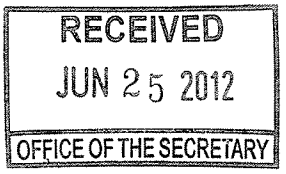
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



In the Matter of optionsXpress, Inc., Thomas E. Stern, and Jonathan I. Feldman, Respondents.	ADMINISTRATIVE PROCEEDING File No. 3-14848

REPLY IN SUPPORT OF RESPONDENT JONATHAN I. FELDMAN'S MOTION FOR SUMMARY DISPOSITION

Gregory T. Lawrence
Daniel J. McCartin
Hannah Kon
CONTI FENN & LAWRENCE LLC
36 South Charles Streets, Suite 2501
Baltimore, Maryland 21201
(410)-837-6999
(410)-510-1647 (facsimile)

Counsel for Jonathan I. Feldman

TABLE OF CONTENTS

I. Introduction 1

II. Argument 2

A. Division Was Required to Present Evidence of a Genuine Dispute 2

B. Undisputed That Alleged Failures Controlled by Broker, Not Feldman . . . 4

C. Feldman's Trading Was Not Deceptive 4

D. Division Obscures Distinct Delivery Obligations. 7

1. Undisputed Feldman Did Not Deceive optionsXpress 8

2. Option Exercises Created CNS Delivery Obligations 9

3. CNS Delivery is Delegated to Broker-Dealers 11

E. Division Timeline Establishes Violation of the Dodd-Frank Act. 12

F. Division Perpetuates Patently False OTS Allegations 14

III. Conclusion 15

TABLE OF AUTHORITIES

Cases

A.T. Brod & Co. v. Perlow, 375 F.2d 393 (2d Cir. 1967) 7

Brock v. Pierce County, 476 U.S. 253 (1986) 13, 14

Ernst & Ernst v. Hochfelder, 425 U.S. 185 (1976) 6

Flagship Securities, 62 S.E.C. 257 (1996) 3

Graham v. SEC, 222 F.3d 994 (D.C. Cir. 2000) 6

In the Matter of Robert L. Burns, Release No. 3260, 2011 WL 3407859 (Aug. 5, 2011) . . 4

Janus Capital Group, Inc. v. First Derivative Traders, 131 S. Ct. 2296 (2011). 5

Kramer v. Secretary of Defense, 39 F. Supp. 2d 54 (D.D.C. 1999) 14

S.E.C. v. U.S. Environmental, Inc., 155 F.3d 107 (2d Cir. 1998) 5

SEC v. Pentagon Capital Management PLC, 2012 WL 479576 (S.D.N.Y. Feb. 14 2012). . 6

Silverman v. Motorola, Inc., 798 F.Supp.2d (N.D. Ill. 2011). 11

The Wharf (Holdings) Ltd. v. United Int'l Holdings, Inc., 532 U.S. 588 (2001). 6, 7

U.S. v. James Daniel Good Real Property, 510 U.S. 43 (1993) 14

United States v. Finnerty, 533 F.3d 143 (2d Cir. 2008). 7

VanCook v. S.E.C., 653 F.3d 130 (2d Cir. 2011). 7

Walling v. Beverly Enter., 476 F.2d 393 (9th Cir. 1973) 6

Statutes and Rules

17 C.F.R. § 201.250(a) 3, 4, 5

Exchange Act Release No. 58774 (October 14, 2008), 73 FR 6166, 61672 (October 17, 2008) ("10b-21 Adopting Release") 12

Rule 250(b); accord FRCP 56(d) (formerly FRCP 56(f) 3

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of optionsXpress, Inc., Thomas E. Stern, and Jonathan I. Feldman, Respondents.	ADMINISTRATIVE PROCEEDING File No. 3-14848

REPLY IN SUPPORT OF RESPONDENT JONATHAN I. FELDMAN'S MOTION FOR SUMMARY DISPOSITION

Respondent Jonathan I. Feldman, by his attorneys, hereby submits this Reply in support of his Motion for Summary Disposition. In support, Respondent states the following:

I. Introduction

The undisputed fact remains that, for the trading at issue, the only way purchasers could receive shares they purchased was through the CNS system. Accordingly, the only delivery failure alleged in the Order is optionsXpress's alleged fail-to-deliver at CNS. In the Opposition, the Division for the first time claims that Mr. Feldman failed to deliver securities to optionsXpress. This new allegation is wholly unsupported by evidence: optionsXpress absolutely and indisputably accepted Mr. Feldman's buy-writes as full performance of any delivery obligation to optionsXpress, and not even the Division could argue that optionsXpress was deceived. Thus, the Division's rhetoric concerning other types of "delivery" is nothing more than a diversion from the fundamental flaw in the Division's charges: Mr. Feldman had no obligation to deliver at CNS and no control over CNS delivery.

The Division's straw man argument concerning scienter fails because Mr. Feldman's scienter is irrelevant for the purposes of the Motion, and indeed the Motion never addresses Mr. Feldman's scienter. It did not matter whether Mr. Feldman intended to deliver or knew optionsXpress was not delivering in CNS, because he did not assume any obligation to deliver in CNS and made no representation about his intention to deliver in CNS. Reg SHO places the obligation for CNS delivery on the broker-dealer. Instead of plainly discussing these obligations, the Division refuses to acknowledge or address the relationship between CNS, the broker-dealer, the customer, and who is obligated to do what.

Equally important, the Division confirms the undisputed facts showing this action is barred under the Dodd-Frank Act. Moreover, the Division offers no affidavit contesting the claim that the Director of the Division had already made a determination concerning filing this action before the Director or the Commission approved a third 180-day period.

Finally, the Division recklessly defends its patently false allegation concerning the OTS fine. The Division's disregard for the truth colors all the allegations in the Order, in addition to meriting striking the allegation and precluding more reference to the OTS matter.

II.
Argument

A. Division Was Required to Present Evidence of a Genuine Dispute

The Motion is supported by affidavits concerning the core material facts. By contrast, the Division openly declines to address the bulk of the undisputed facts:

> [T]he Division does not address all of the factual disputes arising from the attached affidavits, only those that it believes are relevant to the pending motion.

Opposition at 5, n.4. Further, the Division makes rhetorical points and levels new allegations that are nowhere in the Order or supported by evidence or affidavits. At its best, the Division merely relies on allegations in the Order and snippets from emails and websites.

"Rule 250 is very similar to Rule 56(c) of the Federal Rules of Civil Procedure." *Flagship Securities,* 62 S.E.C. 257 (1996) (Murray, J.). Like FRCP 56, Rule 250 provides that a law judge should grant summary disposition if there is no genuine issue of material fact. Allegations in the pleadings of the non-moving party are accepted as true unless contradicted by (1) uncontested affidavits, (2) stipulations, (3) admissions, or (4) judicially noticed facts:

> The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noted pursuant to Rule 323.

