



February 28, 2007

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Office of Mergers and Acquisitions
Securities and Exchange Commission
Division of Corporation Finance
100 F Street, NE
Washington, DC 20549

Attention: Brian V. Breheny, Chief
Christina Chalk, Special Counsel
Michael Pressman, Special Counsel

Dear Mr. Breheny, Ms. Chalk and Mr. Pressman:

Adobe Systems Incorporated, a Delaware corporation (the "**Company**" or "**Adobe**"), has commenced an offer to eligible current employees to amend certain outstanding compensatory stock options to increase the exercise price of these options and to pay a special one-time cash payment equal to the increase in the exercise price (the "**Offer**"). The Offer is being conducted for compensatory purposes and has been structured in reliance upon the Division of Corporation Finance's Exemptive Order for Issuer Exchange Offers that are Conducted for Compensatory Purposes, dated March 21, 2001, which provides relief under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"). The Offer is more fully described in the Schedule TO filed with the Securities and Exchange Commission (the "**Commission**") on January 4, 2007, as amended. On behalf of Adobe, we hereby request, pursuant to Rule 13e-4(h)(9) under the Exchange Act, that the staff of the Division of Corporation Finance (the "**Staff**") of the Commission grant the Company relief from compliance with Rule 13e-4(f)(5) and with Rule 14e-1(c) under the Exchange Act and confirm that the Staff will not recommend that the Commission take enforcement action against the Company pursuant to the "prompt payment" provisions of Rule 14e-1(c) of the Exchange Act in order to permit the Company to make the "Cash Payments" as described more fully in this letter.

FACTUAL BACKGROUND

Adobe grants equity awards under its compensatory stock plans to its employees as a means to advance the interests of the Company and its stockholders by providing an incentive to attract, retain and reward such employees and by motivating them to contribute to the growth and profitability of the Company. As reported in Adobe's Quarterly Report on Form 10-Q for the third quarter ended September 1, 2006, filed with the Commission on October 11, 2006, Adobe has concluded a voluntary review of its stock option granting practices covering the period from 1997 to 2006. A review earlier in 2006 of executive officer grants uncovered no improper grants to Adobe's executive officers. Following this management review in the fourth quarter of last year, the Board of Directors of the Company voluntarily formed a Special Committee of outside directors to undertake a review of annual non-executive employee stock option grants. As a result of the Special Committee's review, Adobe identified occasions on which Adobe used

incorrect measurement dates for determining the accounting consequences of certain stock options (the "**Affected Options**") granted under the Adobe Systems Incorporated 1994 Stock Option Plan, as amended (the "**1994 Plan**") and the Adobe Systems Incorporated 2003 Equity Incentive Plan, as amended (the "**2003 Plan**") (together, the "**Plans**"). These Plans qualify as employee benefit plans as defined under Rule 405 of the Securities Act of 1933, as amended (the "**Securities Act**"). The Affected Options and shares subject thereto have been previously registered on one or more registration statements on Form S-8. With one exception, none of the Affected Options is held by a current or former officer or director of Adobe. With respect to that one exception, one Eligible Optionee who holds an Affected Option was an officer of the Company subject to the reporting requirements of Section 16 of the Exchange Act (an "**Executive Officer**") for approximately 9 months during 2005. However, he no longer serves as an Executive Officer, his Affected Option was granted prior to the time in which he was an Executive Officer, and at no time during his tenure as an Executive Officer did he have responsibility for the Company's option granting policies.

As a result of the use of the incorrect measurement dates, the Affected Options are deemed, for accounting purposes, to have been granted at a discount from the fair market value of Adobe's common stock on the applicable date of grant. Based on this determination made for accounting purposes, the Affected Options may now be deemed to have been granted at a discount for tax purposes, which may expose the holders of Affected Options to materially adverse tax treatment under Section 409A ("**Section 409A**") of the Internal Revenue Code of 1986, as amended (the "**Code**") and the proposed regulations issued by the U.S. Internal Revenue Service (the "**IRS**") thereunder, and under state tax laws of similar effect.

The material adverse personal tax consequences under Section 409A that may apply to the Affected Options include, at a minimum, an obligation to the holder to recognize (1) ordinary state and federal income tax, (2) an additional 20% federal income tax under Section 409A, (3) an additional 20% California state income tax that mirrors the federal 409A tax, and (4) possible federal and state interest penalties. Thus, the holders of the Affected Options could be subject to an aggregate tax rate of 80% or more on the value of the Affected Options, regardless of whether they ever exercise them, as a consequence of the Affected Options being subject to Section 409A.

