

44-1843(a)(7)

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ARIZONA CORPORATION COMMISSION

JAMES MATTHEWS
EXECUTIVE SECRETARY

SECURITIES DIVISION
(602) 542-4242
(602) 255-2600
FAX: (602) 255-2617

February 4, 1992

James R. McDaniel, Esq.
Schiff Hardin & Waite
7200 Sears Tower
Chicago, Illinois 60606-6473

RE: The Options Clearing Corporation
A.R.S. § 44-1843.B.

Dear Mr. McDaniel:

On the basis of the facts set forth in your letter of January 9, 1992, and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable.

We have attached a photocopy of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

DEE RIDDELL HARRIS
Director of Securities

DRH:LN:ww

Attachment

SCHIFF HARDIN & WAITE

A Partnership Including Professional Corporations

7200 Sears Tower, Chicago, Illinois 60606-6473
Telephone (312) 876 1000 Facsimile (312) 258 5600

WASHINGTON, D.C.
NEW YORK
PEORIA

January 9, 1992

Ms. Sandra Forbes
Assistant Director for Law and Policy
Securities Division
Corporation Commission
234 North Central Ave., Suite 425
Phoenix, Arizona 85004

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Re: The Options Clearing Corporation Request for a No Action Letter

Dear Ms. Forbes:

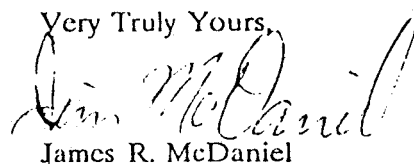
I am writing on behalf of The Options Clearing Corporation ("OCC") to request that the Arizona Corporation Commission, Securities Division issue a no action letter confirming that the filing fee established under A.R.S. § 44-1843B does not apply to standardized options that are issued by OCC and listed on national securities exchanges. This request is made pursuant to Arizona Corporation Commission, Securities Division Policy Statement at CCH ¶ 9614 (9-18-91) and A.R.S. § 44-1861L, and I have enclosed a check in the amount of \$200 to cover the required fee.

In support of our request, I have enclosed a copy of my letter, dated November 12, 1991, to Dee Harris requesting that he confirm our interpretation that the filing fee does not apply to standardized options issued by OCC. On December 3, 1991, my associate Robert Brantman spoke with Lynn Naefach, Senior Counsel of your office. Ms. Naefach said she had reviewed our request with Mr. Harris and Sara Ziskin, and that they agreed with our interpretation of A.R.S. § 44-1843B. At that time Ms. Naefach said that if we wanted something in writing we should formally request a no action letter. Please consider this our formal request for that no action letter.

We suggest that, in reviewing our request, you speak with Ms. Naefach in light of her familiarity with this matter.

If any further information is required or if you have any questions regarding our request, please contact either me at (312) 258-5641 or Robert Brantman at (312) 258-5653.

Very Truly Yours,



James R. McDaniel

cc: Dee R. Harris, Director--Securities Division
Lynn Naefach, Senior Counsel--Securities Division
James C. Yong, The Options Clearing Corporation
Robert Brantman

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A Partnership Including Professional Corporations

7200 Sears Tower, Chicago, Illinois 60606-6473
Telephone (312) 876-1000 Facsimile (312) 258-5600

WASHINGTON, DC
NEW YORK
PEORIA

November 12, 1991

Mr. Dee R. Harris
Director of Securities
Securities Division
Corporation Commission
1200 West Washington Street, Suite 201
Phoenix, Arizona 85007

Re: The Options Clearing Corporation

Dear Mr. Harris:

Following up on my recent telephone conversation with Lynn Naefach of your office, I am writing on behalf of The Options Clearing Corporation ("OCC") to request that you confirm our interpretation that the filing fee established under A.R.S. § 44-1843B does not apply to standardized options that are issued by OCC and listed on national securities exchanges.¹ In your June 27, 1991 letter, entitled Interpretation of H.B. 2451, you stated: "The Division interprets subsection B [§ 44-1843B] to apply to direct offerings by the Company and not by selling shareholders. The scope of the statute is limited to primary and subsequent distributions of securities by the issuer; it does not cover trading in the secondary markets. The statute is deemed to apply to both firm underwritings and best efforts offerings."

Although OCC is considered the "issuer" of standardized options for the purposes of registering under the Securities Act of 1933, sales of options are not "direct offerings by the Company." We understand the phrase "direct offerings by the Company" to mean offerings in which the proceeds are received, directly or indirectly, by the Company that is the issuer of the security being offered. That is not the case with OCC-issued options. In the case of options, the entire purchase price, known as the "premium," is transferred by OCC from the purchaser to the seller. OCC does not retain any part of the premium. The only compensation received by OCC is a fixed clearing fee of a few cents per transaction. This clearing fee is determined independently of the amount of the premium and is paid by the clearing member representing the seller as well as by the purchaser's clearing member. This fee is very similar to the fee received by a stock clearing corporation for clearing a stock transaction.

Rather than representing "direct offerings by the Company," options trading is better characterized as a form of trading in the secondary markets; an area your letter specifically states is outside the scope of A.R.S. § 44-1843B. Transactions in options differ from direct offerings and are like secondary trading in at least three important respects. First, a direct offering of securities

¹ OCC is the issuer of all standardized options listed on AMEX, CBOE, NYSE, PSE, and PHLX.

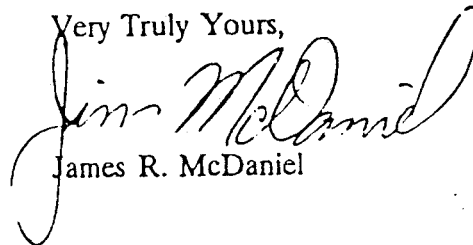
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Mr. Dee R. Harris
Director of Securities
Corporation Commission
November 12, 1991
Page 2

is typically made at a single price. The price of options, in contrast, is determined by the market on a transaction-by-transaction basis. Second, a direct offering is typically made through an underwriter. In fact, your letter points out that "[t]he statute is deemed to apply to both firm underwritings and best efforts offerings." OCC-issued options are not sold pursuant to an underwriting agreement, whether a "firm underwriting" or a "best efforts" underwriting. Third, and most importantly, the proceeds of a direct offering go to the issuer. The proceeds of every option transaction, on the other hand, are received by a seller who is not the issuer of the option. The seller may be selling options that he currently holds in his account or he may be engaging in a "short" sale, but in neither case does OCC retain any part of the premium.

We believe that, for the foregoing reasons, option transactions cannot properly be characterized as "direct offerings by the Company" for purposes of A.R.S. § 44-1843B. We would appreciate confirmation that you concur in our conclusion. If you have any questions regarding our request, please contact either me at (312) 258-5641 or Robert Brantman at (312) 258-5653.

Very Truly Yours,



James R. McDaniel

cc: Lynn Naefach, Senior Counsel--Securities Division
James C. Yong, The Options Clearing Corporation
Robert J. Brantman