

O CHARLEYS INC  
Form SC TO-T  
February 27, 2012

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**SCHEDULE TO**

**TENDER OFFER STATEMENT UNDER SECTION 14(d)(1) OR 13(e)(1)**

**OF THE SECURITIES EXCHANGE ACT OF 1934**

**O CHARLEY S INC.**

(Name of Subject Company (Issuer))

**FIDELITY NATIONAL FINANCIAL, INC.**

**FIDELITY NATIONAL SPECIAL OPPORTUNITIES, INC.**

**FRED MERGER SUB INC.**

(Offerors)

(Names of Filing Persons (identifying status as offeror, issuer or other person))

**COMMON STOCK, NO PAR VALUE**

(Title of Class of Securities)

**670823103**

(CUSIP Number of Class of Securities)

Edgar Filing: O CHARLEYS INC - Form SC TO-T

Michael L. Gravelle

Executive Vice President, General Counsel and Corporate Secretary

Fidelity National Financial, Inc.

601 Riverside Avenue Jacksonville, Florida 32204

(904) 854-8100

(Name, address, and telephone numbers of person authorized to receive notices and communications on behalf of filing persons)

*Copies to:*

Michael J. Aiello, Esq.

Weil, Gotshal & Manges LLP 767 Fifth Avenue

New York, New York 10153

(212) 310-8000

**CALCULATION OF FILING FEE**

**Transaction Valuation(1)**  
\$211,261,765.75

**Amount of Filing Fee(2)**  
\$24,211

(1) Estimated for purposes of calculating the filing fee only. The transaction valuation was calculated by adding the sum of (i) (A) 21,947,206 shares of common stock, no par value per share ( Shares ), of O Charley s Inc. ( O Charley s ) outstanding, minus 2,079,542 Shares owned by Parent on the date hereof, multiplied by (B) the offer price of \$9.85 per share and (ii) (A) 1,580,231 Shares issuable pursuant to the outstanding options to acquire Shares, multiplied by (B) the offer price of \$9.85 per Share. The number of Shares outstanding and the number of Shares issuable pursuant to outstanding options reflected herein have been provided to Parent by O Charley s as of February 20, 2012.

(2) The filing fee was calculated in accordance with Rule 0-11 under the Securities Exchange Act of 1934 by multiplying the transaction value by .00011460.

\*\* Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

Amount Previously Paid:None

Form of Registration No.:N/A

Filing Party:N/A

Date Filed:N/A

\*\* Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

## Edgar Filing: O CHARLEYS INC - Form SC TO-T

Check the appropriate boxes below to designate any transactions to which the statement relates:

- Third-party tender offer subject to Rule 14d-1.
- Issuer tender offer subject to Rule 13e-4.
- Going-private transaction subject to Rule 13e-3.
- Amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer.

This Tender Offer Statement on Schedule TO (which, together with any amendments and supplements thereto, collectively constitute this Schedule TO ) is filed by (i) Fred Merger Sub Inc., a Tennessee corporation (the Purchaser ), and an indirect, wholly-owned subsidiary of Fidelity National Financial, Inc., a Delaware corporation ( Parent ), (ii) Fidelity National Special Opportunities, Inc., a Delaware corporation and a wholly-owned subsidiary of Parent, and (iii) Parent. This Schedule TO relates to the offer (the Offer ) by the Purchaser to purchase all of the issued and outstanding shares of common stock, no par value per share (the Shares ), of O Charley s Inc., a Tennessee corporation ( O Charley s ), at a purchase price of \$9.85 per Share (the Offer Price ) net to the sellers in cash, without interest thereon and less any required withholding taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated February 27, 2012 (which, together with any amendments and supplements thereto, collectively constitute the Offer to Purchase ) and in the related Letter of Transmittal, copies of which are attached hereto as Exhibits (a)(1)(A) and (a)(1)(B).

**Item 1. Summary Term Sheet.**

The information set forth in the section of the Offer to Purchase entitled Summary Term Sheet is incorporated herein by reference.

**Item 2. Subject Company Information.**

(a) The name of the subject company and the issuer of the securities to which this Schedule TO relates is O Charley s Inc., a Tennessee corporation. O Charley s principal executive offices are located at 3038 Sidco Drive, Nashville, Tennessee 37204. O Charley s telephone number at such address is (615) 256-8500.

(b) This Schedule TO relates to the outstanding shares of common stock, no par value per share, of O Charley s. O Charley s has advised Parent and Purchaser that, as of February 20, 2012, there were 21,947,206 Shares issued and outstanding (which includes restricted stock awards issued pursuant to any O Charley s equity incentive plan) and 1,580,231 Shares issuable upon the exercise of outstanding options.

