consent of the holders of the notes, create and issue additional debt securities under the subordinated indenture, ranking equally with the notes. The subordinated indenture does not limit the amount of additional subordinated indebtedness that we or any of our subsidiaries may incur. The notes will be our exclusive obligations and not those of our subsidiaries. Since we are a holding company and substantially all of our operations are conducted through subsidiaries, our cash flow and consequently our ability to service debt, including the notes, depend upon the earnings of our subsidiaries and the distribution of those earnings to us or upon other payments of funds by those subsidiaries to us. The subsidiaries are separate and distinct legal entities and have no obligation, contingent or otherwise, to pay any amounts due on the notes or to provide us with funds for payments on the notes, whether by dividends, distributions, loans or other payments. In addition, the payment of dividends and distributions

and the making of loans and advances to us by our subsidiaries may be subject to regulatory, statutory or contractual restrictions, are contingent upon the earnings of those subsidiaries, and are subject to various business considerations.

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Any right we have to receive assets of any of our subsidiaries upon their liquidation or reorganization and the resulting right of the holders of notes to participate in those assets effectively will be subordinated to the claims of that subsidiary's creditors, including trade creditors, except to the extent that we are recognized as a creditor of the subsidiary, in which case our claims would be subordinated to any security interests in the assets of the subsidiary and any indebtedness of the subsidiary senior to the debt held by us.

## **Events of Default**

Events of default under the subordinated indenture with respect to the notes are:

- (1) failure to pay interest on the notes when due and continuance of that default for 30 days;
- (2) failure to pay the principal of the notes when due and payable;
- (3) failure to perform or the breach of any covenant or warranty in the subordinated indenture or the notes (other than a covenant or warranty included solely for the benefit of a series of debt securities other than the notes) that continues for 60 days after we are given written notice by the indenture trustee or we and the indenture trustee are given written notice by the holders of at least 25% in principal amount of the outstanding notes; or
- (4) certain events of our bankruptcy, insolvency or reorganization.

If an event of default under the subordinated indenture due to certain events of our bankruptcy or insolvency, whether voluntary or involuntary, has occurred and is continuing, then the indenture trustee or the holders of not less than 25% in principal amount of the notes may declare the principal of and accrued interest on the notes to be due and payable immediately.

The holder of any note will have an absolute right to receive payment of the principal of and interest on such note on or after the due dates expressed in such note and to institute suit for the enforcement of any such payment. **There is no right of acceleration in the case of our default in the payment of principal or interest on the notes or the performance of any other obligation under the notes or the subordinated indenture.**

## **Same-Day Settlement and Payment**

Settlement by purchasers of the notes will be made in immediately available funds. All payments by us to the depository of principal and interest will be made in immediately available funds. So long as any notes are represented by global securities registered in the name of the depository or its nominee, those notes will trade in the depository's Same-Day Funds Settlement System which requires secondary market trading in those notes to settle in immediately available funds. No assurance can be given as to the effect, if any, of this requirement to settle in immediately available funds on trading activity in notes.

## **Global Securities; Book-Entry Issue**

We expect that the notes will be issued in the form of global securities held by The Depository Trust Company and its participants, including Euroclear System and Clearstream Banking, S.A., as described under "Book-Entry Procedures and Settlement" in the accompanying prospectus.

## **Trustee**

The Bank of New York Mellon Trust Company, N.A. is the indenture trustee with respect to the notes. The indenture trustee is one of a number of banks with which we and our subsidiaries maintain banking and trust relationships in the ordinary course of business.

