OLIN CORP
Form S-8
August 02, 2005

**Registration No. 333-**

# UNITED STATES

# SECURITIES AND EXCHANGE COMMISSION

**Washington, D.C. 20549**

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# FORM S-8

# REGISTRATION STATEMENT

***UNDER***

***THE SECURITIES ACT OF 1933***

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# OLIN CORPORATION

**(Exact name of registrant as specified in its charter)**

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| **Virginia** | **13-1872319** |
|---|---|
| **(State or other jurisdiction of incorporation or organization)** | **(I.R.S. Employer Identification No.)** |
| **190 Carondelet Plaza, Suite 1530, Clayton, Missouri** | **63105** |
| **(Address of Principal Executive Offices)** | **(Zip Code)** |

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**OLIN CORPORATION CONTRIBUTING EMPLOYEE OWNERSHIP PLAN**

**(Full title of the plan)**

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**G. H. Pain**

**Vice President, General Counsel**

**and Secretary**

**Olin Corporation**

**190 Carondelet Plaza, Suite 1530**

**Clayton, Missouri 63105**

**(Name and address of agent for service)**

**314-480-1400**

**(Telephone number, including area code, of agent for service)**

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**CALCULATION OF REGISTRATION FEE**

| | | Proposed Maximum | | |
|---|---|---|---|---|
| **Title of Securities to be Registered** | **Amount to be registered (1)** | **Offering Price Per Share (2)** | **Aggregate Offering Price (2)** | **Amount of Registration Fee** |
| Common Stock (par value $1.00 per share) | 3,000,000 | $ 18.25 | $ 54,750,000 | $ 6,445.00 |
| Participating Cumulative Preferred Stock Purchase Rights | (3) | (3) | (3) | (3) |

(1) This Registration Statement shall also cover an indeterminate amount of interests to be offered or sold pursuant to the Plan, as well as any additional shares of Common Stock which become issuable under the Plan by reason of any stock dividend or stock split or as the result of other anti-dilution provisions in the Plan.

(2) Estimated solely for purposes of calculating the amount of the registration fee, pursuant to Rule 457(c) and (h), based upon the average of the high and low prices reported for the Common Stock on July 29, 2005, on the New York Stock Exchange consolidated reporting system.

(3) The rights are attached to the Common Stock pursuant to the Rights Agreement dated as of February 27, 1996, between Olin Corporation and Chemical Mellon Shareholder Services, L.L.C. The value attributable to the rights, if any, is reflected in the value of the Common Stock and the registration fee for the rights is included in the fee for the Common Stock.

Part II

Item 3. INCORPORATION OF DOCUMENTS BY REFERENCE

The SEC allows us to incorporate by reference the information we file with them, which means:

incorporated documents are considered part of the prospectus;

we can disclose important information to you by referring you to those documents; and

information that we file with the SEC will automatically update and supersede this incorporated information.

We incorporate by reference the documents listed below which were filed with the SEC under the Securities Exchange Act of 1934:

(a) Our Annual Report on Form 10-K for the fiscal year ended December 31, 2004;

(b) The Plan s Annual Report on Form 11-K for the fiscal year ended December 31, 2004;

(c) Our Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2005;

(d) Our Current Reports on Form 8-K filed on January 28, 2005, March 31, 2005, April 29, 2005, May 4, 2005, May 31, 2005, June 28, 2005 and June 30, 2005; and

(e) The descriptions of our Common Stock and Series A Participating Cumulative Preferred Stock Purchase Rights, contained in Amendment No. 3 to Olin s Registration Statement on Form S-4 filed on August 14, 2002 (Registration No. 333-88990).

We also incorporate by reference each of the following documents that we will file with the SEC after the date of this registration statement until this offering is completed:

reports filed under Section 13(a) and (c) of the Securities Exchange Act of 1934;

definitive proxy or information statements filed under Section 14 of the Securities Exchange Act of 1934 in connection with any subsequent stockholders meeting; and

any reports filed under Section 15(d) of the Securities Exchange Act of 1934.

Item 4. DESCRIPTION OF SECURITIES

Not applicable; the class of securities to be offered is registered under Section 12(g) of the Securities Exchange Act of 1934.