(c) The information set forth in the section in the Offer to Purchase entitled Price Range of Shares; Dividends is incorporated herein by reference.

**Item 3. Identity and Background of Filing Person.**

This Schedule TO is filed by Parent and the Purchaser. The information set forth in the section of the Offer to Purchase entitled Certain Information Concerning Parent, the Purchaser and Certain Related Persons and in Schedule I attached thereto is incorporated herein by reference.

**Item 4. Terms of the Transaction.**

The information set forth in the Offer to Purchase is incorporated herein by reference.

**Item 5. Past Contacts, Transactions, Negotiations and Agreements.**

(a) The information set forth in the sections of the Offer to Purchase entitled Certain Information Concerning Parent, the Purchaser and Certain Related Persons, Background of the Offer, Past Contacts or Negotiations with O Charley s, and The Merger Agreement; Other Agreements, respectively, is incorporated herein by reference.

(b) The information set forth in the sections of the Offer to Purchase entitled Summary Term Sheet, Introduction, Certain Information Concerning Parent, the Purchaser and Certain Related Persons, Background of the Offer; Past Contacts or Negotiations with O Charley s, Purpose of the Offer; Plans for

O Charley s, and The Merger Agreement; Other Agreements, respectively, is incorporated herein by reference.

**Item 6. Purposes of the Transaction and Plans or Proposals.**

The information set forth in the sections of the Offer to Purchase entitled Summary Term Sheet, Introduction, Certain Effects of the Offer, Purpose of the Offer; Plans for O Charley s, and The Merger Agreement; Other Agreements, respectively, is incorporated herein by reference.

**Item 7. Source and Amount of Funds or Other Consideration.**

The information set forth in the section of the Offer to Purchase entitled Source and Amount of Funds is incorporated herein by reference.

**Item 8. Interest in Securities of the Subject Company.**

(a) The information set forth in the section of the Offer to Purchase entitled Certain Information Concerning Parent, the Purchaser and Certain Related Persons is incorporated herein by reference.

(b) The information set forth in the sections of the Offer to Purchase entitled Certain Information Concerning Parent, the Purchaser and Certain Related Persons and The Merger Agreement; Other Agreements and Schedule I attached thereto, respectively, is incorporated herein by reference.

**Item 9. Persons/Assets Retained, Employed, Compensated or Used.**

The information set forth in the section of the Offer to Purchase entitled Fees and Expenses is incorporated herein by reference.

**Item 10. Financial Statements.**

Not applicable.

**Item 11. Additional Information.**

(a)(1) The information set forth in the sections of the Offer to Purchase entitled Certain Information Concerning Parent, the Purchaser and Certain Related Persons, Background of the Offer; Past Contacts or Negotiations with O Charley s, Purpose of the Offer; Plans for O Charley s and The Merger Agreement; Other Agreements, respectively, is incorporated herein by reference.

(a)(2) The information set forth in the sections of the Offer to Purchase entitled Certain Conditions of the Offer and Certain Legal Matters; Regulatory Approvals, respectively, is incorporated herein by reference.

(a)(3) The information set forth in the sections of the Offer to Purchase entitled Certain Conditions of the Offer and Certain Legal Matters; Regulatory Approvals, respectively, is incorporated herein by reference.

(a)(4) The information set forth in the section of the Offer to Purchase entitled Certain Effects of the Offer is incorporated herein by reference.

(a)(5) The information set forth in the section of the Offer to Purchase entitled Certain Legal Matters; Regulatory Approvals, is incorporated herein by reference.

(b) The information set forth in the Offer to Purchase is incorporated herein by reference.