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**MATERIAL UNITED STATES FEDERAL INCOME TAX CONSEQUENCES**

This section summarizes the material U.S. federal income tax considerations relating to the purchase, ownership, and disposition of the notes. This summary does not provide a complete analysis of all potential tax considerations. The information provided below is based on the Internal Revenue Code of 1986, as amended (referred to herein as the Code ), Treasury regulations issued under the Code, judicial authority and administrative rulings and practice, all as of the date of this prospectus supplement and all of which are subject to change, possibly on a retroactive basis. As a result, the tax considerations of purchasing, owning or disposing of the notes could differ from those described below. This summary deals only with beneficial owners who purchase the notes on original issuance at the first price at which a substantial portion of the notes is sold for cash (other than to bond houses, brokers or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers) and who hold the notes as capital assets within the meaning of Section 1221 of the Code. This summary does not deal with persons in special tax situations, such as financial institutions, insurance companies, S corporations, regulated investment companies, real estate investment trusts, tax exempt investors, dealers in securities and currencies, traders in securities that elect to use a mark-to-market method of accounting for their securities, controlled foreign corporations, corporations that accumulate earnings to avoid U.S. federal income tax, U.S. expatriates, persons holding notes as a position in a straddle, hedge, conversion transaction, or other integrated transaction for U.S. federal income tax purposes, investors in pass-through entities, or U.S. holders (as defined below) whose functional currency is not the U.S. dollar. Further, this discussion does not address the consequences under U.S. alternative minimum tax rules, U.S. federal estate or gift tax laws, the tax laws of any U.S. state or locality, any non-U.S. tax laws, or any tax laws other than income tax laws. We will not seek a ruling from the Internal Revenue Service (the IRS ) with respect to any of the matters discussed herein and there can be no assurance that the IRS will not challenge one or more of the tax consequences described herein.

As used herein, the term U.S. Person means:

an individual that is a citizen or resident of the United States, for U.S. federal income tax purposes;

a corporation (or any other entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States, any state or the District of Columbia;

an estate whose income is includible in gross income for U.S. federal income tax purposes regardless of its source; or

a trust, if (i) a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust or (ii) it has a valid election in effect under applicable Treasury regulations to be treated as a U.S. person.

As used herein, a U.S. holder is a beneficial owner of notes that is, for U.S. federal income tax purposes, a U.S. Person. As used herein, the term non-U.S. holder means a beneficial owner, other than a partnership (or entity treated as a partnership for U.S. federal income tax purposes), of notes that is not a U.S. holder.

If a partnership, including for this purpose any entity treated as a partnership for U.S. federal income tax purposes, is a beneficial owner of notes, the treatment of a partner in the partnership generally will depend upon the status of the

partner and upon the activities of the partnership. A holder of notes that is a partnership and partners in such a partnership should consult their independent tax advisors about the U.S. federal income tax consequences of holding and disposing of notes.

**Investors should consult their tax advisor concerning the tax consequences of the ownership and disposition of the notes, including the tax consequences under the laws of any foreign, state, local or other taxing jurisdictions and the possible effects on investors of changes in U.S. federal or other tax laws.**

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**Table of Contents****U.S. holders*****Interest***

It is anticipated, and this discussion assumes, that the notes will be issued without original issue discount for U.S. federal income tax purposes. In such case, interest on a note will be includable by a U.S. holder as interest income at the time it accrues or is received in accordance with such holder's method of accounting for U.S. federal income tax purposes and will be ordinary income.

***Sale, Exchange, Redemption, Retirement or Other Taxable Disposition of the Notes***

Upon a sale, exchange, redemption, retirement or other taxable disposition of a note, a U.S. holder will generally recognize gain or loss equal to the difference between (i) the amount realized on the disposition (other than amounts attributable to accrued but unpaid interest, which will be taxed as interest income as discussed above to the extent not previously included in income) and (ii) the U.S. holder's tax basis in the note. A U.S. holder's tax basis in a note generally will equal the cost of the note. A U.S. holder's gain or loss will generally constitute capital gain or loss and will be long-term capital gain or loss if the U.S. holder has held such note for longer than one year. The deductibility of capital losses is subject to certain limitations. Net long-term capital gain recognized by a non-corporate U.S. holder is generally taxed at preferential rates.

