

ADOBE SYSTEMS INC
Form SC TO-I
May 16, 2003

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As filed with the Securities and Exchange Commission on May 16, 2003

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE TO-I

Tender Offer Statement under Section 14(d)(1) or 13(e)(1)
of the Securities Exchange Act of 1934

ADOBE SYSTEMS INCORPORATED

(Name of Subject Company Issuer and Filing Person Offeror)

OPTIONS TO PURCHASE COMMON STOCK,
par value \$0.0001 per share
(Title of Class of Securities)

00724F-10-1

(CUSIP Number of Class of Securities)

Bruce R. Chizen
President and Chief Executive Officer
ADOBE SYSTEMS INCORPORATED
345 Park Avenue
San Jose, California 95110
Telephone: (408) 536-6000

(Name, address and telephone number of person authorized to receive
notices and communications on behalf of Filing Person)

Copies to:

Karen O. Cottle, Esq.
Cheryl K. House, Esq.
Stuart A. Fagin, Esq.
ADOBE SYSTEMS INCORPORATED
345 Park Avenue
San Jose, California 95110
Telephone: (408) 536-6000

Eric C. Jensen, Esq.
COOLEY GODWARD LLP
Five Palo Alto Square, 3000 El Camino Real
Palo Alto, California 94306-2155
Telephone: (650) 843-5000

CALCULATION OF FILING FEE

Transaction Valuation*

Amount of Filing Fee**

\$146,899,014

\$11,885

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Calculated solely for purposes of determining the filing fee. This amount assumes that options to purchase 11,682,128 shares of Common Stock of Adobe Systems Incorporated, par value \$0.0001 per share ("Common Stock"), having an aggregate value of \$146,899,014 will be exchanged pursuant to this offer. The aggregate value is calculated based upon the Black-Scholes option pricing model as of May 14, 2003.

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\$80.90 per \$1,000,000 of the aggregate offering amount (or .00008090 of the aggregate transaction valuation), pursuant to Rule 0-11 of the Securities Exchange Act of 1934, as amended by Fee Advisory #11 for Fiscal Year 2003, effective February 21, 2003.

Check 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: Not applicable.
Filing Party: Not applicable.

Form or Registration No.: Not applicable.
Date Filed: Not applicable.

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

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:

ITEM 1. SUMMARY TERM SHEET.

The information set forth in the Offer to Exchange Outstanding Options to Purchase Common Stock, filed as Exhibit 99.(a)(1)(A) hereto (the "Offer to Exchange"), under "Summary of Terms" is incorporated herein by reference.

ITEM 2. SUBJECT COMPANY INFORMATION.

(a) **Name and Address.** The name of the issuer is Adobe Systems Incorporated, a Delaware corporation (the "Company" or "Adobe"), the address of its principal executive office is 345 Park Avenue, San Jose, California 95110 and the telephone number of its principal executive office is (408) 536-6000. The information set forth in the Offer to Exchange under Section 16 ("Information About Adobe") is incorporated herein by reference.

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(b) **Securities.** This Schedule TO relates to an offer by the Company to exchange all stock options to purchase shares of the Company's common stock, par value \$0.0001 per share, with exercise prices greater than \$40.00 per share currently outstanding under the Company's 1994 Stock Option Plan and 1999 Equity Incentive Plan (the "Eligible Options"), held by eligible optionholders for new options (the "New Options") to purchase shares of common stock to be granted under the Company's 2003 Equity Incentive Plan, upon the terms and subject to the conditions set forth in the Offer to Exchange. The number of shares of common stock subject to the New Options will be equal to the quotient of the number of shares of common stock subject to the Eligible Options that are accepted for exchange and cancelled, divided by the applicable exchange ratio as set forth in the Offer to Exchange. The information set forth in the Offer to Exchange under "Summary of Terms," Section 1 ("Number of Options; Expiration Date"), Section 5 ("Acceptance of Options for Exchange and Cancellation and Issuance of New Options") and Section 8 ("Source and Amount of Consideration; Terms of New Options") is incorporated herein by reference.

(c) **Trading Market and Price.** The information set forth in the Offer to Exchange under Section 7 ("Price Range of Common Stock") is incorporated herein by reference.