17 C.F.R. § 201.250(a) (emphasis added). When presented with an affidavit submitted by the moving party, the non-moving party cannot rely on allegations, but rather must present evidence or explain why evidence creating a dispute of fact cannot yet be presented:

> If it appears that a party, for good cause shown, cannot present by affidavit prior to hearing facts essential to justify opposition to the motion, the hearing officer shall deny or defer the motion.

Rule 250(b); *accord* FRCP 56(d) (formerly FRCP 56(f)) (requiring an affidavit explaining need for additional discovery to oppose summary judgment). The Commission has specifically approved of granting summary disposition when the opposing party has not presented evidence in response or explained why evidence cannot be presented:

> [T]he law judge 'shall deny or defer the motion' if 'it appears that a party, for good cause shown, cannot present by affidavit prior to hearing facts essential to justify opposition to the motion.' In connection with the Rule 250 motion before the law judge, Burns neither presented the evidence to which he refers nor made a showing why he could not do so, nor does he do so now.

In the Matter of Robert L. Burns, Release No. 3260, 2011 WL 3407859, *6 (Aug. 5, 2011)

B. Undisputed That Alleged Failures Controlled by Broker, Not Feldman

The Division fails to dispute the mechanics of delivery of options and stock for settlement set forth plainly in affidavit by Dr. Erik Sirri.[1] The facts set forth in Dr. Sirri's affidavit must therefore be accepted as correct for the purposes of the Motion. 17 C.F.R. § 201.250(a). In particular, the following facts remain undisputed by the Opposition or the Order:

- For the trading at issue, the purchasers would have received delivery of shares through CNS via their brokers, Sirri Affidavit at ¶¶ 28, 31, attached as Exhibit 1 to the Motion;
- Clearing firm members are the only ones who can deliver through CNS, *id.* at ¶ 41; and
- Customers cannot deliver through CNS, *id.*

The only delivery failure alleged in the Order are fails-to-deliver in the CNS system. *See* Order at ¶¶ 30-31, 36, 42, 124, 157, 159-160. All rhetoric and imprecision aside, therefore, Mr. Feldman had no control over delivery and cannot be a primary violator under any of the anti-fraud provisions.

C. Feldman's Trading Was Not Deceptive

Notwithstanding conclusory assertions in the Opposition, the following facts remain undisputed concerning Mr. Feldman's trading:

- Mr. Feldman's trading was open-market and arms length;
- Mr. Feldman had no knowledge of counterparties' identity; and
- The options were not customized, and buy-writes are common and customary securities transactions.

---

[1] The Division baldly asserts that it disputes paragraphs 44-45, 49, and 51-55 of Dr. Sirri's affidavit, but it presents no actual evidence in support. Thus, the Division has not presented evidence to justify denial of the Motion, and it should be granted under the standard set forth in Rule of Practice 250. *See In the Matter of Robert L. Burns*, 2011 WL 3407859 at *6.

Feldman Affidavit at ¶¶ 5-7; Sirri Affidavit at ¶ 23. The Division does no more than make a perfunctory statement that some of these facts are disputed. *See* Opposition at 5, n.3. But even the Order is devoid of any allegation that Mr. Feldman knew who the counterparties to his trades were or had any contact with the counterparties. Nor does the Division allege in the Order that the buy-writes were not open-market, arms length transactions in non-customized securities. The Division does not present any evidence to dispute this fact for purposes of the Motion, and thus these facts are uncontested. *See* 17 C.F.R. § 201.250(a). Moreover, there is no allegation whatsoever that Mr. Feldman engaged in any acts to conceal his activity. Therefore, Mr. Feldman's trades were not inherently deceptive. Instead, if any deception occurred, it could only have occurred with respect to alleged failures in the CNS system, which was after Mr. Feldman entered the trades and was in optionsXpress's complete control.

Using the word "scheme" to describe conduct that is only deceptive because subsequent deceptive conduct or misstatements follow does not satisfy the standard for primary liability set forth in *Janus Capital Group, Inc. v. First Derivative Traders*, 131 S. Ct. 2296 (2011). While the Division is correct that conduct alone can be deceptive, the Division did not allege or present evidence that any conduct by Mr. Feldman was inherently deceptive. The Division had to present evidence that Mr. Feldman had control over the instrument of deception, which it did not. Indeed, the Division does not dispute, or even address, the fact that only broker-dealers can effect delivery in the CNS system. Nor does the Division dispute that optionsXpress had the power to simply buy Mr. Feldman in to assist optionsXpress's clearing up any alleged fail-to-deliver.

The cases cited by the Division concerning scheme liability all involve a primary violator who engaged in inherently deceptive conduct. *See, e.g., S.E.C. v. U.S. Environmental, Inc.*, 155

F.3d 107, 112 (2d Cir. 1998) (in wash sale scheme, trader "himself commi[tted] a manipulative act by effecting the very buy and sell orders that manipulated USE's stock upward") (internal quotation and citation omitted). In cases of matched orders, the trader who enters the order and collaborates with the counterparty who enters the mirror order is the individual engaging in the deceptive conduct. *See Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 205 n.25 (1976).[2] In the late-trading cases, the hedge fund managers and other industry insiders affirmatively concealed their conduct by using multiple broker identification numbers to evade market timing restrictions, using different branch identification numbers to disguise trading activity, opening numerous customer accounts to evade market timing restrictions, and concealing the identity of the customer or the identity of the broker-dealer. *See, e.g., SEC v. Pentagon Capital Management PLC*, 2012 WL 479576, *12, 14 (S.D.N.Y. Feb. 14 2012).

The Division alleges two ways in which investors are supposedly defrauded: (1) failure to receive shares, and (2) observing volume spikes. Opposition at 10. The first concerns only CNS delivery,[3] and the second concerns mere open-market transactions that actually occurred. Nothing Mr. Feldman did was thus inherently deceptive.

The Division cites *The Wharf (Holdings) Ltd. v. United Int'l Holdings, Inc.*, 532 U.S. 588 (2001) and *Walling v. Beverly Enter.*, 476 F.2d 393 (9th Cir. 1973) for the proposition that entering into a contract for the sale of securities while secretly intending not to perform is fraud. Opposition at 9, n.5, 18. Neither of these cases addressed the sale of securities on public exchanges, and in both cases the defendants made affirmative representations directly to the

---

[2] In *Graham v. SEC*, 222 F.3d 994 (D.C. Cir. 2000), the SEC charged the broker who had assisted the individual entering the wash trades with aiding and abetting violations of Section 10(b), not as a primary violator.

[3] As the Order expressly acknowledges, a clearing broker had the ability to request immediate delivery upon a fail-to-receive in certain circumstances, Order at ¶ 160, and thus there was a mechanism to compel optionsXpress to deliver in certain circumstances.

purchaser. *See The Wharf (Holdings)*, 532 U.S. at 592; *see also Walling*, 476 F.2d at 396.[4] In this case, there is no allegation that Mr. Feldman made a representation to the direct purchaser.

