

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, DC 20549

**FORM S-8**  
**REGISTRATION STATEMENT**  
*UNDER*  
**THE SECURITIES ACT OF 1933**

**Capital One Financial Corporation**

(Exact Name of Registrant as Specified in its Charter)

**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**54-1719854**  
(I.R.S. Employer  
Identification Number)

**1680 Capital One Drive**  
**McLean, Virginia 22102**  
(Address of Principal Executive Offices) (Zip Code)

**(703) 720-1000**  
(Registrant's Telephone Number, Including Area Code)

**Capital One Financial Corporation Amended and Restated 2002 Associate Stock Purchase Plan**  
(Full Title of the Plan)

**John G. Finneran, Jr.**  
**General Counsel & Corporate Secretary**  
**1680 Capital One Drive**  
**McLean, Virginia 22102**  
(Name and Address of Agent for Service)

**(703) 720-1000**  
(Telephone Number, Including Area Code, of Agent for Service)

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer   
Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

Title of securities to be registered	Amount to be registered (1)	Proposed maximum offering price per share (2)	Proposed maximum aggregate offering price (2)	Amount of registration fee
Common Stock, par value \$0.01 per share	10,000,000	\$49.74	\$497,400,000	\$57,003

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement also covers such indeterminate number of additional shares of the Registrant's Common Stock as may become issuable to prevent dilution in the event of stock splits, stock dividends, or similar transactions pursuant to the terms of the Capital One Financial Corporation Amended and Restated 2002 Associate Stock Purchase Plan.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and Rule 457(h) under the Securities Act, based upon the average of the high and low prices of the Registrant's Common Stock on the New York Stock Exchange on May 23, 2012.

## NOTE

This Registration Statement on Form S-8 is filed pursuant to General Instruction E to Form S-8 for the purpose of registering an additional 10,000,000 shares of the Common Stock of Capital One Financial Corporation (the "Company" or "Registrant"), which may be issued under the Capital One Financial Corporation Amended and Restated 2002 Associate Stock Purchase Plan (the "Plan"). In accordance with General Instruction E to Form S-8, the Company hereby incorporates herein by reference the original Form S-8 filed by the Company with respect to the Plan on October 10, 2002 (SEC File No. 333-100488) and the additional Form S-8 filed by the Company with respect to the Plan on May 30, 2008 (SEC File No. 333-151325), together with all exhibits filed therewith or incorporated therein by reference.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### Item 8. Exhibits.

<u>Exhibit No.</u>	<u>Exhibit Description</u>
5.1*	Opinion of Gibson, Dunn & Crutcher LLP.
23.1*	Consent of Gibson, Dunn & Crutcher LLP (included in Exhibit 5.1).
23.2*	Consent of Ernst & Young LLP.
23.3*	Consent of Ernst & Young LLP, relating to the financial statements of ING Bank, fsb.
24.1*	Power of Attorney (included on signature page hereto).
99.1*	Capital One Financial Corporation Amended and Restated 2002 Associate Stock Purchase Plan.

\* Filed herewith.

**SIGNATURES**

Pursuant to the requirements of the Securities Act, 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 Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of McLean, Commonwealth of Virginia, on this 29<sup>th</sup> day of May, 2012.

CAPITAL ONE FINANCIAL CORPORATION

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

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints John G. Finneran and Stephen T. Gannon, and each of them, his true and lawful attorneys-in-fact and agents, each with full power of substitution and resubstitution, for him or her and in his name, place and stead, in any and all capacities, to sign any and all amendments, including post-effective amendments, to this Registration Statement, and any registration statement relating to the offering covered by this Registration Statement and filed pursuant to Rule 462(b) under the Securities Act of 1933, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that each of said attorneys-in-fact and agents or their substitute or substitutes may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Richard D. Fairbank</u> Richard D. Fairbank	Chairman, Chief Executive Officer and President (Principal Executive Officer)	May 29, 2012