Item 5. INTEREST OF NAMED EXPERTS AND COUNSEL

The validity of the newly issued shares of Common Stock of the Company will be passed upon by G. H. Pain, Vice President, General Counsel and Secretary. Mr. Pain owns shares of the Company through various employee benefit plans and has options to purchase shares.

Item 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Under Virginia law, to the extent provided in the articles of incorporation or an amendment to the by-laws approved by shareholders, a corporation may eliminate a director s or an officer s personal liability for monetary damages in any proceeding brought by or in the right of a corporation or brought by or on behalf of shareholders, except for liability resulting from such director s or officer s willful misconduct or a knowing violation of the criminal law or of any federal or state securities law.

Our by-laws provide that the directors and officers shall not be liable for monetary damages to Olin or its shareholders with respect to any transaction, occurrence or course of conduct, except for liability resulting from such director s or officer s willful misconduct or a knowing violation of the criminal law or any federal or state securities law.

Under Virginia law, a corporation may indemnify any person made a party to a proceeding because he is or was a director or officer against liability incurred in the proceeding if he acted in good faith and in a manner he believed to be in or not opposed to the best interests of the corporation, and in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful, except that a corporation may not indemnify a director or officer if either:

the director or officer has been adjudged to be liable to the corporation or

in connection with any other proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

Our by-laws provide that we shall indemnify any director, officer or employee of Olin, or any person who, at our request, serves or has served in any such capacity with another corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, in each case against any and all liability and reasonable expense that may be incurred by him in connection with or resulting from any claim, action or proceeding (whether brought in the right of Olin or any such other corporation, entity, plan or otherwise), civil or criminal, in which he may become involved, as a party or otherwise, by reason of his being or having been a director, officer or employee of Olin, or such other corporation, entity or plan while serving at our request, whether or not he continues to be such at the time such liability or expense shall have been incurred, unless such person engaged in willful misconduct or a knowing violation of the criminal law.

Virginia law provides that any indemnification for a director or officer, unless ordered by a court, is subject to a determination that the director or officer has met the applicable standard of conduct. The determination will be made by either:

- a majority vote of a quorum of the directors who are not parties to such proceeding
- if there is not a quorum of such directors, by majority vote of a committee, consisting of two or more directors who are not parties to such proceeding, duly designated by the directors
- by special legal counsel or
- by the shareholders.

Our by-laws provide that any indemnification of a director, officer or employee shall be made unless:

- the board of directors, acting by a majority vote of those directors who were directors at the time of the occurrence giving rise to the claim for indemnification and who are not at the time parties to such claim (provided that there are at least five such directors), finds that the person seeking indemnification has not met the standards of conduct set forth in the Olin by-laws, or
- if there are not five such directors, Olin s principal Virginia legal counsel, as last designated by the board of directors before the occurrence of the event giving rise to the claim for indemnification, or in the event such Virginia legal counsel is unwilling to serve, then Virginia legal counsel mutually acceptable to Olin and the person seeking indemnification, delivers to Olin its written legal advice that, in such counsel s opinion, the person seeking indemnification has not met the standards of conduct set.

Under Virginia law, a corporation may advance expenses before the final disposition of a proceeding if:

- the director or officer furnishes a written statement of his good faith belief that he has met the proper standard of conduct
- he undertakes to repay the amount if it is ultimately determined that the director or officer is not entitled to indemnification and
- a determination made on the facts then known would not preclude indemnification.

Under Virginia law, to the extent that a director or officer has been successful on the merits or otherwise in defense of the proceeding, the director or officer must be indemnified against reasonable expenses incurred by him in connection with that proceeding.

Under our by-laws, we shall advance expenses incurred by a director, officer or employee prior to the final disposition of the proceeding if the director, officer or employee furnishes to us an undertaking to repay the amount of the expenses advanced in the event it is ultimately determined that he is not entitled to indemnification under our by-laws. Our by-laws do not require that the director, officer or employee furnish any security for such undertaking and provide that such undertaking shall be accepted without reference to the director s, officer s or employee s ability to make repayment. We may refrain from, or suspend, payment of expenses

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if our board of directors or Virginia legal counsel determines that the director, officer or employee has not met the standards of conduct set forth in our by-laws.