Finally, the holding in *United States v. Finnerty*, 533 F.3d 143 (2d Cir. 2008), has not been overturned or minimized. Rather, in the administrative proceeding against Mr. Finnerty, the Commission found that when he became an NYSE specialist, Mr. Finnerty "expressly represented to the NYSE that he would comply with its rules" and thus engaged in deceptive conduct when he traded in violation of those rules. *VanCook v. S.E.C.*, 653 F.3d 130, 140 n.8 (2d Cir. 2011) (quoting *David A. Finnerty*, Exchange Act Release No. 59,998, 95 SEC Docket No. 2534, 2009 WL 1490212, at *3 (May 28, 2009)). Thus, the Commission's adjudicatory decision was based on a finding that Mr. Finnerty had made a prior representation that he dishonored by placing the trade orders, therefore making the order inherently misleading.

Unlike Mr. Finnerty, Mr. Feldman made no representation about his intention or ability to deliver shares to purchasers and none is alleged. The Division's theory rests on the notion that Mr. Feldman's submission of the written call options and buy-write orders were a fraudulent scheme, but submission of an order alone is not deceptive and cannot form the basis of liability under any of the anti-fraud provisions.

D. Division Obscures Distinct Delivery Obligations

The Division's confusing intermingling of the different types of delivery attempts to obscure the basic undisputed fact that the only deception alleged in the Order occurred in the CNS system. It is this delivery alone that allegedly deceived investors.

[4] In *A.T. Brod & Co. v. Perlow*, 375 F.2d 393 (2d Cir. 1967), the defendants had made a direct representation to their broker that they would pay for the securities they asked their broker to purchase, and when they did not, the broker brought suit.

1. Undisputed That Feldman Did Not Deceive optionsXpress

For the first time, the Division touts in its Opposition that Mr. Feldman made a representation concerning his intention or ability to deliver shares to his broker-dealer. This is a complete non-sequitur: The Order makes no allegation that Mr. Feldman deceived optionsXpress. To be sure, the Division misconstrues Mr. Feldman's obligations to optionsXpress under the provision quoted from the optionsXpress User/Customer Agreement. The language quoted by the Division supposedly establishing a "delivery" requirement expressly limits it to delivery "upon our demand." optionsXpress User/Customer Agreement-Terms & Conditions at 5, attached as Exhibit 2-A to the Motion. It is undisputed that optionsXpress accepted the buy-write orders as satisfying any obligations Mr. Feldman had to optionsXpress, and the Division does not dispute that optionsXpress was fully aware of all of Mr. Feldman's trading.

Any contractual obligation of Mr. Feldman to optionsXpress was independent and distinct from optionsXpress's CNS "delivery" requirements.[5] optionsXpress accepted Mr. Feldman's buy-write orders as satisfying any delivery obligation of Mr. Feldman and made the decision to not require additional action from Mr. Feldman. Had optionsXpress demanded additional action, Mr. Feldman would have no choice but to comply. optionsXpress

---

[5] Indeed, the e-mail correspondence between brokers at Penson attached to the Opposition amplifies the point that any obligation by Mr. Feldman to his broker was separate and distinct from the broker's obligation to deliver through CNS:

> He [Mr. Feldman] has done what we asked them to do, but we [Penson] still have a CNS delivery due.

Nov. 27, 2009 E-mail from R. Dill, attached as Exhibit 7 to the Opposition.

> We [Penson] have a CNS delivery obligation regardless of what was agreed upon with the Customer [Mr. Feldman].

Nov. 27, 2009 E-mail from D. Rafteseth, attached as Exhibit 7 to the Opposition.

User/Customer Agreement-Terms & Conditions at 5-6, attached as Exhibit 2-A to the Motion. Thus, the Division's argument that the agreement between Mr. Feldman and optionsXpress required Mr. Feldman to deliver securities is unsupported and irrelevant because (a) it is not alleged that optionsXpress demanded delivery that Mr. Feldman refused or was deceived by Mr. Feldman concerning delivery; and (b) in any event, this would not affect the broker's obligations to deliver in CNS, and a failure to deliver in CNS is the only deception alleged.

Retail customers are not charged with complying with Reg SHO or determining whether their broker complied with Reg SHO by settling trades through CNS. Accordingly, the Division's attempt to reinvent their case as one of a failure by Mr. Feldman to deliver to optionsXpress fails as a matter of law.

2. Option Exercises Created CNS Delivery Obligations

The Division quotes summaries of product specifications on the Chicago Board Options Exchange ("CBOE") website, which states that the "physical delivery" feature of exchange traded equity options "means that there is a physical delivery of the underlying stock to or from your brokerage account if the option is exercised." Opposition at 6. As a threshold matter, the CBOE is not the issuer of the exchange traded equities options, but rather the issuer is the Options Clearing Corporation ("OCC"). As is made clear in the full prospectus for options issued by the OCC, the word "physical" in this description is used only to distinguish the exercise process for equity options, which are "physically-settled" (meaning that exercise results in a trade in the underlying stock) from index options and certain other types of options, which are "cash-settled" (meaning that exercise results in a transfer of cash, based on the difference between the underlying index level and the strike price):

> 'Physically-settled' Options call for the delivery of the underlying interest [stock] against payment of the exercise price. . . . Other Options are 'cash-settled.'

> When a cash-settled Option is exercised, the holder is entitled to receive a cash 'exercise settlement amount.'

The Options Clearing Corporation Put and Call Options Prospectus at 4, attached as Exhibit 1, and available at:

http://www.sec.gov/Archives/edgar/data/74751/000091205702010314/a2071792zs-20.txt.

Moreover, the OCC prospectus states clearly that the any obligation to deliver stock resulting from the exercise or assignment of an option falls on the broker dealer "Clearing Member."

> Settlement obligations among Clearing Members resulting from the exercise of Options calling for the delivery of stocks are ordinarily discharged through a stock clearing corporation. . . . After an exercise of an Option calling for the delivery of stock has been assigned as described above, OCC with report the exercise to the stock clearing corporation. Each Clearing Member (or its agent) then looks to the stock clearing corporation for settlement, and receives delivery of the underlying stock or payment for the exercise price, as the case may be, in accordance with the rules of the clearing corporation. The clearing corporation in turn looks to the other Clearing Member for an offsetting delivery or payment.

Id. at 5. The Prospectus also explicitly states that any obligation of customers to settle a trade is independent of the settlement process in the CNS system and is arranged independently between the clearing member and their customer:

> Clearing Members settle independently with their customers (or with brokers representing customers).

Id. at 6. Thus, the assignment of a call option, like the sale of a stock, creates delivery obligations for the broker-dealer. As explained in Dr. Sirri's uncontested affidavit, stock positions created by option exercises for the trading at issue were cleared through CNS. *See* Sirri Affidavit at ¶ 38, attached as Exhibit 1 to the Motion.