Under the currently available guidance for Section 409A, the holders of the Affected Options may avoid or minimize the adverse personal tax effects of Section 409A if the Affected Options are amended to increase the exercise price to the full fair market value of Adobe's common stock on the correct measurement date. The guidance under Section 409A also provides that if an issuer such as Adobe wishes to compensate the holder for the increase in the exercise price of the Affected Options, any such payment must not be made earlier than January of the calendar year following the calendar year in which the Affected Options are amended. If the payment is made prior to such time, the Affected Options and the cash payments will both be subject to the material adverse tax consequences under Section 409A and the attempted correction will fail.

Adobe elected to use the Offer as a voluntary mechanism to provide current (but not former) employees holding Affected Options (the “**Eligible Optionees**”) with the opportunity to bring the Affected Options into compliance with Section 409A.¹ An Eligible Optionee may choose to amend his or her Affected Option in a manner that should exempt it from the adverse tax consequences under Section 409A and, in connection with that choice, to receive a one-time cash payment equal to the aggregate increase in the exercise price of the Affected Option (less applicable tax withholding) (the “**Cash Payment**”).

Affected Options accepted for amendment under the Offer will be amended effective as of the expiration of the Offer (the “**Expiration Date**”) and will be exercisable by the Eligible Optionees not later than five business days thereafter, to the extent such Affected Options are otherwise vested and exercisable as of such date.² This delay in exercisability is necessary in order to process the amendments to the Affected Options in Adobe’s stock plan database. In addition, any exercise of the Affected Options, whether or not amended, will be subject to compliance with the Adobe Insider Trading Policy and any interim blackout periods during which cashless exercises and sales to cover are not permitted. As amended, the Affected Options will continue to be governed by the terms of the applicable Plans and, therefore, will be eligible to be exercised pursuant to the applicable registration statements on Form S-8 that were previously filed in respect of the Affected Options.

The Eligible Optionees will have a contractual right to the Cash Payment effective as of the Expiration Date, as documented in the “Final Election Confirmation Statement” that each Eligible Optionee who accepts the Offer will be sent via email within three business days after the Expiration Date. The Final Election Confirmation Statement will specifically set forth the contractual “Promise to Make Cash Payment,” including the dollar value of the Cash Payment.³

¹ As of the date of this letter, there are no former employees holding Affected Options. In addition, we understand that if the Offer were extended to former employees who hold Affected Options, the Offer would not qualify for the exemptive relief provided under the SEC Exemptive Order for Issuer Exchange Offers that are Conducted for Compensatory Purposes (Mar. 21, 2001) because the new options offered in the Offer would not be eligible to be issued to former employees under an “employee benefit plan” as defined in Rule 405 of the Securities Act.

² The vesting and exercisability provisions of Affected Options will not be modified as a result of the Offer. The existing vesting schedule (if any) of each Affected Options will remain unchanged, whether or not an Affected Option is amended under the Offer. Affected Options, whether or not amended, will continue to be subject to the original exercise periods set forth in the applicable award agreements, including a standard post-termination exercise period of not less than three (3) months (unless in connection with a termination for cause, in which case the Affected Option, whether or not amended, would immediately cease to be exercisable, as provided in the standard form of award agreement).

³ Each Eligible Optionee also was expressly informed of the dollar value of the Cash Payment that he or she is eligible to receive under the Offer via a personalized “Election Form” that was delivered by email at the commencement of the Offer.

In compliance with the applicable provisions of Section 409A, as clarified in the guidance issued by the IRS to date, and in response to guidance provided by the Staff, the Offer materials were amended on February 7, 2007 to clearly state that the Cash Payment will be paid on January 2, 2008.⁴ The current guidance provided under Section 409A does not allow Adobe to amend the Affected Options and make the Cash Payments in the same calendar year. If the Cash Payment were to be made prior to January 2008, the increased strike price would become ineffective as a "cure" such that the Affected Option would remain subject to adverse taxation under Section 409A and the Cash Payment would also be subject to Section 409A.

In order to minimize the burden of the increased exercise price on the Eligible Optionees, and in order for the Eligible Optionees to maintain the benefit of the bargain they agreed to at the time they accepted their Affected Options and commenced the performance of their services for Adobe, the Cash Payment will not be subject to vesting or otherwise subject to forfeiture and will be paid regardless of whether the Eligible Option is ever exercised. This and other relevant information regarding the Offer has been made available to each Eligible Optionee.

