

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA
c/o Department of Justice
Washington, D.C. 20530,

Plaintiff,

v.

Civil Action No.

RICHARD D. FAIRBANK
c/o Capital One Financial Corporation
1680 Capital One Drive
McLean, VA 22102

Defendant.

COMPLAINT FOR CIVIL PENALTIES FOR FAILURE TO COMPLY
WITH THE PREMERGER REPORTING AND WAITING REQUIREMENTS
OF THE HART-SCOTT RODINO ACT

The United States of America, acting under the direction of the Attorney General of the United States and at the request of the United States Federal Trade Commission, brings this civil antitrust action to obtain monetary relief in the form of civil penalties against Defendant Richard D. Fairbank (“Fairbank”). The United States alleges as follows:

I. NATURE OF THE ACTION

1. Fairbank violated the notice and waiting period requirements of Section 7A of the Clayton Act, (15 U.S.C. § 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 “HSR Act” or “Act”), with respect to the acquisition of voting securities of Capital One Financial Corporation (“COF”) in 2018.

amount of civil penalty in effect at the time of Fairbank's corrective filing was \$42,530 per day.
84 Fed. Reg. 3980 (February 14, 2019).

VI. DEFENDANT'S PRIOR VIOLATION OF THE HSR ACT

13. In 1999 and 2004, Fairbank acquired voting securities of COF that resulted in holdings exceeding

March 7, 2013. Fairbank was permitted under the HSR Act to acquire additional voting securities of COF until five years after the 2013 filing waiting period expired (i.e., March 6, 2018) without making another HSR Act filing so long as he did not exceed the next highest threshold, \$500 million, as adjusted.

17. On March 8, 2018, over five years after expiration of the waiting period for the February 5, 2013 filing, Fairbank acquired 101,148 shares of COF due to vesting PSUs. Even though this acquisition did not bring Fairbank's holdings over the next highest threshold (\$500 million, as adjusted), he was required to make an HSR Act filing because the five-year exemption period of his 2013 filing had ended. As a result of this acquisition, Fairbank held voting securities of COF valued in excess of the \$100 million threshold, as adjusted, which in 2018 was \$168.8 million.

18. Although required to do so, Fairbank did not file under the HSR Act or observe the HSR Act's waiting period prior to completing the March 8, 2018, transaction.

19. On December 18, 2019, Fairbank made a corrective filing and thIejm(A)2 (l)-2 (Tj-0.004 .1 (h)-13

Dated: September 2, 2021

FOR THE PLAINTIFF UNITED STATES
OF AMERICA:

/s/ Richard A. Powers
Richard A. Powers
Acting Assistant Attorney General
Department of Justice
Antitrust Division
Washington, D.C. 20530

/s/ Maribeth Petrizzi
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