3. CNS Delivery is Delegated to Broker-Dealers

Mr. Feldman's assertion in the Motion that he relied on his broker-dealer for delivery was not aimed at negating scienter, and the issue of whether Mr. Feldman had scienter need not be decided for purposes of this Motion. Rather, reliance in this context is the absence of a representation; it simply indicates who had the obligation to cause delivery through the CNS system. The Division nonetheless focuses its response to the undisputed evidence concerning how the delivery process works on scienter. It did not matter whether Mr. Feldman intended to deliver or knew he would be assigned, because he did not assume the delivery obligation that by default and industry practice is assumed by optionsXpress.[6] Even if Mr. Feldman knew optionsXpress was not fulfilling its delivery obligations in CNS, Mr. Feldman could not be a primary violator under the anti-fraud provisions because he did not perform, or have control over, the allegedly deceptive conduct.[7]

This reliance is explicitly provided for by the Rule 10b-21 Adopting Release:

> [I]f a seller is relying on a broker-dealer to comply with Regulation SHO's locate obligation and to make delivery on a sale, the seller would not be representing at the time it submits an order to sell a security that it can or intends to deliver securities on the date delivery is due.

---

[6] The Division notes that a broker-dealer can also aid and abet a Rule 10b-21 violation. This is accurate, but has no application here. An actual example of an a broker-dealer aiding and abetting is as follows: An investor tells clearing broker "A" that he wants to short stock and he has located shares away at broker "B." The investor sells on Monday and broker B in fact has shares in his possession at that time. Broker A checks with broker B who confirms he has the shares. But broker B and the investor know that the shares will be taken away on Wednesday by another borrower, so the investor cannot deliver to broker A on Thursday, and thus fails to deliver shares to broker A. In that scenario, broker B could be found to have aided and abetted the investor's violation of Rule 10b-21.

[7] *Silverman v. Motorola, Inc.*, 798 F.Supp.2d (N.D. Ill. 2011), is inapposite. In *Silverman*, officers and directors of Motorola claimed they did not have the requisite scienter because they relied in good faith on Motorola's internal controls. *Id.* at 968. But Mr. Feldman is not arguing, for the purposes of this Motion, that his good faith reliance negated scienter. Moreover, *Silverman* does not advance the Division's claim that if Mr. Feldman knew optionsXpress was not complying with Reg SHO he can be primarily liable under the anti-fraud provisions, because in *Silverman* the defendants were actually officers and directors of the company making the misstatements. Mr. Feldman is not an officer, director, or employee of optionsXpress.

Exchange Act Release No. 58774 (October 14, 2008), 73 FR 6166, 61672 (October 17, 2008) ("10b-21 Adopting Release") (emphasis added). The Division's assertion that this paragraph does not apply because it refers to Rule 203 instead of Rule 204 is absurd. This paragraph is found in the section titled "Discussion of Rule 10b-21" in the subsection titled "Seller's Reliance on a Broker-Dealer or 'Easy to Borrow' Lists." *See* 10b-21 Adopting Release at 61671-61672. Nothing about this paragraph's placement indicates that the seller's reliance on the broker-dealer only applies to locate requirements and not delivery. Such an interpretation is also directly contradicted by the language of the Adopting Release, which says "if a seller is relying on a broker-dealer to comply with Regulation SHO's locate obligation and to make delivery on a sale . . . ." The Adopting Release is explicit that a seller is not making a representation when it submits an order if the seller is relying on a broker-dealer for delivery. Mr. Feldman's reliance was thus necessitated by Reg SHO and the CNS system because he could not effect delivery at CNS, a fact not disputed by the Division. *See* Sirri Affidavit at ¶ 28, attached as Exhibit 1 to the Motion ("Broker-dealers and banks who are members of the NSCC ('Clearing Members') are the only parties that can deliver stock to the NSCC in settlement of trades.").

E. Division Timeline Establishes Violation of the Dodd-Frank Act

The Division acknowledges that the Commission was granted authority to institute these proceedings on October 20, 2011, before the expiration of the second Dodd-Frank 180-day deadline. Opposition at 24. The plain language of Section 4E of the Exchange Act directs that the Division "shall" file an action authorized within the 180-day period or any extension thereof. The Division could not rely on a further extension of the second Dodd-Frank deadline to file against Mr. Feldman because the action was indisputably authorized within the second 180-day period.

The Division's argument that the second deadline was a "nullity" falls flat because the now-revealed timeline shows that the Division added another 180-days from the end of the second 180-days. If the second deadline was a nullity, then the third 180-day period would start to run on October 13, 2011—the day it was approved by the Commission—and not October 21, 2011—the last day of the supposedly "nullified" second 180-day period. Indeed, if that was the case, then the third 180-day period expired on April 10, 2012, and the filing of the Order on April 17, 2012 violated the Dodd-Frank Act.

Moreover, the Division presents no evidence concerning when the Division Director made the determination to file an action and instead rhetorically states that only "supposition" supports Mr. Feldman's chronology. Even passing familiarity with the Commission's process all but conclusively establishes that the Division had submitted an Action Memorandum recommending an action against Mr. Feldman more than a week before it was authorized. In such a case, the Division must at least dispute by affidavit that the Director's decision to file was made prior to October 13, 2011. It did not, and thus the chronology should be deemed conceded.

The Division reads *Brock v. Pierce County* and *U.S. v. James Daniel Good Real Property* far too broadly. *Brock* did not stand for the proposition that agency action is never barred by a deadline unless specified by Congress:

> We need not, and do not, hold that a statutory deadline for agency action can never bar later action unless that consequence is stated explicitly in the statute.

Brock v. Pierce County, 476 U.S. 253, 262 n.9 (1986). Rather, the *Brock* Court found that the deadline did not act as a statutory bar because there was nothing to indicate Congress intended to impose a jurisdictional limit on agency action when enacting the subject statute. To the contrary, legislators of the statute at issue in *Brock* explicitly stated that the Secretary's jurisdiction would

not be affected if a determination was not made in the specified time. *Id.* at 263.

No such legislative intent is evident here in the Dodd-Frank Act. Rather, Congress spent substantial consideration on this provision of Dodd-Frank, building in a narrow exception for the Division in the event of "certain complex actions." Congress gave the Division the ability to extend its own deadline multiple times if the investigation was "sufficiently complex" to warrant more time. Such a provision is wholly lacking in the statutes considered by the *Brock* and *James Daniel Good Real Property* Courts. *See U.S. v. James Daniel Good Real Property*, 510 U.S. 43, 63 (1993). Indeed, the internal deadline at issue in *James Daniel Good Real Property* was vague and set no specific time limit. Rather, it required the customs agent to "report immediately" to the customs officer every violation of customs laws, and it required the customs officer to "report promptly" the violations to the United States Attorney, who in turn was required to cause proper proceedings to be commenced "forthwith." *Id.*

Congress's provision of additional extensions of the deadline infers that Congress believed the deadline to act as a statutory bar to the SEC's ability to bring actions. If Congress intended this to be merely an internal guideline, it would not have needed to build exemptions into the law. None of the cases cited by the Division "supports a reading of statutory time limitations so permissive as to negate the legislative intent of the statute." *Kramer v. Secretary of Defense*, 39 F. Supp. 2d 54, 59 (D.D.C. 1999).