---

<u>/s/ Gary L. Perlin</u> Gary L. Perlin	Chief Financial Officer ( <i>Principal Financial Officer</i> )	May 29, 2012
<u>/s/ R. Scott Blackley</u> R. Scott Blackley	Controller, ( <i>Principal Accounting Officer</i> )	May 29, 2012
<u>/s/ W. Ronald Dietz</u> W. Ronald Dietz	Director	May 29, 2012
<u>/s/ Patrick W. Gross</u> Patrick W. Gross	Director	May 29, 2012
<u>/s/ Ann Fritz Hackett</u> Ann F. Hackett	Director	May 29, 2012
<u>/s/ Lewis Hay, III</u> Lewis Hay, III	Director	May 29, 2012
<u>/s/ C.P.A.J. Leenaars</u> C.P.A.J. Leenaars	Director	May 29, 2012
<u>/s/ Pierre E. Leroy</u> Pierre E. Leroy	Director	May 29, 2012
<u>/s/ Peter E. Raskind</u> Peter E. Raskind	Director	May 29, 2012
<u>/s/ Mayo A. Shattuck, III</u> Mayo A. Shattuck, III	Director	May 29, 2012
<u>/s/ Bradford H. Warner</u> Bradford H. Warner	Director	May 29, 2012

May 29, 2012

C 67293-00043

Capital One Financial Corporation  
1680 Capital One Drive  
McLean, VA 22102Re: *Capital One Financial Corporation's Registration Statement on Form S-8*

Ladies and Gentlemen:

We have examined the Registration Statement on Form S-8 (the "Registration Statement"), of Capital One Financial Corporation, a Delaware corporation (the "Company"), to be filed with the Securities and Exchange Commission (the "Commission") on or about May 29, 2012, pursuant to the Securities Act of 1933, as amended (the "Securities Act"), in connection with the offering by the Company of up to 10,000,000 additional shares of the Company's common stock, par value \$0.01 (the "Shares"). The Shares subject to the Registration Statement are to be issued under the Amended and Restated 2002 Associate Stock Purchase Plan (the "Plan").

We have examined the Plan and the originals, or photostatic or certified copies, of such records of the Company and certificates of officers of the Company and of public officials and such other documents as we have deemed relevant and necessary as the basis for the opinions set forth below. We have also made such other investigations as we have deemed relevant and necessary or appropriate in connection with the opinion hereinafter set forth. In our examination, we have assumed the genuineness of all signatures, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as copies. We have also assumed that there are no agreements or understandings between or among the Company and any participants in the Plan that would expand, modify or otherwise affect the terms of the Plan or the respective rights or obligations of the participants thereunder. Finally, we have assumed the accuracy of all other information provided to us by the Company during the course of our investigations, on which we have relied in issuing the opinion expressed below.

Based upon the foregoing examination and in reliance thereon, and subject to the assumptions stated and in reliance on statements of fact contained in the documents that we have examined, we are of the opinion that the Shares, when issued and sold in accordance with the terms set forth in the Plan and against payment therefor, and when the Registration Statement has become effective under the Securities Act, will be validly issued, fully paid and non-assessable.

We consent to the filing of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the Rules and Regulations of the Commission.

Very truly yours,

/s/ Gibson, Dunn &amp; Crutcher LLP

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the Capital One Financial Corporation Amended and Restated 2002 Associate Stock Purchase Plan of our reports dated February 28, 2012, with respect to the consolidated financial statements of Capital One Financial Corporation, and the effectiveness of internal control over financial reporting of Capital One Financial Corporation included in its Annual Report (Form 10-K) for the year ended December 31, 2011, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

McLean, VA  
May 29, 2012

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the Capital One Financial Corporation Amended and Restated 2002 Associate Stock Purchase Plan of our report dated March 5, 2012, with respect to the consolidated financial statements of ING Bank, fsb and Subsidiaries included in the Current Report on Form 8-K of Capital One Financial Corporation dated March 14, 2012.

/s/ Ernst & Young LLP

McLean, VA  
May 29, 2012

**CAPITAL ONE FINANCIAL CORPORATION  
2002 ASSOCIATE STOCK PURCHASE PLAN**

**AMENDED AND RESTATED AS OF MAY 8, 2012**

**1. Purpose and Effect of Plan**

The purpose of the Plan is to secure for the Company and its stockholders the benefits of the incentive inherent in the ownership of Common Stock by present and future employees of the Company and its Subsidiaries. The Plan is hereby amended and restated effective as of February 23, 2012, subject to the approval of the Company's stockholders at the Company's 2012 annual meeting.