Virginia law gives a corporation the power to purchase and maintain insurance on behalf of any director or officer against any liability asserted against, and incurred in his capacity as a director or officer, whether or not the corporation would have the power to indemnify the director or officer against this liability under Virginia law.

Item 7. EXEMPTION FROM REGISTRATION CLAIMED

Not applicable.

Item 8. EXHIBITS

(a) The Exhibits to this Registration Statement are listed in the Exhibit Index to this Registration Statement, which Index is incorporated herein by reference.

(b) The Registrant undertakes that it or its subsidiary will submit or has submitted the plan and any amendment thereto to the Internal Revenue Service ( IRS ) in a timely manner, and has made or will make all changes required by the IRS in order to qualify the plan.

Item 9. UNDERTAKINGS

(a) The undersigned Registrant hereby undertakes:

1. To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

   (i) To include any prospectus required by Section 10(a) (3) of the Securities Act of 1933;

   (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

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(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (i) and (ii) above do not apply if the registration statement is on Form S-3, Form S-8 or Form F-3, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

2. That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

3. To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant s annual report pursuant to Section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan s annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the provisions referred to under Item 6, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

Registrant. Pursuant to the requirements of the Securities Act of 1933, 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 Clayton, State of Missouri, on August 2, 2005.

OLIN CORPORATION

By: /s/ G. H. Pain

G. H. Pain
Title: Vice President, General Counsel and Secretary

POWER OF ATTORNEY

We the undersigned officers and directors of Olin Corporation, hereby severally constitute and appoint George H. Pain, Dennis R. McGough, and John E. Fischer, and each of them singly, our true and lawful attorneys-in-fact, with full power to them in any and all capacities, to sign any and all amendments to this Registration Statement on Form S-8 (including any post-effective amendments thereto), and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact may 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 below by the following persons in the capacities and on the date indicated.

| **Signature** | **Title** | **Date** |
|---|---|---|
| /s/ Joseph D. Rupp<br>Joseph D. Rupp | Chairman, President, Chief Executive Officer and Director (Principal Executive Officer) | August 2, 2005 |
| /s/ John E. Fischer<br>John E. Fischer | Vice President and Chief Financial Officer(Principal Financial Officer) | August 2, 2005 |
| /s/ Donald W. Bogus<br>Donald W. Bogus | Director | August 2, 2005 |
| /s/ Donald W. Griffin<br>Donald W. Griffin | Director | August 2, 2005 |

| Signature | Title | Date |
|---|---|---|
| /s/ James G. Hascall | Director | August 2, 2005 |
| James G. Hascall | | |
| | Director | |
| William W. Higgins | | |
| /s/ Virginia A. Kamsky | Director | August 2, 2005 |
| Virginia A. Kamsky | | |
| /s/ Randall W. Larrimore | Director | August 2, 2005 |
| Randall W. Larrimore | | |
| /s/ Richard M. Rompala | Director | August 2, 2005 |
| Richard M. Rompala | | |
| /s/ Anthony W. Ruggiero | Director | August 2, 2005 |
| Anthony W. Ruggiero | | |
| /s/ Philip J. Schulz | Director | August 2, 2005 |
| Philip J. Schulz | | |
| /s/ Todd A. Slater | Vice President and Controller | August 2, 2005 |
| Todd A. Slater | (Principal Accounting Officer) | |

Plan. Pursuant to the requirements of the Securities Act of 1933, the Olin Corporation Contributing Employee Ownership Plan has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized in the City of Clayton, State of Missouri, on this 2nd day of August, 2005.