F. Division Perpetuates Patently False OTS Allegations

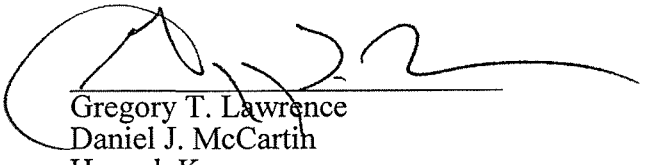
The Division falsely asserts that the OTS imposed a fine against Mr. Feldman in June 2010. The obvious truth is that the OTS instituted administrative proceedings against Mr. Feldman in June 2010. On February 17, 2011, Mr. Feldman settled those administrative charges on a non-fraud basis and consented to a fine. Even a cursory comparison of the June 2010 order

instituting the proceedings and the February 2011 consent order show that different statutory provisions are cited and all fraud charges were dropped in the consent order. The patently false representation in the Order and now in this forum continues to defame Mr. Feldman. The Division's admission that it has not determined whether it will offer evidence on this false allegation is particularly troubling, as it inclusion in the Order can only be seen as gratuitous. These allegations should be stricken, and the Division should be prohibited from referencing the allegations in any way in these proceedings. Further, the failure to correct the obvious error by the Division should color the analysis of the Division's Opposition to this wholly appropriate Motion for Summary Disposition.

III.
Conclusion

Based on the foregoing, and the reasons stated in Respondent's Motion, summary disposition should be granted in favor of Mr. Feldman and dismiss all charges against him and strike the patently false, impertinent, and scandalous statement from paragraph 10 of the Order.

Respectfully submitted,



Gregory T. Lawrence
Daniel J. McCartin
Hannah Kon
CONTI FENN & LAWRENCE LLC
36 South Charles Streets, Suite 2501
Baltimore, Maryland 21201
(410)-837-6999
(410)-510-1647 (facsimile)

Counsel for Jonathan I. Feldman

Exhibit

1

PROSPECTUS

The Options Clearing Corporation

PUT AND CALL OPTIONS

This prospectus pertains to put and call security options ("Options") issued by The Options Clearing Corporation ("OCC").

Certain types of transactions in Options involve a high degree of risk and are not suitable for many investors. Investors should understand the nature and extent of their rights and obligations and be aware of the risks involved. An options disclosure document containing a description of the risks of Options transactions is required, under U.S. laws, to be furnished to Options investors. That document is entitled *Characteristics and Risks of Standardized Options*. Investors may obtain that document and any supplements to it from their brokers. That document is not a part of this prospectus, and it is not incorporated herein by reference or otherwise.

Financial statements of OCC and certain additional information required to be contained in Part II of the registration statement of which this prospectus forms a part, other than exhibits, may be obtained without charge upon request from OCC. The exhibits required to be contained in Part II may be inspected at the offices of OCC or obtained from OCC, from the Securities and Exchange Commission ("SEC") upon payment of the applicable fee or from the Internet world wide web site maintained by the SEC at "http://www.sec.gov."

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The date of this prospectus is April 12, 2002.

No person has been authorized to give any information or to make any representations on behalf of OCC other than those contained in this prospectus, and, if given or made, such other information or representations must not be relied upon as having been authorized by OCC. This prospectus does not constitute an offer to sell Options in any jurisdiction in which, or to any person to whom, it is unlawful to make such offer. The delivery of this prospectus does not imply that the information herein is correct as of any time subsequent to its date.

Certain Options issued by OCC and traded on U.S. exchanges may also be traded on non-U.S. exchanges. Options issued by OCC that are traded on non-U.S. exchanges would be identical to Options having the same terms that are traded on U.S. exchanges. A U.S. investor desiring to effect transactions in OCC-issued Options on a non-U.S. exchange generally could do so through a U.S. broker who is a member of the non-U.S. exchange or who maintains an affiliation or correspondent relationship with a member of that exchange. Investors should bear in mind that non-U.S. exchanges, transactions in Options executed on such exchanges, and non-U.S. members of such exchanges are not subject to regulation by the SEC, are not generally subject to the requirements of the securities or other laws of the United States, and may not be subject to the jurisdiction of courts in the United States.

THE OPTIONS CLEARING CORPORATION

OCC was organized as a corporation in 1972 under the laws of the state of Delaware. OCC is owned equally by the American Stock Exchange LLC, the Chicago Board Options Exchange, Incorporated, the International Securities Exchange LLC, the Pacific Exchange Incorporated, and the Philadelphia Stock Exchange, Inc., which are the U.S. exchanges that provide markets in Options as of the date of this prospectus.

OCC's principal business consists of issuing Options, providing facilities for the clearance and settlement of transactions in Options, and providing incidental services to its Clearing Members and to the markets on which Options are traded. (Clearing Members are organizations—generally securities firms—that assume responsibility to OCC for the settlement of transactions in Options and the performance of the obligations undertaken by writers of Options.) OCC also intends to clear and settle transactions in security futures products, commodity futures and options on commodity futures. This registration statement does not cover those other products.

OCC is managed by a board of directors consisting of nine directors who represent Clearing Members, one director representing each of its stockholder exchanges, one public director, and the chief executive officer of OCC.

The principal executive offices of OCC are located at One North Wacker Drive, Suite 500, Chicago, Illinois 60606, telephone (312) 322-6200.

DESCRIPTION OF OPTIONS

General

The Options covered by this prospectus are put and call options issued by OCC that are "securities" for purposes of the U.S. securities laws. As of the date of this prospectus, Options are traded or approved for trading on common stocks and certain other equity securities, including preferred stocks, publicly traded limited partnership interests, American Depositary Receipts, American Depositary Shares, and interests in unit investment trusts, investment companies and similar entities holding portfolios or baskets of common stocks, all of which are included in the term "stock" as used in this prospectus. Options are also currently traded or approved for trading on United States Treasury bonds, notes, and bills (sometimes referred to below as "debt instruments"), on foreign currencies, on stock and mutual fund indexes, and on the yields of certain Treasury securities. Stock, debt instruments, currencies, and indexes on which Options are traded are referred to as "underlying interests." Packaged spread Options, calling for payment, upon exercise, of the net exercise settlement values of specified types of spread positions, have also been approved for trading. Options may be traded on other underlying interests in the future.

There are three "styles" of Options—American, European, and capped. Subject to certain limitations prescribed in the by-laws and rules of OCC, an American-style Option may be exercised at any time prior to expiration. A European-style Option or a capped Option may be exercised only at expiration. In addition, a capped Option will be automatically exercised if the value of the underlying interest on any trading day (determined at or during such time or times and in such manner as may be specified for particular classes of capped Options) equals or exceeds (in the case of a call Option), or equals or is less than (in the case of a put Option), the pre-established "cap price" for the Option. Certain American-style and European-style Options will be automatically exercised at expiration if they are in the money or in the money by a minimum amount. An Option holder may determine from his broker whether

and under what circumstances the Option will be automatically exercised, and, if the Option will not be automatically exercised, what steps the holder must take in order to exercise.