***Medicare Tax***

U.S. holders who are individuals, estates or certain trusts are required to pay an additional 3.8% Medicare tax on the lesser of (1) the U.S. person's net investment income for the relevant taxable year and (2) the excess of the U.S. person's modified gross income for the taxable year over a certain threshold (which in the case of individuals will be between \$125,000 and \$250,000 depending on the individual's circumstances). Net investment income will generally include interest income and net gains from the disposition of the notes, unless such interest income or net gains are derived in the ordinary course of the conduct of a trade or business (other than a trade or business that consists of certain passive or trading activities). A U.S. holder that is an individual, estate or trust should consult its tax advisor regarding the applicability of the Medicare tax to its income and gains in respect of its investment in the notes.

***Backup Withholding and Information Reporting***

In general, a U.S. holder of a note will be subject to backup withholding at the applicable tax rate with respect to payments of interest or the gross proceeds from dispositions of notes, unless the holder (i) is an entity that is exempt from backup withholding (generally including tax-exempt organizations and certain qualified nominees) and, when required, provides appropriate documentation to that effect, (ii) provides us or our paying agent with the social security number or other taxpayer identification number ( "TIN" ), certifies that the TIN provided is correct and that the holder has not been notified by the IRS that it is subject to backup withholding due to underreporting of interest or dividends, and otherwise complies with applicable requirements of the backup withholding rules. In addition, such payments to U.S. holders that are not exempt entities will generally be subject to information reporting requirements. A U.S. holder who does not provide us or our paying agent with the correct TIN may be subject to penalties imposed by the IRS. The amount of any backup withholding from a payment to a U.S. holder will be allowed as a credit against such holder's U.S. federal income tax liability and may entitle such holder to a refund, provided that the required information is timely furnished to the IRS.



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**Non-U.S. holders**

***Interest***

Subject to the discussions of backup withholding and the Foreign Account Tax Compliance Act ( FATCA ) below, interest income of a non-U.S. holder will qualify for the portfolio interest exemption and therefore not be subject to U.S. federal income tax or withholding, provided that:

the interest paid on the note is not income that is effectively connected with a United States trade or business carried on by the non-U.S. holder ( ECI ) (and, if required by an applicable income tax treaty, is not attributable to a U.S. permanent establishment);

the non-U.S. holder does not actually or constructively (pursuant to the rules of Section 871(h)(3)(C) of the Code) own 10% or more of the total combined voting power of all classes of our stock that are entitled to vote;

the non-U.S. holder is not a controlled foreign corporation related to us actually or constructively through the stock ownership rules under Section 864(d)(4) of the Code;

the non-U.S. holder is not a bank that is receiving the interest on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its business; and

the beneficial owner satisfies the certification requirements set forth in Section 871(h) or 881(c), as applicable, of the Code and the Treasury regulations issued thereunder by giving us or our paying agent an appropriate IRS Form W-8 (or a suitable substitute or successor form or such other form as the IRS may prescribe) that has been properly completed and duly executed establishing its status as a non-U.S. Person or by other means prescribed by the Secretary of the Treasury (or the non-U.S. holder holds the notes through certain foreign intermediaries or certain foreign partnerships, and the non-U.S. holder and the foreign intermediary or foreign partnership satisfy the certification requirements of applicable Treasury regulations).

If any of these conditions are not met, interest on the notes paid to a non-U.S. holder will generally be subject to U.S. federal income tax and withholding at a 30% rate unless (a) an applicable income tax treaty reduces or eliminates such tax, and the non-U.S. holder claims the benefit of that treaty by providing an IRS Form W-8BEN or IRS Form W-8BEN-E (or a suitable substitute or successor form or such other form as the IRS may prescribe) that has been properly completed and duly executed, or (b) the interest is ECI and the non-U.S. holder complies with applicable certification requirements by providing an IRS Form W-8ECI (or a suitable substitute or successor form or such other form as the IRS may prescribe) that has been properly completed and duly executed.

