

Omniture, Inc.
Form SC TO-T/A
October 19, 2009

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE TO

(Amendment No. 3)

**TENDER OFFER STATEMENT UNDER SECTION 14(d)(1) OR 13(e)(1)
OF THE SECURITIES EXCHANGE ACT OF 1934**

OMNITURE, INC.

(Name of Subject Company (Issuer))

SNOWBIRD ACQUISITION CORPORATION

ADOBE SYSTEMS INCORPORATED

(Name of Filing Persons (Offerors))

Common Stock, par value \$0.001 per share
(Titles of classes of securities)

68212S109
(CUSIP number of class of securities)

Karen Cottle

Edgar Filing: Omniture, Inc. - Form SC TO-T/A

Senior Vice President, General Counsel & Corporate Secretary

Adobe Systems Incorporated

345 Park Avenue

San Jose, CA 95110-2704

Tel: 408-563-6000

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

Copies to:

Peter F. Kerman
Glenn G. Nash
Latham & Watkins LLP
140 Scott Drive
Menlo Park, California 94025
Tel: 650-328-4600

CALCULATION OF FILING FEE

Transaction Valuation*
\$1,790,228,933.00

Amount of Filing Fee**
\$99,894.77

* Estimated for purposes of calculating the filing fee only. This amount assumes the purchase of up to 83,266,462 shares of common stock, par value \$0.001 per share, of Omniture at a purchase price of \$21.50 per share. Such number of shares consists of (i) 77,306,452 shares of common stock issued and outstanding as of September 21, 2009, and (ii) 5,960,010 shares of common stock that are expected to be issuable before the expiration of the Offer under vested options, restricted stock units and other rights to acquire Omniture shares.

** The amount of the filing fee, calculated in accordance with Rule 0-11 of the Securities Exchange Act of 1934, as amended (the Exchange Act), equals 0.00005580 of the transaction valuation.

x 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: \$99,894.77

Edgar Filing: Omniture, Inc. - Form SC TO-T/A

Filing Party: Adobe Systems Incorporated and
Snowbird Acquisition Corporation

Form or Registration No. Schedule TO

Date Filed: September 24, 2009

- 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:

Edgar Filing: Omniture, Inc. - Form SC TO-T/A

This Amendment No. 3 (this Amendment) amends and supplements the Tender Offer Statement on Schedule TO originally filed with the Securities and Exchange Commission on September 24, 2009, as amended (the Schedule TO and together with the Amendment, the Statement), by Snowbird Acquisition Corporation, a Delaware corporation (the Purchaser) and a wholly owned subsidiary of Adobe Systems Incorporated, a Delaware corporation (Adobe), relating to the offer (the Offer) by the Purchaser to purchase all of the issued and outstanding shares of common stock, par value \$0.001 per share (the Shares), of Omniture, Inc., a Delaware corporation (Omniture), at a purchase price of \$21.50 per Share, net to the seller in cash, without interest but subject to any applicable tax withholding, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated September 24, 2009 (the Offer to Purchase), and in the related Letter of Transmittal (Letter of Transmittal), copies of which are filed with the Schedule TO as Exhibits (a)(1)(A) and (a)(1)(B). Capitalized terms used and not otherwise defined in this Amendment shall have the meaning assigned to such terms in the Offer to Purchase or in the Statement.

The information in the Offer to Purchase and the Letter of Transmittal is incorporated into this Amendment by reference to all of the applicable items in the Schedule TO, except that such information is hereby amended and supplemented to the extent provided herein.

Item 11. Additional Information.

Item 11 of the Statement is amended and supplemented by adding the following text to the end of existing subsection (a)(2) and (a)(3).

On September 18, 2009 Adobe, the parent company of the Purchaser, filed a complete notification with respect to the Offer with the German Federal Cartel Office (the FCO) pursuant to and as required by the provisions of the German Act Against Restraints on Competition to obtain approval to complete the acquisition of the Shares of Omniture. On October 19, 2009, the FCO provided notification to Adobe under the German Act Against Restraints on Competition that the acquisition of the Shares of Omniture may be consummated as it does not meet the statutory test for prohibition. Accordingly, the condition to the Offer that any waiting period or clearance, consent or approval under any other Antitrust Laws commercially reasonably required shall have expired, been terminated or be obtained has been satisfied. The Offer continues to be conditioned upon the other conditions described in Section 14 Conditions to the Offer of the Offer to Purchase, including, among other things, the satisfaction of the Minimum Condition.

SIGNATURES

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.

SNOWBIRD ACQUISITION CORPORATION

By: */s/ MARK GARRETT*
Name: Mark Garrett
Title: President and Treasurer

ADOBE SYSTEMS INCORPORATED

By: */s/ SHANTANU NARAYEN*
Name: Shantanu Narayen
Title: President and Chief Executive Officer

Date: October 19, 2009