ITEM 3. IDENTITY AND BACKGROUND OF THE FILING PERSON.

(a) **Name and Address.** The information set forth under Item 2(a) above and on Appendix A of the Offer to Exchange ("Information about the Directors and Executive Officers of Adobe") is incorporated herein by reference.

ITEM 4. TERMS OF THE TRANSACTION.

(a) **Material Terms.** The information set forth in the Offer to Exchange under "Summary of Terms," Section 1 ("Number of Options; Expiration Date"), Section 3 ("Procedures"), Section 4 ("Change in Election"), Section 5 ("Acceptance of Options for Exchange and Cancellation and Issuance of New Options"), Section 6 ("Conditions of this Offer"), Section 8 ("Source and Amount of Consideration; Terms of New Options"), Section 10 ("Status of Options Acquired by Us in this Offer; Accounting Consequences of this Offer"), Section 11 ("Legal Matters; Regulatory Approvals"), Section 12 ("Material U.S. Federal Income Tax Consequences"), Section 13 ("Terms of the Offer Specific to Eligible Employees Employed Outside the United States"), Section 14 ("Extension of this Offer; Termination; Amendment") and Appendix B of the Offer to Exchange ("A Guide to International Issues") is incorporated herein by reference.

(b) **Purchases.** The information set forth in the Offer to Exchange under Section 9 ("Interests of Directors and Executive Officers; Transactions and Arrangements Involving the Options") is incorporated herein by reference.

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ITEM 5. PAST CONTACTS, TRANSACTIONS, NEGOTIATIONS AND AGREEMENTS.

(e) **Agreements Involving the Subject Company's Securities.** The information set forth in the Offer to Exchange under Section 9 ("Interests of Directors and Executive Officers; Transactions and Arrangements Involving the Options") is incorporated herein by reference.

ITEM 6. PURPOSES OF THE TRANSACTION AND PLANS OR PROPOSALS.

(a) **Purposes.** The information set forth in the Offer to Exchange under "Summary of Terms" and Section 2 ("Purpose of this Offer") is incorporated herein by reference.

(b) **Use of Securities Acquired.** The information set forth in the Offer to Exchange under Section 10 ("Status of Options Acquired by Us in this Offer; Accounting Consequences of this Offer") is incorporated herein by reference.

(c) **Plans.** At present, the Board of Directors of the Company is composed of eight (8) members. The Company from time to time evaluates strategic acquisitions and will continue to do so in the future. The Company may issue its stock or pay cash in connection with such acquisitions. The Company may obtain cash for such acquisitions through a variety of means, including, without limitation, through the issuance of additional stock. The information set forth in the Offer to Exchange under Section 9 ("Interest of Directors and Executive Officers; Transactions and Arrangements Involving the Options") is incorporated herein by reference.

ITEM 7. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION.

(a) **Source of Funds.** The information set forth in the Offer to Exchange under Section 8 ("Source and Amount of Consideration; Terms of New Options") and Section 15 ("Fees and Expenses") is incorporated herein by reference.

(b) **Conditions.** The information set forth in the Offer to Exchange under Section 6 ("Conditions of this Offer") is incorporated herein by reference.

(d) **Borrowed Funds.** Not applicable.

ITEM 8. INTEREST IN THE SECURITIES OF THE SUBJECT COMPANY.

(a) **Securities Ownership.** The information set forth in the Offer to Exchange under Section 9 ("Interests of Directors and Executive Officers; Transactions and Arrangements Involving the Options") is incorporated herein by reference.

(b) **Securities Transactions.** The information set forth in the Offer to Exchange under Section 9 ("Interests of Directors and Executive Officers; Transactions and Arrangements Involving the Options") is incorporated herein by reference.

ITEM 9. PERSONS/ASSETS, RETAINED, EMPLOYED, COMPENSATED OR USED.

Not applicable.

ITEM 10. FINANCIAL STATEMENTS.