"Physically-settled" Options call for the delivery of the underlying interest against payment of the exercise price. When a physically-settled Option is exercised, subject to limitations that may be imposed by OCC pursuant to its by-laws and rules, the exercising holder sells (in the case of a put) or buys (in the case of a call) the number of shares or other units of the underlying interest covered by the Option at a fixed or determinable exercise price. Other Options are "cash-settled." When a cash-settled Option is exercised, the holder is entitled to receive a cash "exercise settlement amount." The exercise settlement amount for a cash-settled Option is equal to the product of (i) the difference between the exercise price of the Option and the settlement value of the underlying interest as of a specified date and time (or, in the case of a capped Option that is automatically exercised, the cap price) and (ii) the number of units of the underlying interest covered by the Option, or, in the case of Options on indexes or yields, a fixed "multiplier." Certain Options may provide for payments or deliveries prior to exercise, such as dividend equivalent payments.

As of the date of this prospectus, several exchanges have proposed to trade "differential Options." A differential Option is a cash-settled European-style Option based on an index reflecting the differential (positive in the case of a call or negative in the case of a put) between the percentage price performance of a designated interest and that of a benchmark interest over the life of the Option. Trading of differential Options is subject to SEC approval.

Obligations of OCC

The obligations of OCC to holders and writers of Options are prescribed in its by-laws and rules, copies of which may be obtained as described under "Additional Information" below. The following is a brief summary of some, but not all, of those obligations, and is qualified in its entirety by the provisions of the by-laws and rules themselves.

1. *Acceptance and Rejection of Transactions*

If a market reports an Option transaction to OCC on a timely basis, OCC ordinarily becomes obligated to "accept" the transaction—that is, to issue the Option if the buyer was engaging in an opening purchase transaction or to cancel a pre-existing writer's position if the buyer was engaging in a closing purchase transaction—on the following business day. When OCC issues Options, it assumes the obligations described below under "Exercise and Settlement." OCC has no obligation with respect to any transaction in Options unless and until the transaction is reported to OCC by the responsible market. In the case of certain Options, OCC reserves the right to reject even properly reported transactions if the Clearing Member representing the buyer fails to meet its obligations to OCC before the time when the Option would otherwise be issued. If a transaction is rejected for that reason, the writer may have remedies under the rules of the market where the transaction took place.

2. *Exercise and Settlement*

When OCC issues an Option, it becomes obligated to purchase (in the case of a put) or sell (in the case of a call) the underlying interest for the stated exercise price (or, in the case of a cash-settled Option, to pay the exercise settlement amount) if the Option is exercised. The procedures whereby OCC discharges these obligations are prescribed in the by-laws and rules of OCC, and are summarized below.

After an Option is exercised, OCC assigns the exercise to a Clearing Member whose account with OCC reflects the writing of an Option of the same series as the exercised Option. The assigned Clearing Member then becomes obligated to perform OCC's obligations on its behalf—that is, to purchase the underlying interest (in the case of an exercised put) or to sell the underlying interest (in the case of an exercised call) for the specified exercise price, or to pay the exercise settlement amount in the case of a cash-settled Option.

While an American-style Option normally can be exercised at any time prior to its expiration, and a European-style or capped-style Option ordinarily can be exercised at expiration, both OCC and the Options markets have the authority to restrict the exercise of Options at certain times in specified circumstances. It also is possible that a court or the SEC or another regulatory agency having jurisdiction would take action which would have the effect of restricting the exercise of an Option or settlement of such exercise. If a restriction on exercise is imposed at a time when trading in the Option has also been halted, holders of that Option may be locked into their positions until either the restriction or the trading halt has been lifted. Further, certain restrictions could prevent exercise throughout the exercise period, in which event an Option would expire worthless.

A. *Stocks.* Settlement obligations among Clearing Members resulting from the exercise of Options calling for the delivery of stocks are ordinarily discharged through a stock clearing corporation. Like OCC, a stock clearing corporation is registered with the SEC as a clearing agency, and its rules are subject to SEC review. After an exercise of an Option calling for the delivery of stock has been assigned as described above, OCC will report the exercise to the stock clearing corporation. Each Clearing Member (or its agent) then looks to the stock clearing corporation for settlement, and receives delivery of the underlying stock or payment of the exercise price, as the case may be, in accordance with the rules of the clearing corporation. The clearing corporation in turn looks to the other Clearing Member for an offsetting delivery or payment. When an exercise is submitted to a stock clearing corporation for settlement and not rejected by it, the responsibility for completing the settlement passes from OCC to the stock clearing corporation. This occurs on or prior to the exercise settlement date, at a time determined by agreement between OCC and the stock clearing corporation. After that time, OCC has no further responsibility to its Clearing Members for the exercise. Instead, rights and responsibilities run between the exercising and assigned Clearing Members and the stock clearing corporation. In unusual circumstances, OCC may require that particular exercises (or exercises of stock Options generally) be settled directly between the exercising and the assigned Clearing Members or their agents. In those cases, OCC's obligations are discharged when the aggregate exercise price in the case of a put, or the underlying stock in the case of a call, is delivered to the exercising Clearing Member.

B. *Debt Instruments.* Exercises of Options requiring delivery of debt instruments are settled directly between the exercising and the assigned Clearing Members or their agents. OCC's obligations are discharged when the aggregate exercise price in the case of a put, or the deliverable underlying debt instrument in the case of a call, is delivered to the exercising Clearing Member.

C. *Foreign Currencies.* Exercises of Options requiring delivery of foreign currencies are settled through OCC. Currencies are delivered to OCC, and redelivered by OCC to the receiving Clearing Members, through banking channels that make the underlying currency available to the recipient in the country of origin (as designated by OCC, in the case of the euro). Exercise prices are paid to OCC, and credited by OCC to the accounts of the delivering Clearing Members, either through OCC's regular cash settlement system or through the banking channels used for delivery of the underlying currencies. Certain foreign currency Options have exercise prices that are denominated in currencies other than

U.S. dollars. Payment of exercise prices denominated in foreign currencies and delivery of the underlying currencies are effected through banking arrangements established for that purpose by OCC in the country of origin of the currency being paid or delivered.

Clearing Members may arrange in some cases for delivery of underlying foreign currency and payment of exercise prices to be made directly between a customer's bank account and an OCC correspondent bank. In some cases, OCC may act as an agent for The Intermarket Clearing Corporation ("ICC"), a futures clearing subsidiary of OCC, in making foreign currency settlements with Clearing Members, and settlements between OCC and ICC may be netted. ICC's settlement procedures are the same as OCC's. OCC's obligations to the exercising Clearing Member are discharged when the aggregate exercise price in the case of a put, or the underlying currency in the case of a call, is delivered to the Clearing Member.