OLIN CORPORATION CONTRIBUTING EMPLOYEE OWNERSHIP PLAN

By the Pension and CEOP Administrative Committee

/s/ Dennis R. McGough

Dennis R. McGough

/s/ Sharon E. Doughty

Sharon E. Doughty

/s/ Denise C. Lockwood

Denise C. Lockwood

/s/ Mary Ann T. DeRosa

Mary Ann T. DeRosa

EXHIBIT INDEX

| EXHIBIT | DESCRIPTION |
|---|---|
| 5 | Opinion of Counsel |
| 23.1 | Consent of Independent Auditor |
| 23.2 | Consent of Ernst & Young |
| 23.3 | Consent of Amper, Politziner & Mattia, P.C. |
| 23.4 | Consent of Counsel (contained in Exhibit 5) |
| 24 | Power of Attorney (included on signature page) |

h this requirement during the 90-day period, Nasdaq will commence delisting proceedings and we may be delisted from the Nasdaq National Market. Our shares will continue to trade on the Nasdaq National Market unless and until the delisting proceedings have commenced and been completed and the Nasdaq National Market has made a determination to delist us. In the event our shares are delisted from the Nasdaq National Market, we will attempt to have our common stock traded on the Nasdaq Small Cap Market. If our common stock is delisted, it could seriously limit the liquidity of our common stock and would limit our ability to raise future capital through the sale of our common stock, which could seriously harm our business. If we fail to maintain positive margins on service revenues in the foreseeable future, our results of operations could suffer. For the three-month and six-month periods ended June 30, 2002, our service margins were positive. While we anticipate that our margins will continue to be positive in the future, we cannot guarantee that they will remain positive. Failure to maintain positive margins on service revenues would cause our business to suffer. For more information related to our costs associated with our service revenues, see "Management's Discussion and Analysis of Financial Condition and Results of Operations." Evolving technological developments and emerging industry standards will require us to enhance the functionality of our employee relationship management software applications, and any inability to enhance functionality could cause our sales to decline. Because the market for our products is subject to rapid technological change and evolving industry standards, the life cycles of our products are difficult to predict. Competitors may introduce new products or enhancements to existing products employing new technologies, which could render our existing products and services obsolete and unmarketable. For example, our currently available software applications are written entirely in the Java computer language. While we believe that this provides our solution with significant advantages in terms of functionality and flexibility, it is not clear whether Java-based systems will continue to maintain commercial acceptance. 17 To be successful, our products and services must keep pace with technological developments and emerging industry standards, address the ever-changing and increasingly sophisticated needs of our customers and achieve market acceptance. Our results of operations would be seriously harmed if we are unable to develop, release and market new software product enhancements on a timely and cost-effective basis, or if new products or enhancements do not achieve market acceptance or fail to respond to evolving industry or technology standards. In developing new products and services, we may also fail to develop and market products that respond to technological changes or evolving industry standards in a timely or cost-effective manner, or experience difficulties that could delay or prevent the successful development, introduction and marketing of these new products and services. If we fail to expand our relationships with third parties that can provide implementation and consulting services to our customers, we may be unable to grow our revenues and our business could be harmed. In order for us to focus more effectively on our core business of developing and licensing software solutions, we must continue to establish relationships with third parties that can provide implementation and consulting services to our customers. Third-party implementation and consulting firms can also be influential in the choice of employee relationship management software applications by new customers. To date, we have established relationships with several third-party implementation and consulting firms. In general, however, if we are unable to establish and maintain effective, long-term relationships with implementation and consulting providers, or if these providers do not meet the needs or expectations of our customers, we may be unable to grow our revenues and our business could be seriously harmed. As a result of the limited resources and