DISCUSSION

As noted above, the Offer is being made for compensatory purposes in order to permit the Eligible Optionees to minimize or avoid the potential materially adverse personal tax consequences under Section 409A and state tax laws of similar effect in respect of their Affected Options and to maintain the benefit of the bargain they made when they agreed to provide services to Adobe in exchange for the vesting of the Affected Options. Thus, the Exchange Act rules principally relevant to the Offer are those relating to issuer tender offers. Rule 13e-4 promulgated under the Exchange Act governs any "issuer tender offer", which is defined in paragraph (a)(2) thereof as "a tender offer for, or a request or invitation for tenders of, any class of equity security, made by the issuer of such class of equity security or by an affiliate of such issuer."

The Staff has advised us that Offer may be seen to present "prompt payment" issues pursuant to Rule 13e-4(f)(5) and Rule 14(e)-1(c) of the Exchange Act, since the Cash Payment will not be paid until January 2, 2008. We are requesting that the Staff grant the Company relief from compliance with Rule 13e-4(f)(5) and with Rule 14e-1(c) under the Exchange Act and confirm that the Staff will not recommend that the Commission take enforcement action pursuant to Rule 14e-1(c) of the Exchange Act as a result of the payment of the Cash Bonus in January 2008.

Adobe believes that the regulatory characteristics of the Offer are similar to those previously addressed by the Staff and by the Commission in the context of employee stock option repricing

⁴ Payment will be made on this date for all Eligible Optionees, including those whose service with the Company terminated for any reason after the Expiration Time but prior to January 2, 2008.

offers ("**Option Repricing Offers**"),⁵ employee stock option liquidity programs ("**Option Liquidity Programs**"),⁶ and employee stock option exchange offers ("**Option Exchange Offers**")⁷ (we refer collectively to the Option Repricing Offers, the Option Liquidity Programs, and the Option Exchange Offers, as the "**Analogous Facilities**"), each of which implicated the "prompt payment" rules. Specifically, Adobe believes that the Offer's terms and conditions, including payment of the Cash Payments on January 2, 2008, do not raise the concerns of fraudulent, deceptive or manipulative acts or practices, concerns which gave rise to the adoption of Rule 13e-4 and Rule 14e-1 of the Exchange Act. In support, note the tax law requirements behind the January 2008 payment date and the detailed information that will be available to Eligible Optionees regarding the Offer. Adobe believes that granting an exemption from the "prompt payment" rules for the Offer will be consistent with the actions taken by the Staff and the Commission with respect to the Analogous Facilities where the "prompt payment" rules were implicated but where, as here, the potential for fraud, deception, and manipulation did not exist.

Valid Business Purpose

Section 409A was adopted pursuant to the American Jobs Creation Act of 2004 (the "**AJCA**") to address perceived abuses in deferred compensation. Under the AJCA, deferred compensation includes stock options granted, intentionally or otherwise, with an exercise price that is less than the fair market value of the underlying common stock on the date of grant. Section 409A and California's state law equivalent have retroactive effect and so could be applicable to the Affected Options, all of which were granted prior to the adoption of the AJCA. Section 409A and the corresponding state tax laws impose their punitive taxes directly on the individual employee, not on the Company. Thus, Adobe is not required to offer either the opportunity to bring the Affected Options into compliance with Section 409A or to provide the Cash Payment (or any other compensatory payment) to compensate the Eligible Optionees for the increase in the exercise price of their Affected Options.

However, from Adobe's perspective, the Offer, including the Cash Payment, serves important compensatory and personnel goals. The Offer to amend the Affected Options provides valued employees with the opportunity to avoid an aggregate potential tax rate of 80% or more under federal and state tax laws, and thus retain the opportunity to share in the value that they helped to create during the terms of their Affected Options through their talent and hard work, as

⁵ See, e.g., Martha Stewart Living Omnimedia, Inc., SEC No-Action Letter (2003 WL 23220843); Lante Corporation, SEC No-Action Letter, Fed. Sec. L. Rep. (CCH) (Feb. 9, 2001); Digimarc Corp., SEC No-Action Letter, Fed. Sec. L. Rep. (CCH) (Mar. 16, 2001); LookSmart, Ltd., SEC No-Action Letter, Fed. Sec. L. Rep. (CCH) (Mar. 20, 2001); SEC Exemptive Order for Issuer Exchange Offers that are Conducted for Compensatory Purposes (Mar. 21, 2001).