If the interest on the notes is ECI, the non-U.S. holder will be required to pay U.S. federal income tax on that interest on a net income basis generally in the same manner as a U.S. holder (and the 30% withholding tax described above will not apply, provided the appropriate statement is provided to us or our paying agent). If a non-U.S. holder is eligible for the benefits of any income tax treaty between the United States and its country of residence, any interest income that is ECI will be subject to U.S. federal income tax in the manner specified by the treaty and will generally

be subject to U.S. federal income tax only if such income is attributable to a permanent establishment or a fixed base maintained by the non-U.S. holder in the United States and the non-U.S. holder claims the benefit of the treaty by providing a Form W-8BEN or a Form W-8BEN-E (or a suitable substitute or successor form or such other form as the IRS may prescribe) that has been properly completed and duly executed. In addition, interest received by a corporate non-U.S. holder that is ECI may also, under certain circumstances, be subject to an additional branch profits tax at a 30% rate, or, if applicable, a lower treaty rate.

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### ***Sale, Exchange, Redemption, Retirement or Other Taxable Disposition of the Notes***

Subject to the discussion of backup withholding and FATCA below, a non-U.S. holder will generally not be subject to U.S. federal income tax on any gain realized on a sale, exchange, redemption, retirement or other taxable disposition of the notes unless:

the gain is effectively connected with the conduct of a trade or business within the United States by the non-U.S. holder (and, if required by an applicable income tax treaty, is attributable to a U.S. permanent establishment),

in the case of a non-U.S. holder who is a nonresident alien individual and holds the note as a capital asset, such holder is present in the United States for 183 or more days in the taxable year and certain other requirements are met, or

we are or have been a U.S. real property holding corporation for U.S. federal income tax purposes during the shorter of the non-U.S. holder's holding period or the 5-year period ending on the date of disposition of the notes or common stock, as the case may be. We believe that we are not, and we do not anticipate becoming, a U.S. real property holding corporation for U.S. federal income tax purposes.

If a non-U.S. holder falls under the first of these exceptions, the holder will be taxed on the net gain derived from the disposition under the graduated U.S. federal income tax rates that are applicable to U.S. Persons and, if the non-U.S. holder is a foreign corporation, it may also be subject to the branch profits tax described above. Even though the ECI will be subject to U.S. federal income tax, and possibly subject to the branch profits tax, it will not be subject to withholding if the non-U.S. holder delivers an appropriate IRS Form W-8ECI (or a suitable substitute or successor form or such other form as the IRS may prescribe) that has been properly completed and duly executed to us or our agent.

If an individual non-U.S. holder falls under the second of these exceptions, the holder generally will be subject to U.S. federal income tax at a rate of 30% on the amount by which the gain derived from the disposition exceeds such holder's capital losses allocable to sources within the United States for the taxable year of the sale.

### ***Backup Withholding and Information Reporting***

Generally, the amount of interest paid to you and the amount of tax, if any, withheld with respect to those payments must be reported annually to the IRS and to you. Copies of the information returns reporting such interest, and withholding may also be made available to the tax authorities in the country in which you reside under the provisions of an applicable income tax treaty. Backup withholding will generally not apply to payments of interest on the notes by us or our paying agent if a holder certifies its status as a non-U.S. holder under penalties of perjury or otherwise establishes an exemption (provided that neither we nor our paying agent has actual knowledge that it is a U.S. Person or that the conditions of any other exemptions are not in fact satisfied).