capacities of many third-party implementation providers, we may be unable to attain sufficient focus and resources from the third-party providers to meet all of our customers' needs, even if we establish relationships with these third parties. If sufficient resources are unavailable, we will be required to provide these services internally, which could limit our ability to expand our base of customers. A number of our competitors have significantly more established relationships with these third parties and, as a result, these third parties may be more likely to recommend competitors' products and services rather than our own. Even if we are successful in developing additional relationships with third-party implementation and consulting providers, we will be subject to significant risk, as we cannot control the level and quality of service provided by third-party implementation and consulting partners. Our expectations of future growth depend on our ability to expand internationally, and factors specific to our international expansion may prevent us from achieving our anticipated growth. Over time, we intend to expand our international operations to achieve our anticipated growth, but we may face significant challenges to our international expansion. The expansion of our existing international operations and entry into additional international markets will require significant management attention and financial resources. To achieve broad acceptance in international markets, our products must be localized to handle a variety of factors specific to each international market, such as tax laws and local regulations. The incorporation of these factors into our products is a complex process and often requires assistance from third parties. We may not adequately address all of the factors necessary to achieve broad acceptance in our target international markets. Further, to achieve broad usage by employees across international organizations, our products must be localized to handle native languages and cultures in each international market. Localizing our products is also a complex process and we intend to continue working with third parties to develop localized products. To date, we have 18 localized our product for the markets where the English language is the native language and completed translations for the German, French, Italian and Spanish languages. We have only a limited history of marketing, selling and supporting our products and services internationally. In 1999, we opened a regional office in the United Kingdom. In 2000, we expanded our European Operations through opening a second office in Frankfurt, Germany; however, as part of our restructuring plan implemented in April of 2002, we closed the Frankfurt office. As of June 30, 2002, we had a total of 10 employees in our international operations. For the six months ended June 30, 2002, we derived approximately 12% of our revenues from our international operations. To succeed internationally, we must react quickly to the business environment in which we operate overseas. Thus, we must effectively monitor the size of our international workforce and make adjustments as necessary. During periods of growth we must hire and train experienced international personnel as well as recruit and retain qualified domestic personnel to staff and manage our international operations. However, we may experience difficulties in recruiting and training additional international staff. We must also be able to enter into strategic relationships with companies in international markets. If we are not able to maintain successful strategic relationships internationally or recruit additional companies to enter into strategic relationships, our future growth could be limited. We also face other risks inherent in conducting business internationally, such as: - difficulties in collecting accounts receivable and longer collection periods; - seasonal business activity in certain parts of the world; - fluctuations in currency exchange rates; and - trade barriers. Any of these factors could seriously harm our international operations and, consequently, our business. 19 Our sales cycles are long and unpredictable, which makes period-to-period revenues difficult to predict. Because the market for our employee relationship management software products and related services is relatively new, we experience long and unpredictable sales cycles. The sales cycle for our employee relationship management software applications typically ranges from two to nine months. Our customers have frequently viewed the purchase of our products as part of a long-term strategic decision regarding the management of their workforce-related operations and expenditures. This decision process has sometimes resulted in customers taking a long period of time to assess alternative solutions by our competitors or deferring a purchase decision until the market evolves. Sales cycles continue to be long and the timing of purchase decisions by individual customers remain at times uncertain. We must continue to educate potential customers on the use and benefits of our products and services, as well as the integration of our products and services with additional software applications utilized by the individual customers. Because the sales cycle is long and timing of individual orders is uncertain, our period-to-period revenues are difficult to predict. We may be unable to attract and retain highly skilled employees that are necessary for the success of our business plan. Our ability to execute our business plan and be successful also depends on our continued ability to attract and retain highly skilled employees. We depend on the services of senior management and other personnel, particularly Robert A. Spinner, our Chief Executive Officer. None of our senior management is obligated to continue to provide services to the Company.