**2. Shares Reserved for the Plan**

There shall be reserved for issuance and purchase by Participating Associates under the Plan an aggregate of 18,000,000 shares of Common Stock, subject to adjustment as provided in Section 12. Shares issued under the Plan may consist of newly issued shares acquired from the Company, treasury shares held by the Company, shares acquired on the open market or a combination of the above.

**3. Definitions**

Where indicated by initial capital letters, the following terms shall have the following meanings:

- a. Act: The Securities Exchange Act of 1934, as amended.
- b. Base Compensation: The base salary and/or commissions of an Eligible Associate received from the Employer, including salary reduction contributions pursuant to elections under a plan subject to Code section 125 or 401(k), but excluding all other compensation such as overtime, bonuses, profit sharing awards and credits received under a plan subject to Code section 125.
- c. Beneficiary: The beneficiary designated by the Participating Associate in the beneficiary designation in effect under the Company's group life insurance plan, or if no beneficiary designation is in effect under such plan, the beneficiary designated by the Participating Associate in the beneficiary designation in effect under the Company's Executive Life Insurance Plan, provided that if the Participating Associate has no beneficiary designation in effect under either of the foregoing plans or if the Participating Associate's designated beneficiary predeceases him, the Participating Associate's beneficiary shall be his estate.
- d. Board: The Board of Directors of the Company.
- e. Business Day: A day on which the New York Stock Exchange is open for trading in Common Stock or, if trading in Common Stock is suspended, the next following day on which the New York Stock Exchange is open for trading and on which trading in Common Stock is no longer suspended.
- f. Code: The Internal Revenue Code of 1986, as amended from time to time.
- g. Committee: The committee established pursuant to Section 4 to be responsible for the general administration of the Plan.
- h. Common Stock: The Company's common stock, \$.01 par value per share.
- i. Company: Capital One Financial Corporation and any successor by merger, consolidation or otherwise.
- j. Eligible Associate: Any employee of the Company or any of its Subsidiaries who meets the eligibility requirements of Section 5.



- k. Employer: For purposes of Section 5, the Company or Subsidiary employing an Eligible Associate.
- l. Enrollment Form: The form filed with the Company's Human Resources Department authorizing payroll deductions pursuant to Section 6.
- m. Fair Market Value: With respect to Common Stock acquired from the Company, the closing price as reported on the New York Stock Exchange Composite Tape on the date in question, or, if the Common Stock shall not have been so quoted on such date, the closing price on the last day prior thereto on which the Common Stock was so quoted. With respect to Common Stock acquired in respect of the Plan on the open market, the weighted average purchase price (computed to four decimal places) of all shares purchased on the date in question.
- n. Investment Account: The account established for each Participating Associate pursuant to Section 9 to account for Common Stock purchased under the Plan.
- o. Investment Date: The last Business Day of each calendar month, or such other date(s) as determined by the Committee.
- p. Participating Associate: An Eligible Associate who elects to participate in the Plan by filing an Enrollment Form pursuant to Section 6.
- q. Payroll Deduction Account: The account established for a Participating Associate to reflect payroll deductions and lump-sum cash contributions pursuant to Section 6.
- r. Plan: The "Capital One Financial Corporation 2002 Associate Stock Purchase Plan," as set forth herein and as amended from time to time.
- s. Purchase Price: The price for each whole and fractional share of Common Stock purchased under the Plan (after taking into account matching contributions pursuant to Section 7), other than those purchased by dividend reinvestment, shall be the Fair Market Value on the date in question. The price for each whole and fractional share of Common Stock purchased by dividend reinvestment shall be 85% (or such greater percentage determined by the Committee) of the Fair Market Value on the date in question. In the event matching contributions pursuant to Section 7 are eliminated, the price for each whole and fractional share of Common Stock purchased under the Plan shall be 85% (or such greater percentage determined by the Committee) of the Fair Market Value on the date in question.
- t. Section: A section of the Plan, unless otherwise required by the context.
- u. Subsidiary or Subsidiaries: Any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company if, as of an Investment Date, each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

#### **4. Administration of the Plan**

The Plan shall be administered by a committee, consisting of not less than two members appointed by the Board. The Committee shall be the Compensation Committee of the Board unless the Board shall appoint another committee to administer the Plan. The Board from time to time may remove members previously appointed and may fill vacancies, however caused, in the Committee.