⁶ See, e.g., Microsoft Corporation, SEC No-Action Letter (2003 WL 22358818); Comcast Corp., SEC No-Action Letter (2004 WL 2434401).

⁷ See, e.g., Security Capital Assurance Ltd., SEC No-Action Letter (2006 WL 3284099).

originally intended at the time of grant. In addition, the offer of the Cash Payment serves the Company's legitimate business interests in addressing issues of employee morale, motivation and retention, by recognizing that the Eligible Optionees had no control over the administrative practices and determinations that may result in the Affected Options becoming subject to Section 409A and the state laws of similar effect. By providing a means to retain and motivate the Eligible Optionees, and to re-align the interests of the Eligible Optionees with those of the Company and its stockholders, the Offer as structured, including the Cash Payment, serves the Company's compensatory and personnel objectives.

However, the entire purpose of the Offer would be frustrated if the Cash Payment were required to be paid in 2007 or if the Cash Payment had to be eliminated entirely. For example, assume a California-based employee received a nonstatutory stock option on May 19, 2004 to purchase 1,000 shares at \$21.78 (i.e., an Affected Option). Based on the corrected measurement date of May 26, 2004, the revised exercise price is \$22.13. The current market price of Adobe common stock is approximately \$40. The following table demonstrates the material nature of the impact of Section 409A on the benefit under this Affected Option (assume nonstatutory stock option, fully vested today), including if the Company were required to make the Cash Payment prior to January 2008.

	Option is subject to 409A (no bonus; no exercise price increase)	Option is "cured" & "good" Cash Payment is made (no 409A)	Option & Cash Payment are subject to 409A (increase price & receive bonus in 2007)
Income to Eligible Optionee	\$18,220 ⁸	\$18,220 ⁹	\$18,570 ¹⁰
Federal income tax (25%)	\$4,555	\$4,555	\$4,643
State income tax (9.3%)	\$1,694	\$1,694	\$1,727
Federal 409A tax (20%)	\$3,644	\$0	\$3,714
State 409A tax (20%)	\$3,644	\$0	\$3,714

⁸ Equals full spread of \$18,220 (\$40 less original exercise price, multiplied by 1,000 shares).

⁹ Equals corrected spread of \$17,870 (\$40 less new exercise price, multiplied by 1,000 shares) plus \$350 Cash Payment (taxable as a bonus).

¹⁰ Equals full spread of \$18,220 plus 409A-taxable Cash Payment.

Employee FICA contribution (7.65%)	\$1,394	\$1,394	\$1,420
Employee state disability insurance contribution (0.6%)	\$110	\$110	\$111
Total Tax Paid	\$15,041	\$7,753	\$15,329
Total Tax Rate	82.5%	42.5%	82.5%

Clearly, the application of Section 409A to the Affected Option and the consideration under the Offer means the Affected Option provides less benefit to Adobe (as measured by reference to the original legitimate business goals of the Plans) and the Cash Payment would no longer serve the Company's legitimate business interests in addressing concerns of employee morale, motivation and retention. Thus, the valid business purpose of the Offer would be frustrated if the Offer were required to be modified either to eliminate the Cash Payment or to require its payment at a time that would result in the entire consideration offered under the Offer becoming subject to the material adverse tax consequences of Section 409A and similar state tax laws.

Prompt Payment

The consideration under the Offer has been structured to be documented and paid as promptly as administratively feasible consistent with a tax-effective result. The Affected Options will be amended effective as of the Expiration Time and will be available in each Eligible Optionee's stock plan account for exercise not later than five business days following the Expiration Time. This minimal delay is necessary for accurate processing of the amendments in Adobe's stock plan database. To minimize any confusion of an Eligible Optionee during such time, each Eligible Optionee who accepts the Offer will receive a Final Election Confirmation Statement within three business days following the Expiration Time, which form sets forth the terms of the amended Eligible Options.