(a) **Financial Information.** Item 8 ("Consolidated Financial Statements and Supplementary Data") of Adobe's Annual Report on Form 10-K for the fiscal year ended November 29, 2002, filed on February 26, 2003, as amended March 28, 2003, including all material incorporated by reference therein, is incorporated herein by reference. Item 1 ("Condensed Consolidated Financial Statements") of Adobe's Quarterly Report on Form 10-Q for the quarter ended February 28, 2003, filed on April 11, 2003, including all material incorporated by reference therein, is incorporated herein by reference. The

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information set forth in the Offer to Exchange under Section 16 ("Information about Adobe"), Section 17 ("Risk Factors") and Section 18 ("Additional Information") is incorporated herein by reference.

(b) **Pro Forma Financial Information.** Not applicable.

ITEM 11. ADDITIONAL INFORMATION.

(a) **Agreements, Regulatory Requirements and Legal Proceedings.** The information set forth in the Offer to Exchange under Section 11 ("Legal Matters; Regulatory Approvals") is incorporated herein by reference.

(b) **Other Material Information.** Not applicable.

ITEM 12. EXHIBITS.

Exhibit Number

Description

99.(a)(1)(A)

Offer to Exchange Outstanding Options to Purchase Common Stock, dated May 16, 2003.

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Exhibit Number	Description
99.(a)(1)(B)	Summary of Terms of Offer to Exchange Outstanding Options to Purchase Common Stock.
99.(a)(1)(C)	Form of Electronic Transmittal Letter.
99.(a)(1)(D)	Form of Stock Option Exchange Election Form.
99.(a)(1)(E)	Form of Electronic Reminder Notice.
99.(a)(1)(F)	Form of Electronic Confirmation Notice.
99.(a)(1)(G)	Form of Slide Presentation to Employees.
99.(a)(1)(H)	Form of Stock Option Exchange Election Electronic Log-In Pages.
99.(a)(1)(I)	Form of Confirmation of Cancellation of Eligible Options and Promise to Grant New Options.
99.(a)(1)(J)*	Communications to Employees from Bruce R. Chizen, President and Chief Executive Officer, dated March 17, 2003.
99.(a)(1)(K)*	Employee Frequently Asked Questions Document.
99.(a)(1)(L)*	Communications to Managers.
99.(a)(1)(M)*	Slides for use by Management in Discussions with Institutional Investors.
99.(a)(1)(N)*	Adobe Systems Incorporated's Definitive Proxy Statement on Schedule 14A, filed with the Securities and Exchange Commission on March 17, 2003, and incorporated herein by reference.
99.(a)(1)(O)**	Communications to Employees from Bruce R. Chizen, President and Chief Executive Officer, Regarding the Results of the Vote at Adobe Systems Incorporated's Annual Stockholders Meeting.
99.(a)(1)(P)	Adobe Systems Incorporated's Annual Report on Form 10-K for its fiscal year ended November 29, 2002, filed with the Securities and Exchange Commission on February 26, 2003, as amended March 28, 2003, and incorporated herein by reference.
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99.(a)(1)(Q)	Adobe Systems Incorporated's Quarterly Report on Form 10-Q for its fiscal quarter ended February 28, 2003, filed with the Securities and Exchange Commission on April 11, 2003, and incorporated herein by reference.
99.(b)	Not applicable.
99.(d)(1)	Adobe Systems Incorporated's 2003 Equity Incentive Plan.
99.(d)(2)	Adobe Systems Incorporated's 1999 Equity Incentive Plan, as amended (filed as Exhibit 10.37 to the Company's Annual Report on Form 10-K for the period ended November 29, 2002, filed on February 26, 2003, as amended March 28, 2003, and incorporated herein by reference).
99.(d)(3)	Adobe Systems Incorporated's 1994 Stock Option Plan (filed as Exhibit 10.40 to the Company's Registration Statement on Form S-8 (File No. 333-28195), filed on May 30, 1997, and incorporated herein by reference).
99.(g)	Not applicable.
99.(h)	Not applicable.

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**

Previously filed with the Preliminary Communications on Schedule TO filed with the Securities and Exchange Commission on April 10, 2003, and incorporated herein by reference.

ITEM 13. INFORMATION REQUIRED BY SCHEDULE 13E-3.

Not applicable.

[Remainder of this page intentionally left blank]

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Schedule To

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: May 16, 2003

ADOBE SYSTEMS INCORPORATED

By: /s/ BRUCE R. CHIZEN

Name: Bruce R. Chizen
Title: President and Chief Executive Officer
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