D. *Cash Settlements.* Exercises of cash-settled Options are settled through OCC. The exercise settlement amount is credited to the exercising Clearing Member's settlement account with OCC and charged to the account of the assigned Clearing Member. OCC's obligations are discharged when the exercise settlement amount is credited to the account of the exercising Clearing Member. In the future, exchanges may introduce cash-settled Options with exercise settlement amounts payable in currencies other than U.S. dollars. OCC and Clearing Members would pay and receive such amounts through banking channels that make the relevant currency available to the recipient in the country of origin.

Exercise settlement amounts for cash-settled Options are calculated based upon values or prices for the underlying interests determined in accordance with procedures specified in the by-laws and rules of OCC or in the rules of the exchanges on which the Options are traded. Special discretionary procedures for determining exercise settlement amounts may apply when values or prices of the underlying interests are unreported or otherwise unavailable or have been affected by trading halts or other unusual conditions.

E. *Net Settlement.* If a Clearing Member is obligated both to purchase and to sell a particular underlying interest for the same exercise price on the same exercise settlement date, OCC may offset the Clearing Member's purchase and sale obligations against each other, so that only the net purchase obligation or the net sale obligation will have to be settled as described above. Where an exercise is settled by offset, OCC has no further responsibility in respect of that exercise. OCC may net a Clearing Member's purchase and sale obligations with respect to foreign currencies even where the purchase and sale are at different exercise prices. In that event, the difference in exercise prices is settled in cash between OCC and the Clearing Member.

F. *Settlement with Customers.* The foregoing describes the system for exercise settlements among OCC and its Clearing Members. Clearing Members settle independently with their customers (or with brokers representing customers). OCC has no responsibility for settlements between a Clearing Member or broker and its customer or for the funds or securities of a customer that are held by a Clearing Member or broker.

G. *Shortages of Underlying Interests.* In certain circumstances involving shortages of underlying securities or currencies or in other unusual situations, OCC has the power to impose special exercise settlement procedures. These special procedures may involve delaying settlements or fixing cash settlement prices in lieu of delivery of the underlying security or currency. OCC does not have the power to fix cash settlement prices for put series opened for trading prior to September 16, 2000. However, it does have the authority in such circumstances to prohibit the exercise of such puts by holders who

would be unable to deliver the underlying security or currency on the exercise settlement date. In the event of a shortage of an underlying debt instrument, OCC may permit the delivery of other, generally comparable securities, and may adjust the exercise prices of affected Options to compensate for such substitute deliveries.

3. *Remedies*

A. *General Rule.* If an exercising or an assigned Clearing Member is suspended by OCC, with the result that a pending exercise will not be settled in the ordinary course, or if a Clearing Member fails to make settlement for an exercise that was to have been settled directly with another Clearing Member or an exercise of foreign currency Options, OCC may require that the underlying interest be bought in or sold out by the non-defaulting party to the exercise. Losses on such transactions constitute senior claims against certain assets of the defaulting Clearing Member in the possession of OCC, and are compensable out of OCC's Clearing Fund (see "The Back-Up System") to the extent that those assets are insufficient. In addition, losses sustained by an exercising Clearing Member would constitute claims against the general assets of OCC.

B. *Cash-Settled Products.* If a Clearing Member that is a party to an exercise of a cash-settled Option is suspended or fails to pay the exercise settlement amount to OCC, OCC is obligated to settle with all Clearing Members that have filed exercise notices that were assigned to the suspended or defaulting Clearing Member.

C. *Settlements Through Stock Clearing Corporations.* After responsibility for completing a settlement passes to a stock clearing corporation as described above, the exercising and assigned Clearing Members have no further rights against OCC or any assets in its possession.

D. *Tender Offers, Etc.* If an exercising or an assigned Clearing Member fails to make timely delivery of an underlying security on the exercise settlement date, and as a result another party is unable to deliver the security in sufficient time to participate in a tender offer, exchange offer, or other transaction, the Clearing Member that failed to make timely delivery may be held liable for any loss sustained by the other party. Similarly, a Clearing Member may seek to hold its customer liable for losses sustained due to the customer's failure to make timely delivery.

4. *The Back-Up System*

OCC's settlement procedures are designed so that for every outstanding Option there will be a writer—and a Clearing Member that is or that represents the writer—of an Option of the same series who has undertaken to perform OCC's obligations in the event that an exercise is assigned to such writer. As a result, no matter how many Options of a given series may be outstanding at any time, there will always be a group of writers of Options of the same series who, in the aggregate, have undertaken to perform OCC's obligations with respect to such Options.

A customer that writes an Option is contractually bound to its broker to perform in accordance with the terms of the Option. These contractual obligations are secured by the securities or other margin that the customer is required to deposit with its broker.

Clearing Members are contractually bound to perform their obligations to OCC regardless of whether their customers perform. Standing behind a Clearing Member's obligations are the Clearing Member's net capital, the Clearing Member's margin deposits with OCC, OCC's lien and setoff rights with respect to certain of the Clearing Member's assets, and the Clearing Fund.

A. *The Clearing Member's Net Capital.* Every U.S. Clearing Member must have an initial net capital (as defined in SEC rules or, in certain cases, rules of the Commodity Futures Trading Commission) of $1 million or more, depending on the nature and magnitude of its assets and obligations. A Clearing Member's net capital may fall to less than that amount as a result of transactions in the regular course of business, but a Clearing Member may not engage in or clear any opening transaction if its net capital falls below $750,000 or a greater amount determined in accordance with the rules of OCC. Certain non-U.S. Clearing Members may elect to comply with alternative financial requirements. These alternative requirements may be more or less stringent than those applicable to U.S. Clearing Members. A Clearing Member's assets are, of course, subject to claims by creditors other than OCC.

OCC obtains certain financial reports from each Clearing Member on a monthly basis, and may require more frequent reports. In appropriate cases, OCC may impose restrictions on a Clearing Member's operations, such as a prohibition on opening transactions or a requirement that the Clearing Member reduce or eliminate certain writing positions.

When Options issued by OCC are traded on non-U.S. exchanges, or when security futures products or other futures products cleared by OCC are traded on futures exchanges, clearinghouses associated with those exchanges ("Associate Clearinghouses") may carry positions on behalf of their members in accounts with OCC. The financial and reporting requirements applicable to Associate Clearinghouses, as well as OCC's ability to impose restrictions on positions carried by Associate Clearinghouses, are subject to agreements between OCC and the Associate Clearinghouses.

B. *The Clearing Member's Margin Deposits.* Subject to certain exceptions described below, each Clearing Member is required to deposit and maintain margin with OCC with respect to each Option for which it represents the writer. Several different forms of margin are permitted, including cash, marketable securities and letters of credit, and certain margin assets may be denominated in foreign currencies. OCC may in the future accept margin deposits in still other forms.