Over time, we will need to hire additional personnel in all operational areas. Competition for personnel in our industry is intense. We have in the past experienced, and we expect to continue to experience in the future, difficulty in hiring and retaining highly skilled employees with appropriate qualifications. If we do not succeed in attracting or retaining personnel, our business could be adversely affected. Software defects could lead to loss of revenue or delay the market acceptance of our applications. Our enterprise applications software is complex and, accordingly, may contain undetected errors or failures when first introduced or as new versions are released. This may result in loss of, or delay in, market acceptance of our products. We have in the past discovered software errors in our new releases and new products after their introduction. In the event that we experience significant software errors in future releases, we could experience delays in the release, customer dissatisfaction and lower revenues and service margins during the period required to correct these errors. We may in the future discover errors, and additional scalability limitations, in new releases or new products after the commencement of commercial shipments. Any of these errors or defects could cause our business to be materially harmed. We may become increasingly dependent on third-party software incorporated in our products and, if so, impaired relations with these third parties, errors in third-party software or inability to enhance the software over time could harm our business. We incorporate third-party software into our products. Currently, the third-party software we use includes application server software that we license from BEA Systems, off-line database software from Pointbase, off-line client server software from Pumatech, synchronization software from Aether Systems, reporting software from Business Objects and Java Web Start from Sun Microsystems. We may incorporate additional third-party software into our products as we 20 expand our product line and broaden the content and services accessible through our gateway. The operation of our products would be impaired if errors occur in the third-party software that we license. It may be more difficult for us to correct any errors in third-party software because the software is not within our control. Accordingly, our business would be adversely affected in the event of any errors in this software. Furthermore, it may be difficult for us to replace any third-party software if a vendor seeks to terminate our license to the software. Our success depends in part upon our ability to protect our intellectual property and we may not be able to do so adequately. Our success depends in large part upon our proprietary technology. We rely on a combination of copyright, trademark and trade secret protection, confidentiality and nondisclosure agreements and licensing arrangements to establish and protect our intellectual property rights. We license rather than sell our solutions and require our customers to enter into license agreements, which impose restrictions on their ability to utilize the software. In addition, we seek to avoid disclosure of our trade secrets through a number of means, including requiring those persons with access to our proprietary information to execute nondisclosure agreements with us and restricting access to our source code. We seek to protect our software, documentation and other written materials under trade secret and copyright laws, which afford only limited protection. Despite our efforts to protect our proprietary rights, unauthorized parties may attempt to copy aspects of our products or to obtain and use information that we regard as proprietary. Policing unauthorized use of our products is difficult, and while we are unable to determine the extent to which piracy of our software products exists, software piracy can be expected to be a persistent problem. In addition, the laws of some foreign countries do not protect our proprietary rights to as great an extent as do the laws of the United States of America. Our means of protecting our proprietary rights may not be adequate and our competitors may independently develop similar technology, duplicate our products, or design around our proprietary intellectual property. Security and other concerns may discourage customers from purchasing our hosted product. If customers determine that our hosted product is not scaleable, does not provide adequate security for the dissemination of information over the Internet, or is otherwise inadequate for Internet-based use, or if for any other reason customers fail to accept our hosted products for use on the Internet or on a subscription basis, our business will be harmed. As a hosted provider, we expect to receive confidential information including credit card, travel booking, employee, purchasing, supplier, and other financial and accounting data, through the Internet and there can be no assurance that this information will not be subject to computer break-ins, theft, and other improper activity that could jeopardize the security of information for which we are responsible. Any such lapse in security could expose us to litigation, loss of customers, or otherwise harm our business. In addition, any person who is able to circumvent our security measures could misappropriate proprietary or confidential customer information or cause interruptions in our operations. We may be required to incur significant costs to protect against security breaches or to alleviate problems caused by breaches. Additionally, in the past, computer viruses and software programs that disable or impair computers have been distributed and have rapidly spread over the Internet. Computer viruses could be introduced into our systems or those of our customers or suppliers, which could disrupt our software