Subject to the express provisions of the Plan, the Committee shall have the authority to take any and all actions necessary to implement the Plan and to interpret the Plan, to prescribe, amend and rescind rules and regulations relating to the Plan, and to make all other determinations necessary or advisable in administering the Plan. All of such actions, interpretations and determinations shall be final and binding upon all persons. A quorum of the Committee shall consist of a majority of its members and the Committee may act by vote of a majority of its

members at a meeting at which a quorum is present, or without a meeting by a written consent to its actions signed by all members of the Committee. The Committee may delegate all matters relating to the administration of the Plan to one or more of the Company's officers. In addition, the Committee may request advice or assistance and employ such other persons as are necessary for proper administration of the Plan.

No member of the Committee or the Board shall be liable for any action, omission, or determination relating to the Plan, and the Company shall indemnify and hold harmless each member of the Committee and each other director, employee or consultant of the Company to whom any duty or power relating to the administration or interpretation of the Plan has been delegated against any cost or expense (including counsel fees) or liability arising out of any action, omission or determination relating to the Plan, to the maximum extent permitted by law.

#### **5. Eligible Associates**

Subject to the limitations of this Section, all employees of the Company or its Subsidiaries shall be eligible to participate in the Plan. To be an employee eligible to participate in the Plan, a person must be actively employed by the Employer and customarily paid through the Employer's regular payroll. Any person who is excluded by the terms and conditions of his employment from participation in the Plan, any person acting as a non-employee director of the Employer, any person designated by the Employer as an independent contractor, and any person who is a "leased employee" within the meaning of Section 414(n) of the Code, shall not be considered an employee for purposes of this Section 5. It is expressly intended that persons acting as non-employee directors of the Employer, persons designated as independent contractors by the Employer and "leased employees" within the meaning of Section 414(n) of the Code are to be excluded from Plan participation even if a court or administrative agency determines that such persons are common law employees and not persons acting as non-employee directors, independent contractors or "leased employees" of the Employer.

#### **6. Election to Participate**

Each Eligible Associate may elect to become a Participating Associate by filing with the Company's Human Resources Department (or third party plan administrator designated by the Company's Human Resources Department) an Enrollment Form authorizing specified regular payroll deductions from his Base Compensation; provided however that, for purposes of this Section 6, the last Enrollment Form filed by a Participating Associate pursuant to the Company's 1994 Associate Stock Purchase Plan prior to the initial adoption of the Plan shall be deemed to be filed and effective with respect to the Plan as if actually filed hereunder. Such regular payroll deductions shall be subject to a minimum deduction of 1% and a maximum deduction of 15% (or such lower percentage determined by the Committee) of Base Compensation for that payroll period. A Participating Associate may also elect to make lump-sum cash contributions to the Plan, provided that the total of regular payroll deductions and lump-sum cash contributions in any calendar quarter shall not exceed 15% (or such lower percentage determined by the Committee) of the Participating Associate's Base Compensation for the calendar quarter in which the lump-sum cash contribution is made. For purposes of the preceding sentence, a Participating Associate's Base Compensation for any calendar quarter shall be the actual Base Compensation paid to the Participating Associate during such calendar quarter taking into account only the Base Compensation paid with respect to payroll periods during which payroll deductions were being made under the Plan. In addition, the total of regular payroll deductions and lump-sum cash contributions in any calendar year shall not exceed \$75,000. All regular payroll deductions and lump-sum cash contributions shall be credited as soon as practicable to the Payroll Deduction Account that the Company has established with respect to the Participating Associate. A Participating Associate may elect once each calendar quarter to increase, decrease, or eliminate his regular payroll deduction by filing a new Enrollment Form.

All elections described in this Section 6 shall be filed in a form and manner established by the Company's Human Resources Department. Except to the extent otherwise required to comply with the Act or any securities law compliance program established by the Company, elections with respect to regular payroll deductions shall become effective as soon as practicable on or after the first day of the first payroll period that begins following the date the election is duly filed.