With respect to the Cash Payment, Adobe believes the appropriate characterization of the cash consideration under the Offer is as a fully vested, nonforfeitable contractual right. As noted, each Eligible Optionee who accepts the Offer will receive a Final Election Confirmation Statement within three business days following the Expiration Time, which form includes the express Promise to Make Cash Payment and the value of that Cash Payment. Thereafter, the Cash Payment will be promptly paid, regardless of continued service by the Eligible Optionee to Adobe, on January 2, 2008 and regardless of whether the Affected Option is ever exercised by the Eligible Optionee. Such date was used as it is the earliest administratively feasible payroll date to make payment following the conclusion of calendar year 2007. The fact that the Cash Payment will not be paid prior to 2008 due to the requirements of Section 409A and analogous

state tax laws is similar to the facts under the Option Repricing Offers in which existing options were exchanged for new options that would not be granted for at least six months following the conclusion of the applicable tender offer in order to avoid triggering variable accounting.¹¹ In addition, whereas the six month delay in the Option Repricing Offers was imposed for the benefit of the company, the timing of the Cash Payment is delayed into 2008 solely for the benefit of the Eligible Optionees. Furthermore, unlike the Option Repricing Programs, the Cash Payment will be made even if the Eligible Optionee's service with Adobe terminates prior to the payment date.

We also note that in certain other of the Analogous Facilities, the Staff granted no-action and exemptive relief for programs that provided for a two or three year delay of payment of some or all of the consideration, based not on tax law or accounting requirements, but instead because of the issuer's discretionary requirement that the participants provide continued service over that period.¹² Adobe has imposed no such delay of payment. To the contrary, to further reflect the unconditional nature of the right to the Cash Payment upon amendment of the Affected Options, Adobe has provided that the Cash Payment is not subject to vesting or other forfeiture conditions and will be paid even to those Eligible Optionees whose service with Adobe terminates prior to the payment date.

Prominent Disclosure

Adobe has provided the Eligible Optionees with all material information necessary for them to independently make a well informed decision on whether to participate in the Offer, including the essential features of the Offer and the risks that they should consider in deciding whether to accept the Offer. The Company has prominently and repeatedly disclosed in the Offer materials the timing of the Cash Payment and has also described the tax law reason for such timing.¹³ In addition, each Eligible Optionee is able to determine the total Cash Payment that he or she will receive under the Offer by referring to the personalized Election Form that was emailed to him or her at the commencement of the Offer. Hard copies of this and other relevant information are also available to each Eligible Optionee. Such provision of information, including making expressly clear the value of the Cash Payment, is consistent with the Analogous Facilities.

¹¹ See, e.g., Lante Corporation, SEC No-Action Letter, Fed. Sec. L. Rep. (CCH) (Feb. 9, 2001); Digimarc Corp., SEC No-Action Letter, Fed. Sec. L. Rep. (CCH) (Mar. 16, 2001); LookSmart, Ltd., SEC No-Action Letter, Fed. Sec. L. Rep. (CCH) (Mar. 20, 2001). See also Axel Springer Offer for ProSiebenSat.1 Media AG, granting exemptive and no action relief under Rule 13e-4(f)(5) and Rule 14e-1(c) where payment in an issuer exchange offer was delayed due to requirements of foreign law.

¹² See e.g., Security Capital Assurance Ltd., SEC No-Action Letter (2006 WL 3284099); Microsoft Corporation, SEC No-Action Letter (2003 WL 22358818); Martha Stewart Living Omnimedia, Inc., SEC No-Action Letter (2003 WL 23220843).

¹³ See Summary Term Sheet; Frequently Asked Questions 20-24; Section 1, The Proposed Amendment; Section 12, Material US Federal Tax Consequences; and Attachment C: Form of Email: Final Election Confirmation Statement (Post-Expiration Time For Offer Participants).



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CONCLUSION

For the foregoing reasons, Adobe believes that the Offer's terms and conditions, including payment of the Cash Payment on January 2, 2008, do not raise the concerns of fraudulent, deceptive or manipulative acts or practices, concerns which gave rise to the adoption of Rule 13e-4 and Rule 14e-1 of the Exchange Act. We hereby respectfully request that the Staff grant the Company exemptive relief from compliance with Rule 13e-4(f)(5) and with Rule 14e-1(c) under the Exchange Act and confirm that the Staff will not recommend that the Commission take enforcement action pursuant to Rule 14e-1(c) of the Exchange Act.



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If you have any questions or comments about the matters discussed above, please feel free to contact me at (650) 843-5049 or John McKenna at (650) 843-5059.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric C. Jensen". The signature is stylized and somewhat abstract, with a vertical line on the left and several horizontal and diagonal strokes.

Eric C. Jensen

cc: Karen O. Cottle, Esq. – *Adobe Systems Incorporated*
Stuart A. Fagin, Esq. – *Adobe Systems Incorporated*
John T. McKenna, Esq. – *Cooley Godward Kronish LLP*

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