solutions or make them inaccessible to customers or suppliers. Further, a well-publicized compromise of security could deter people from using the Internet to conduct transactions that involve transmitting confidential information. Our failure to prevent security breaches, or well-publicized security 21 breaches affecting the Internet in general, could significantly harm our business, operating results and financial condition. We may face costly damages or litigation costs if a third party claims that we infringe its intellectual property. There has been a substantial amount of litigation in the software industry and the Internet industry regarding intellectual property rights. It is possible that in the future, third parties may claim that we or our current or potential future products infringe upon their intellectual property. We expect that software product developers and providers of Internet-based software applications will increasingly be subject to infringement claims as the number of products and competitors in our industry segment grows and the functionality of products in different industry segments overlaps. Any claims, with or without merit, could be time consuming, result in costly litigation, cause product shipment delays or require us to enter into royalty or licensing agreements. Royalty or licensing agreements, if required, may not be available on terms acceptable to us or at all, which could seriously harm our business. We are the target of a securities class action complaint and are at risk of securities class action litigation, which may result in substantial costs and divert management attention and resources. In November 2001, the Company and certain of its officers and directors were named as defendants in a class action shareholder complaint filed in the United States District Court for the Southern District of New York now captioned In re Extensity, Inc. Initial Public Offering Securities Litigation. In the complaint, the plaintiffs allege that the Company, certain of its officers and directors and the underwriters of its initial public offering ("IPO") violated the federal securities laws because the Company's IPO registration statement and prospectus contained untrue statements of material fact or omitted material facts regarding the compensation to be received by, and the stock allocation practices of, the IPO underwriters. The plaintiffs seek unspecified monetary damages and other relief. Similar complaints were filed in the same court against hundreds of public companies that conducted IPOs of their common stock since the mid-1990s. This action may divert the efforts and attention of management and, if determined adversely to the Company, could have a material impact on our business. Any future acquisitions of companies or technologies may result in distraction of our management and disruptions to our business. We may acquire or make investments in complementary businesses, technologies, services or products if appropriate opportunities arise. From time to time we may engage in discussions and negotiations with companies regarding our acquiring or investing in such companies' businesses, products, services or technologies. We cannot make assurances that we will be able to identify future suitable acquisition or investment candidates, or if we do identify suitable candidates, that we will be able to make such acquisitions or investments on commercially acceptable terms or at all. If we acquire or invest in another company, we could have difficulty assimilating that company's personnel, operations, technology or products and service offerings. In addition, the key personnel of the acquired company may decide not to work for us. These difficulties could disrupt our ongoing business, distract our management and employees, increase our expenses and adversely affect our results of operations. Furthermore, we may incur indebtedness or issue equity securities to pay for any future acquisitions. The issuance of equity securities could be dilutive to our existing stockholders. 22 We have anti-takeover provisions in our charter and in our contracts that could delay or prevent an acquisition of our company, even if such an acquisition would be beneficial to our stockholders. Provisions of our certificate of incorporation, our bylaws, Delaware law and certain agreements entered into by or for the benefit of some of our key officers could make it more difficult for a third party to acquire us, even if doing so might be beneficial to our stockholders. Our business may face additional risks and uncertainties not presently known to us, which would cause our business to suffer. In addition to the risks specifically identified in this Risk Factors section or elsewhere in this Annual Report, we may face additional risks and uncertainties not presently known to us or that we currently deem immaterial which ultimately may impair our business, results of operations and financial condition. RISKS RELATED TO OUR INDUSTRY Our success will depend upon the growth and acceptance of the market we address and our ability to meet the needs of the emerging market for employee relationship management software applications. The market for our employee relationship management software applications and services is at an early stage of development. Our success will depend upon the continued development of this market and the increasing acceptance by customers of the benefits to be provided by employee relationship management applications and services. In addition, as the market evolves, it is unclear whether the market will accept our suite of applications as a preferred solution for employee relationship management needs. Accordingly, our products and services may not achieve significant market acceptance or realize significant revenue growth. Unless a critical mass of organizations and their suppliers use our