**Item 12. Exhibits.**

Exhibit	Exhibit Name
(a)(1)(A)	Offer to Purchase dated February 27, 2012*
(a)(1)(B)	Letter of Transmittal (including Form W-9 and General Instructions to Form W-9).*
(a)(1)(C)	Notice of Guaranteed Delivery.*
(a)(1)(D)	Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.*
(a)(1)(E)	Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.*
(a)(5)(A)	Press Release issued by Fidelity National Financial, Inc. on February 6, 2012 (incorporated herein by reference to Exhibit 99.1 to the Schedule TO-C filed by Fidelity National Financial, Inc. on February 6, 2012).
(a)(5)(B)	Form of Summary Advertisement as published on February 27, 2012 in The Wall Street Journal.
(a)(5)(C)	Press Release issued by Fidelity National Financial Inc. on February 27, 2012.
(b)(1)	Amendment and Restatement Agreement dated as of March 5, 2010 to the Credit Agreement among Fidelity National Financial, Inc., Bank of America, N.A., and certain agents and other lenders party thereto (incorporated herein by reference to Exhibit 10.1 to the Current Report on Form 8-K filed by Fidelity National Financial, Inc. on March 10, 2010).
(b)(2)	Commitment Increase Agreement, dated as of March 5, 2010, among Fidelity National Financial, Inc., Bank of America, N.A. as Administrative Agent, and the other financial institutions party thereto (incorporated herein by reference to Exhibit 10.2 to the Current Report on Form 8-K filed by Fidelity National Financial, Inc. on March 10, 2010).
(d)(1)	Agreement and Plan of Merger, dated as of February 5, 2012, by and among Fidelity National Financial, Inc., Fred Merger Sub Inc., and O Charley s Inc.
(d)(2)	Tender and Support Agreement, dated as of February 5, 2012, by and among Fidelity National Financial, Inc., Fred Merger Sub Inc., and each of the shareholders of O Charley s Inc. listed on Schedule A thereto (incorporated herein by reference to Exhibit 2.2 to the Current Report on Form 8-K filed by O Charley s Inc. on February 6, 2012).
(d)(3)	Confidentiality Agreement, dated as of November 23, 2011, by and among Fidelity National Financial, Inc., American Blue Ribbon Holdings, LLC, and O Charley s Inc.
(g)	Not applicable.
(h)	Not applicable.

\* Included in mailing to shareholders.

**Item 13. Information required by Schedule 13E-3.**

Not applicable.

**SIGNATURE**

After due inquiry and to the best of the knowledge and belief of each of the undersigned, each of the undersigned hereby certifies that the information set forth in this statement is true, complete and correct.

FIDELITY NATIONAL FINANCIAL, INC.

By: /s/ Michael L. Gravelle  
Name: Michael L. Gravelle  
Title: Executive Vice President, General Counsel  
and Corporate Secretary

FIDELITY NATIONAL SPECIAL OPPORTUNITIES, INC.

By: /s/ Michael L. Gravelle  
Name: Michael L. Gravelle  
Title: Executive Vice President, General Counsel  
and Corporate Secretary

FRED MERGER SUB INC.

By: /s/ Goodloe M. Partee  
Name: Goodloe M. Partee  
Title: Secretary

Dated: February 27, 2012



<b>Exhibit</b>	<b>Exhibit Name</b>
(a)(1)(A)	Offer to Purchase dated February 27, 2012*
(a)(1)(B)	Letter of Transmittal (including Form W-9 and General Instructions to Form W-9).*
(a)(1)(C)	Notice of Guaranteed Delivery.*
(a)(1)(D)	Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.*
(a)(1)(E)	Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.*
(a)(5)(A)	Press Release issued by Fidelity National Financial, Inc. on February 6, 2012, (incorporated herein by reference to Exhibit 99.1 to the Schedule TO-C filed by Fidelity National Financial, Inc. on February 6, 2012).
(a)(5)(B)	Form of Summary Advertisement as published on February 27, 2012 in The Wall Street Journal.
(a)(5)(C)	Press Release issued by Fidelity National Financial Inc. on February 27, 2012.
(b)(1)	Amendment and Restatement Agreement dated as of March 5, 2010 to the Credit Agreement among Fidelity National Financial, Inc., Bank of America, N.A., and certain agents and other lenders party thereto (incorporated herein by reference to Exhibit 10.1 to the Current Report on Form 8-K filed by Fidelity National Financial, Inc. on March 10, 2010).
(b)(2)	Commitment Increase Agreement, dated as of March 5, 2010, among Fidelity National Financial, Inc., Bank of America, N.A. as Administrative Agent, and the other financial institutions party thereto (incorporated herein by reference to Exhibit 10.2 to the Current Report on Form 8-K filed by Fidelity National Financial, Inc. on March 10, 2010).
(d)(1)	Agreement and Plan of Merger, dated as of February 5, 2012, by and among Fidelity National Financial, Inc., Fred Merger Sub Inc., and O Charley s Inc.
(d)(2)	Tender and Support Agreement, dated as of February 5, 2012, by and among Fidelity National Financial, Inc., Fred Merger Sub Inc., and each of the shareholders of O Charley s Inc. listed on Schedule A thereto (incorporated herein by reference to Exhibit 2.2 to the Current Report on Form 8-K filed by O Charley s Inc. on February 6, 2012).
(d)(3)	Confidentiality Agreement, dated as of November 23, 2011, by and among Fidelity National Financial, Inc., American Blue Ribbon Holdings, LLC, and O Charley s Inc.
(g)	Not applicable.
(h)	Not applicable.

\* Included in mailing to shareholders.