#### **7. Method of Purchase and Investment Accounts**

Subject to Section 13, each Participating Associate shall receive a matching contribution to his Payroll Deduction Account as and when payroll deductions and/or lump sum contributions are made by the Participating Associate to his Payroll Deduction Account pursuant to Section 6 equal to 17.65% of the amount of such deductions and/or

contributions. In addition, subject to Section 13, each Participating Associate having eligible funds in his Payroll Deduction Account on an Investment Date shall be deemed, without any further action, to have purchased the number of whole and fractional shares that the eligible funds in his Payroll Deduction Account could purchase at the applicable Purchase Price on that Investment Date; provided, however, that no eligible funds in a Participating Associate's Payroll Deduction Account attributable to such Participating Associate's lump-sum cash contributions shall be deemed to have purchased whole and fractional shares of Common Stock until the last Investment Date of the calendar quarter within which such lump-sum cash contributions were made. All whole and fractional shares purchased (rounded to the nearest ten thousandth) shall be maintained in a separate Investment Account for each Participating Associate. All cash dividends paid with respect to the whole and fractional shares of Common Stock held in a Participating Associate's Investment Account shall be used as soon as practicable to purchase additional shares of Common Stock at the applicable Purchase Price. All such additional shares, along with any dividends paid in shares of Common Stock, shall be added to the shares held for the Participating Associate in his Investment Account. Expenses incurred in the purchase of such shares of Common Stock shall be paid by the Company. Any distribution of shares or other property with respect to whole or fractional shares of Common Stock held in a Participating Associate's Investment Account, other than a cash dividend or dividend of Common Stock, shall be distributed to the Participating Associate as soon as practicable. In the event of such a distribution, certificates for whole shares shall be issued and fractional shares shall be sold and the proceeds of sale, less selling expenses and other applicable charges, distributed to the Participating Associate.

#### **8. Stock Purchases**

The Company shall issue (or direct the issuance of or the purchase on the open market of) shares of Common Stock to be credited to the Investment Accounts of the Participating Associates as of each Investment Date (or as soon as practicable thereafter) and each date as of which shares of Common Stock are purchased with reinvested cash dividends (or as soon as practicable thereafter).

#### **9. Title of Accounts**

The Company's Human Resources Department or its delegate shall establish and maintain an Investment Account with respect to each Participating Associate. Each Investment Account shall be in the name of the Participating Associate.

#### **10. Rights as a Shareholder**

From and after the Investment Date on which shares of Common Stock are purchased by a Participating Associate under the Plan, such Participating Associate shall have all of the rights and privileges of a shareholder of the Company with respect to such shares of Common Stock. Subject to Section 18 herein, a Participating Associate shall have the right at any time (i) to obtain a certificate for the whole shares of Common Stock credited to his Investment Account or (ii) to direct that any whole shares in his Investment Account be sold and that the proceeds, less expenses of sale, be remitted to him.

Prior to the Investment Date on which shares of Common Stock are to be purchased by a Participating Associate, such Participating Associate shall not have any rights as a shareholder of the Company with respect to such shares of Common Stock. Each Participating Associate shall be a general unsecured creditor of the Company to the extent of any amounts deducted under the Plan from such Participating Associate's Base Compensation or lump-sum cash contributions made by such Participating Associate during the period prior to the Investment Date on which such amounts are applied to the purchase of Common Stock for the Participating Associate.

#### **11. Rights Not Transferable**

Rights under the Plan, except as set forth in Section 13(b) herein, are not transferable by a Participating Associate.

#### **12. Change in Capital Structure**

In the event of a stock dividend, spin-off, stock split or combination of shares, recapitalization or merger in which the Company is the surviving corporation or other change in the Company's capital stock (including, but not limited to, the creation or issuance to shareholders generally of rights, options or warrants for the purchase of common stock or preferred stock of the Company), the number and kind of shares of stock or securities of the Company to be

subject to the Plan, the maximum number of shares or securities that may be delivered under the Plan, the Purchase Price and other relevant provisions shall be appropriately adjusted by the Committee, whose determination shall be binding on all persons.

If the Company is a party to a consolidation or a merger in which the Company is not the surviving corporation, a transaction that results in the acquisition of substantially all of the Company's outstanding stock by a single person or entity, or a sale or transfer of substantially all of the Company's assets, the Committee may take such actions with respect to the Plan as the Committee deems appropriate.