The payment of the proceeds of the disposition of notes to or through the United States office of a United States or foreign broker will be subject to information reporting and, depending on the circumstances, backup withholding unless the non-U.S. holder provides the certification described above or otherwise establishes an exemption (and neither we nor our paying agent has actual knowledge that the holder is a U.S. Person or that the conditions of any

other exemptions are not in fact satisfied). The proceeds of a disposition effected outside the United States by a holder of the notes to or through a foreign office of a broker generally will not be subject to backup withholding or information reporting. However, if that broker is, for United States federal income tax purposes, a U.S. Person, a controlled foreign corporation, a foreign person 50% or more of whose gross income from all sources for certain periods is effectively connected with a trade or business in the United States, or a foreign partnership that is engaged in the conduct of a trade or business in the United States or that has one or more partners that are U.S. Persons who in the aggregate hold more than 50% of the income or capital interests in the partnership, information reporting requirements will apply unless that broker has documentary evidence in its

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files of such holder's status as a non-U.S. holder and has no actual knowledge to the contrary or unless such holder otherwise establishes an exemption.

Any amounts withheld from a payment to a holder under the backup withholding rules will be allowed as a credit against such holder's U.S. federal income tax liability and may entitle it to a refund, provided it timely furnishes the required information to the IRS.

## **FATCA**

Under FATCA, a 30% withholding tax may be imposed on interest (including original issue discount) on notes issued to a foreign financial institution (including amounts paid to a foreign financial institution on or behalf of a holder) and certain other non-financial foreign entities. Additionally, after December 31, 2018, a 30% withholding may apply to gross proceeds from the disposition of such notes.

Withholding under FATCA generally will not apply where such payments are made to (1) a foreign financial institution that undertakes, under either an agreement with the U.S. Treasury or pursuant to an intergovernmental agreement between the jurisdiction in which it is a resident and the U.S. Treasury, to generally identify accounts held by certain U.S. persons and foreign entities with substantial U.S. owners, annually report certain information about such accounts and withhold 30% on payments made to non-compliant foreign financial institutions and certain other account holders, (2) a non-financial foreign entity that either certifies it does not have any substantial U.S. owners or furnishes identifying information regarding each substantial U.S. owner, or (3) a foreign financial institution or a non-financial foreign entity that otherwise qualifies for an exemption from these rules.

Investors should consult their tax advisors regarding FATCA and the regulations thereunder.

**The U.S. federal tax discussion set forth above as to both U.S. holders and non-U.S. holders is included for general information only and may not be applicable depending upon a holder's particular situation. Holders should consult their tax advisors with respect to the tax consequences to them of the ownership and disposition of the notes, including the tax consequences under state, local, foreign and other tax laws and the possible effects of changes in U.S. federal or other tax laws.**

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**CERTAIN ERISA CONSIDERATIONS**

The following is a summary of certain considerations associated with the purchase of the notes by employee benefit plans to which Title I of the U.S. Employee Retirement Income Security Act of 1974, as amended, which we refer to as ERISA, applies; plans, individual retirement accounts and other arrangements to which Section 4975 of the Code or provisions under any federal, state, local, non-U.S. or other laws or regulations that are similar to such provisions of ERISA or the Code, which we collectively refer to as Similar Laws, apply; and entities whose underlying assets are considered to include plan assets of such plans, accounts and arrangements (each of which we call a Plan).

Each fiduciary of a Plan should consider the fiduciary standards of ERISA or any applicable Similar Laws in the context of the Plan's particular circumstances before authorizing an investment in the notes. Accordingly, among other factors, the fiduciary should consider whether the investment would satisfy the prudence and diversification requirements of ERISA or any applicable Similar Laws and would be consistent with the documents and instruments governing the Plan.

Section 406 of ERISA and Section 4975 of the Code prohibit Plans subject to such provisions, which we call ERISA Plans, from engaging in certain transactions involving plan assets with persons that are parties in interest under ERISA or disqualified persons under the Code with respect to the ERISA Plans. A violation of these prohibited transaction rules may result in an excise tax or other liabilities under ERISA and/or Section 4975 of the Code for those persons, unless exemptive relief is available under an applicable statutory or administrative exemption. Employee benefit plans that are governmental plans (as defined in Section 3(32) of ERISA), certain church plans (as defined in Section 3(33) of ERISA) and foreign plans (as described in Section 4(b)(4) of ERISA) are not subject to the requirements of ERISA or Section 4975 of the Code, but may be subject to Similar Laws.