solutions and recommend them to new customers, our solutions may not achieve widespread market acceptance, which may cause our business to suffer. Market prices of technology companies have been highly volatile, and the market for our stock may continue to be volatile as well. The stock market has experienced significant price and trading volume fluctuations and the market prices of technology companies generally, and Internet-related software companies particularly, have been extremely volatile. Investors may not be able to resell their shares at or above the price they paid for the stock. In the past, following periods of volatility in the market price of a public company's securities, securities class action litigation has often been instituted against that company. Such litigation would likely result in substantial costs and diversion of management's attention and resources. Increasing government regulation could limit the market for, or impose sales and other taxes on the sale of, our products and services. As Internet commerce evolves, we expect that federal, state or foreign agencies will adopt regulations covering issues such as user privacy, pricing, taxation of goods and services provided over the Internet, and content and quality of products and services. It is possible that legislation could expose companies involved in electronic commerce to liability, which could limit the growth of electronic commerce generally. Legislation could dampen the growth in Internet 23 usage and decrease its acceptance as a communications and commercial medium. If enacted, these laws, rules or regulations could limit the market for our products and services. ITEM 3. Quantitative and Qualitative Disclosures About Market Risk We develop products in the United States and market our products in North America and, to a lesser extent, in Europe and the rest of the world. As a result, our financial results could be affected by factors such as changes in foreign currency rates or weak economic conditions in foreign markets. Because the majority of our revenues are currently denominated in U.S. dollars, a strengthening of the dollar could make our products less competitive in foreign markets. INTEREST RATE RISK We have an investment portfolio of money market funds and fixed income certificates of deposit. The fixed income certificates of deposit, like all fixed income securities, are subject to interest rate risk and will fall in value if market interest rates increase. We attempt to limit this exposure by investing primarily in short-term securities. In view of the nature and mix of our total portfolio, a 10% movement in market interest rates would not have a significant impact on the total value of our portfolio as of June 30, 2002. PART II. OTHER INFORMATION ITEM 1. Legal Proceedings In November 2001, the Company and certain of its officers and directors were named as defendants in a class action shareholder complaint filed in the United States District Court for the Southern District of New York, now captioned, In re Extensity, Inc. Initial Public Offering Securities Litigation. In the complaint, the plaintiffs allege that the Company, certain of its officers and directors and the underwriters of its initial public offering ("IPO") violated the federal securities laws because the Company's IPO registration statement and prospectus contained untrue statements of material fact or omitted material facts regarding the compensation to be received by, and the stock allocation practices of, the IPO underwriters. The plaintiffs seek unspecified monetary damages and other relief. Similar complaints were filed in the same court against hundreds of other public companies that conducted IPOs of their common stock since the mid-1990s (collectively, the "IPO Lawsuits"). On August 8, 2001, the IPO Lawsuits were consolidated for pretrial purposes before United States Judge Shira Scheindlin of the Southern District of New York. Judge Scheindlin held an initial case management conference on September 7, 2001, at which time she ordered, among other things, that the time for all defendants to respond to any complaint be postponed until further order of the court. Thus, the Company has not been required to answer the complaint, and no discovery has been served on the Company. In accordance with Judge Scheindlin's orders at further status conferences in March and April, the appointed lead plaintiffs' counsel filed amended, consolidated complaints in the IPO Lawsuits on April 19, 2002. Defendants then filed motions to dismiss the IPO lawsuits on July 1 and July 15, 2002, as to which the Court does not expect to issue a decision until at least November 2002. The Company believes that this lawsuit is without merit and intends to defend against it vigorously. 24 ITEM 2. Changes in Securities and Use of Proceeds a. Not applicable. b. Not applicable. c. Not applicable. d. Not applicable. ITEM 3. Defaults Upon Senior Securities None. ITEM 4. Submission of Matters To a Vote of Security Holders The Company's annual meeting of stockholders was held on May 31, 2002 (the "Annual Meeting"). The following matters were voted upon at the Annual Meeting: Proposal 1 - To elect directors to hold office until 2003 Annual Meeting of Stockholders and until their successors are elected. For Withheld Authority --- ---------- Robert A. Spinner 21,485,121 66,674 Sharam I. Sasson 21,529,848 21,947 Christopher D. Brennan 21,483,448 68,347 John R. Hummber 21,431,275 120,520 David A. Reed 21,431,448 120,347 Ted E. Schlein 21,484,048 67,747 Proposal 2 - To ratify the selection of PricewaterhouseCoopers LLP as independent auditors of the Company for its fiscal year ending December 31, 2002. For Against Abstain --- ------- ------- 21,483,558 61,010 7,227 25 ITEM 5. Other Information In accordance with Section 10A(i)(2) of the

Securities Exchange Act of 1934, as added by Section 202 of the Sarbanes-Oxley Act of 2002 (the "Act"), we are required to disclose the non-audit services approved by our Audit Committee to be performed by PricewaterhouseCoopers LLP, our external auditor. Non-audit services are defined in the Act as services other than those provided in connection with an audit or a review of the financial statements of a company. The Audit Committee has not approved the engagement of PricewaterhouseCoopers LLP for any non-audit services. ITEM 6. Exhibits and Reports on Form 8-K (a) Exhibits Exhibits 10.11.1, 10.14 and 99.1 are filed as updates to the exhibit index included in the Company's Form 10-K filed with the SEC on April 1, 2002 (File No. 000-28897). Exhibit 10.11.1 Extensity, Inc. Amended and Restated 2000 Non-statutory Stock Option Plan. Exhibit 10.14 Extensity, Inc. Executive Change of Control Severance Benefit Plan. Exhibit 99.1 - Certification by Chief Executive Officer and Chief Financial Officer. None. (b) Reports on Form 8-K: None. 26 SIGNATURE Pursuant to the requirements of the Securities and Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized. August 14, 2002 EXTENSITY, INC. By /s/ Kenneth R. Hahn Chief Financial Officer (Principal Financial and Accounting Officer) 27