The amount of margin is specified by OCC in accordance with its rules, and may be reduced to the extent a Clearing Member is permitted or required to pledge to OCC certain Options positions carried in its accounts with OCC. OCC may require any Clearing Member to deposit higher margins at any time in the event it deems such action necessary and appropriate in the circumstances to protect the interests of other Clearing Members, OCC or the public. OCC may waive a margin deposit that would otherwise be required to be made if it determines that the waiver is advisable in the public interest and for the protection of investors and is consistent with maintaining OCC's financial integrity. OCC may also waive margin deposits by Associate Clearinghouses.

OCC has implemented "cross-margining" arrangements with various other commodity clearing organizations. Under these arrangements, OCC Clearing Members that are also members of one or more of the participating commodity clearing organizations, or that have affiliates that are members of such clearing organizations, may pledge positions in certain Options to secure their obligations (or obligations of their designated affiliates) in respect of positions in related futures and futures options and vice versa. The obligations of one or more participating commodity clearing organizations are substituted in whole or in part for the Clearing Member's obligations to deposit margin in respect of cross-margined Option writing positions. Margin deposited in satisfaction of any remaining margin requirement in respect of cross-margined Options, futures and futures options positions is held jointly for the benefit of OCC and the participating commodity clearing organization(s).

OCC also functions as an intermediary in stock lending and borrowing transactions, and expects in the future to clear transactions among participating clearing members in security futures products, commodity futures, and options on commodity futures. Positions representing the rights and obligations of the borrowing or lending Clearing Member in stock lending and borrowing transactions are carried in the Clearing Member's accounts at OCC, and positions in security futures products, commodity futures, and options on commodity futures will also be included in those accounts. A Clearing Member's margin requirements will reflect the increase or decrease in risk to OCC associated with the inclusion of those positions in the Clearing Member's accounts, except that a Clearing Member may elect to exclude stock borrow and loan positions from its margin requirements. In that event, OCC relies on its internal risk monitoring systems and the Clearing Member's Clearing Fund deposit and the other elements of the OCC back-up system to mitigate the intra-day risk to OCC created by stock borrow and loan positions.

Margin deposited by a Clearing Member may be applied only to the obligations of that Clearing Member and its designated affiliates and may not be applied to the obligations of other Clearing Members or the obligations of OCC itself.

In lieu of depositing margin with respect to writing positions in certain call Options, a Clearing Member may deposit the underlying interest, or, in the case of index Options, a combination of cash and marketable securities with an aggregate initial value determined in accordance with the rules of OCC. In lieu of depositing margin with respect to writing positions in certain put Options, a Clearing Member may deposit cash and/or short-term government securities with an aggregate initial value not less than the aggregate exercise price. Cash and securities deposited in lieu of margin must be placed with a depository satisfactory to OCC under agreements requiring their delivery or liquidation and payment of the proceeds in the event that the writer is required to perform its exercise settlement obligations with respect to the position covered by the deposit.

OCC has no reason to believe that any depository holding margin deposits or deposits made in lieu of margin will not deliver them in accordance with the terms of its agreement with OCC, or that any bank will not honor letters of credit issued to OCC for margin purposes. However, there can be no assurance that a bank or other depository will not delay or default in performing these or other obligations to OCC, or be restrained by court order or regulatory action from performing these obligations, and such delays or defaults could adversely affect OCC's ability to perform its obligations as the issuer of Options.

C. *OCC's Lien and Setoff Rights.* OCC has a lien on, and setoff right against, certain securities, margin deposits, funds and other assets maintained in Clearing Members' accounts with OCC. If a Clearing Member does not perform its obligations to OCC, these assets may be sold or converted to cash and the proceeds applied to the performance of the Clearing Member's obligations to OCC (such application being limited, in certain cases, to obligations arising from the same account in which the assets were held).

D. *The Clearing Fund.* OCC's rules provide for a Clearing Fund composed of mandatory deposits by Clearing Members. The Clearing Fund is for the protection of OCC and is not a general indemnity fund available to other persons, such as customers of Clearing Members. The amount of the Fund varies over time, based on formulas designed to reflect OCC's risk exposure. The proportionate contribution of each Clearing Member takes into account the size of the Clearing Member's positions relative to the positions of all Clearing Members. All Clearing Fund deposits must be made in cash or by the deposit of U.S. or Canadian government securities or other government securities acceptable to OCC. OCC may agree with an Associate Clearinghouse that its Clearing Fund deposit may be made in different or additional forms or may waive Clearing Fund deposits by an Associate Clearinghouse.

If a Clearing Member fails to discharge any obligation to OCC in connection with Options or other products or transactions OCC may clear, the Clearing Member's Clearing Fund deposit may be applied to the discharge of that obligation. If a Clearing Member's obligation to OCC exceeds its Clearing Fund deposit, the amount of the deficiency may be charged by OCC on a predetermined basis against all other Clearing Members' Clearing Fund deposits. OCC also may charge to the Clearing Fund, on the same basis, certain other losses resulting from its business as an issuer of securities and a clearing organization. Whenever amounts are paid out of the Clearing Fund as a result of such a charge, Clearing Members are required promptly to make good any deficiency in their deposits resulting from such payment, except that a Clearing Member is not required to pay more than an additional 100% of the amount of its prescribed Clearing Fund deposit if it ceases to clear transactions through OCC and promptly closes out or transfers all of its positions.

Under certain limited circumstances, OCC may borrow against the Clearing Fund on a short term basis to meet obligations arising out of the suspension of a Clearing Member and related actions taken by OCC or to cover losses resulting from bank or clearing organization failures.

OCC will also have available its own assets in the event that the Clearing Fund is insufficient. However, these assets are small relative to the magnitude of OCC's potential obligations.

Certificateless Trading

No certificates are issued to evidence Options. Investors look to the confirmations and statements that they receive from their brokers to confirm their positions as holders or writers of Options.

ADDITIONAL INFORMATION

Certain additional information, which is neither part of this prospectus nor incorporated herein in any way, can be obtained as described below:

1. The document entitled *Characteristics and Risks of Standardized Options* referred to on the cover page of this prospectus, and any supplements to that document, may be obtained by U.S. customers from their brokers.

2. The by-laws and rules of OCC relating to Options, as the same may be amended from time to time, are filed with the SEC under the Securities Exchange Act of 1934. These filings may be obtained from the SEC upon payment of the fees prescribed by the SEC. Compilations of OCC's by-laws and rules are published on OCC's Internet world wide web site at "http://www.optionsclearing.com." However, these compilations are not always current.

3. The constitutional provisions, rules, regulations and other requirements of the U.S. exchanges that are authorized to provide markets in Options, and of the stock clearing corporation through which exercises of stock Options are settled, are required to be filed with the SEC. These filings may be obtained from the SEC upon payment of the fees prescribed by the SEC. Copies of corresponding documents relating to non-U.S. exchanges that provide markets in Options may be obtained in accordance with the rules applicable to those exchanges. OCC is not responsible for the content, interpretation, sufficiency or enforcement of such provisions, rules, regulations, other requirements or documents.

4. The financial statements of OCC and certain other information may be obtained as described on the cover page of this prospectus.