Prohibited transactions within the meaning of Section 406 of ERISA or Section 4975 of the Code could arise if the notes were acquired by an ERISA Plan with respect to which we or any of our affiliates are a party in interest or a disqualified person. For example, if we are a party in interest or disqualified person with respect to an investing ERISA Plan (either directly or by reason of our ownership of our subsidiaries), an extension of credit prohibited by Section 406(a)(1)(B) of ERISA and Section 4975(c)(1)(B) of the Code between the investing ERISA Plan and us may be deemed to occur, unless exemptive relief were available under an applicable exemption (see below).

Prohibited transaction class exemptions, or PTCEs, issued by the United States Department of Labor, as well as certain statutory exemptions available under ERISA and the Code, may provide exemptive relief for direct or indirect prohibited transactions resulting from the purchase, holding or disposition of the notes. Those class and statutory exemptions include:

PTCE 96-23 for certain transactions determined by in-house asset managers;

PTCE 95-60 for certain transactions involving insurance company general accounts;

PTCE 91-38 for certain transactions involving bank collective investment funds;

PTCE 90-1 for certain transactions involving insurance company separate accounts;

PTCE 84-14 for certain transactions determined by independent qualified professional asset managers; and

ERISA § 408(b)(17); Code § 4975(d)(20) statutory exemption for certain transactions with service providers. Because of the possibility that direct or indirect prohibited transactions or violations of Similar Laws could occur as a result of the purchase, holding or disposition of the notes by a Plan, the notes may not be purchased by any Plan, or any person investing the assets of any Plan, unless its purchase, holding and disposition of the notes

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will not constitute or result in a non-exempt prohibited transaction under ERISA or the Code or in a violation of any Similar Laws. Any purchaser or holder of the notes or any interest in the notes will be deemed to have represented in its fiduciary and its corporate capacity by its purchase and holding of the notes that either:

it is not a Plan and is not purchasing the notes or interest in the notes on behalf of or with the assets of any Plan; or

its purchase, holding and disposition of the notes or interest in the notes will not constitute or result in a non-exempt prohibited transaction under ERISA or the Code or in a violation of any Similar Laws.

In addition, any purchaser that is a Plan or that is acquiring the notes on behalf of a Plan, including any fiduciary purchasing on behalf of a Plan, will be deemed to have represented, in its corporate and its fiduciary capacity, by its purchase and holding of the notes that (a) neither we, the indenture trustee nor the underwriters, nor any of our respective affiliates (collectively the Seller ) is a fiduciary (under Section 3(21) of ERISA, or under any final or proposed regulations thereunder, or with respect to a governmental, church, or foreign plan under any Similar Laws) with respect to the acquisition, holding or disposition of the notes, or as a result of any exercise by the Seller of any rights in connection with the notes, (b) no advice provided by the Seller or an affiliate has formed a primary basis for any investment decision by or on behalf of such purchaser in connection with the notes and the transactions contemplated with respect to the notes, and (c) such purchaser recognizes and agrees that any communication from the Seller or any affiliate to the purchaser with respect to the notes is not intended by the Seller or such affiliate to be impartial investment advice and is rendered in its capacity as a seller of such notes and not as a fiduciary to such purchaser.

Due to the complexity of these rules and the penalties imposed upon persons involved in non-exempt prohibited transactions, it is important that any person considering the purchase of notes on behalf of or with the assets of any Plan consult with its counsel regarding the consequences under ERISA, the Code and any applicable Similar Laws of the acquisition, ownership and disposition of notes, whether any exemption would be applicable, and whether all conditions of such exemption have been satisfied such that the acquisition, holding and disposition of the notes by the Plan are entitled to full exemptive relief thereunder.

Nothi