Notwithstanding anything in the Plan to the contrary, the Committee may take the foregoing actions without the consent of any Participating Associate, and the Committee's determination shall be conclusive and binding on all persons for all purposes.

### **13. Termination of Employment and Death**

- (a) If a Participating Associate's employment is terminated for any reason other than death: (i) certificates with respect to the whole shares in his Investment Account shall be issued to him as soon as practicable following the next Investment Date, provided that the Participating Associate may elect to have such shares sold and the proceeds of the sale, less selling expenses, remitted to him; (ii) any fractional shares in his Investment Account shall be sold as soon as practicable following the next Investment Date, and the proceeds of the sale, less selling expenses, shall be remitted to the Participating Associate; and (iii) any amount in his Payroll Deduction Account shall be used to purchase shares as of the next following Investment Date, and such shares shall be distributed as soon as practicable thereafter in accordance with (a) (i) and (a) (ii) above; provided that, following the termination of his employment for any reason other than death, a Participating Associate may elect to receive a cash distribution from his Payroll Deduction Account before the next following Investment Date, if practicable.
- (b) If a Participating Associate dies: (i) certificates with respect to any whole shares in his Investment Account shall be delivered to his Beneficiary as soon as practicable following the next Investment Date; (ii) any fractional shares in his Investment Account shall be sold as soon as practicable following the next Investment Date, and the proceeds of the sale, less selling expenses, shall be remitted to his Beneficiary; and (iii) any amount in his Payroll Deduction Account shall be used to purchase shares as of the next following Investment Date, and such shares shall be distributed to his Beneficiary as soon as practicable thereafter in accordance with (b) (i) and (b) (ii) above; provided that a Beneficiary may elect to receive the distributions from the Participating Associate's Investment Account (as described in (b) (i) and (b) (ii) , above) before the Investment Date next following the Participating Associate's death, if practicable.

### **14. Tax Withholding**

Each Participating Associate must make adequate provision for federal, state, or other tax withholding obligations, if any, which arise in connection with participation in the Plan. By electing to participate in the Plan, a Participating Associate authorizes the Company to withhold from the Participating Associate's compensation the amounts necessary to satisfy any such applicable tax withholding obligations. At any time, the Company may, but shall not be obligated to, withhold from the Participating Associate's compensation the amount necessary for the Company to satisfy any applicable tax withholding obligations.

### **15. Amendment of the Plan**

The Board in its sole discretion may at any time amend the Plan in any respect; provided that such amendment is in compliance with all applicable laws and regulations and the requirements of any national securities exchange on which shares of Common Stock are then traded. Any such amendment shall be subject to the approval of the Company's stockholders to the extent required by applicable law or the requirements of any national securities exchange on which shares of Common Stock are then traded.

#### **16. Termination of the Plan**

The Plan and all rights of Eligible Associates hereunder shall terminate:

- (a) on the Investment Date that Participating Associates become entitled to purchase a number of shares greater than the number of reserved shares remaining available for purchase; or
- (b) at any earlier date determined by the Board in its sole discretion.

In the event that the Plan terminates under circumstances described in (a) above, reserved shares remaining as of the termination date shall be sold to Participating Associates at the applicable Purchase Price on a pro rata basis. Upon termination of the Plan, all amounts in a Participating Associate's Payroll Deduction Account that are not used to purchase Common Stock shall be refunded to the Participating Associate.

#### **17. Effective Date of Plan**

The Plan originally was adopted by the Board and became effective on September 19, 2002. This amendment and restatement of the Plan was adopted by the Board on February 23, 2012 and is subject to the approval of the Company's stockholders at the Company's 2012 annual meeting.

#### **18. Government and Other Regulations**

The Plan, and the grant and exercise of the rights to purchase shares hereunder, and the obligation to sell and deliver shares upon the exercise of rights to purchase shares, shall be subject to all applicable federal, state and foreign laws, rules and regulations, and to such approvals by any regulatory or government agency as may be required, in the opinion of counsel for the Company.

#### **19. Gender and Number**

Masculine pronouns shall refer to both males and females. The singular form shall include the plural.