

Edgar Filing: ADOBE SYSTEMS INC - Form SC 13D/A

ADOBE SYSTEMS INC
Form SC 13D/A
December 06, 2012

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
SCHEDULE 13D
Under the Securities and Exchange Act of 1934

(Amendment No. 2)

Adobe Systems Incorporated

(Name of Issuer)

Common Stock, \$0.001 par value

(Title of Class of Securities)

00724F101

(CUSIP Number)

Allison Bennington, Esq.
ValueAct Capital
435 Pacific Avenue, Fourth Floor
San Francisco, CA 94133
(415) 362-3700

(Name, address and telephone number of Person
Authorized to Receive Notices and Communications)

Allison Bennington, Esq.
ValueAct Capital
435 Pacific Avenue, Fourth Floor
San Francisco, CA 94133
(415) 362-3700

December 4, 2012

(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of 240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box [].

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 240.13d-7 for other parties to whom copies are to be sent.

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

This information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

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SCHEDULE 13D

CUSIP NO. 00724F101

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1. NAME OF REPORTING PERSON/S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON (entities only)

ValueAct Capital Master Fund, L.P.

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP* (a)
(b)

3. SEC USE ONLY

4. SOURCE OF FUNDS (See Instructions)*

WC*

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e)

6. CITIZENSHIP OR PLACE OF ORGANIZATION

British Virgin Islands

	7. SOLE VOTING POWER	0
NUMBER OF	8. SHARED VOTING POWER	31,303,362**
SHARES		
BENEFICIALLY	9. SOLE DISPOSITIVE POWER	0
OWNED BY EACH		
PERSON WITH	10. SHARED DISPOSITIVE POWER	31,303,362**

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

31,303,362**

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

6.3%

14. TYPE OF REPORTING PERSON

PN

*See Item 3

**See Item 2 and 5

SCHEDULE 13D

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CUSIP NO. 00724F101

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1. NAME OF REPORTING PERSON/S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON (entities only)

VA Partners I, LLC

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP* (a) (b)

3. SEC USE ONLY

4. SOURCE OF FUNDS*

00*

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e)

6. CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

	7. SOLE VOTING POWER
	0
NUMBER OF	8. SHARED VOTING POWER
SHARES	31,303,362**
BENEFICIALLY	
OWNED BY EACH	9. SOLE DISPOSITIVE POWER
PERSON WITH	0
	10. SHARED DISPOSITIVE POWER
	31,303,362**

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13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

6.3%

14. TYPE OF REPORTING PERSON

00 (LLC)

*See Item 3

**See Item 2 and 5

SCHEDULE 13D

CUSIP NO. 00724F101

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1. NAME OF REPORTING PERSON/S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON (entities only)

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ValueAct Capital Management, L.P.

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP* (a) [X]
(b) []

3. SEC USE ONLY

4. SOURCE OF FUNDS*

00*

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) []

6. CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

7. SOLE VOTING POWER 0
8. SHARED VOTING POWER 31,303,362**
9. SOLE DISPOSITIVE POWER 0
10. SHARED DISPOSITIVE POWER 31,303,362**

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31,303,362**

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6.3%

14. TYPE OF REPORTING PERSON

PN

*See Item 3

**See Item 2 and 5

SCHEDULE 13D

CUSIP NO. 00724F101

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1. NAME OF REPORTING PERSON/S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON (entities only)

ValueAct Capital Management, LLC

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP* (a) [X]
(b) []

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3. SEC USE ONLY

4. SOURCE OF FUNDS*

00*

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED
PURSUANT TO ITEMS 2(d) or 2(e)

[]

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Delaware

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0

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31,303,362**

9. SOLE DISPOSITIVE POWER
0

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31,303,362**

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CERTAIN SHARES

[]

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6.3%

14. TYPE OF REPORTING PERSON

00 (LLC)

*See Item 3

**See Item 2 and 5

SCHEDULE 13D

CUSIP NO. 00724F101

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1. NAME OF REPORTING PERSON/S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE
PERSON (entities only)

ValueAct Holdings, L.P.

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP*

(a) [X]

(b) []

3. SEC USE ONLY

4. SOURCE OF FUNDS*

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00*

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED
PURSUANT TO ITEMS 2(d) or 2(e) []

6. CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

7. SOLE VOTING POWER
0

NUMBER OF
SHARES
BENEFICIALLY
OWNED BY EACH
PERSON WITH

8. SHARED VOTING POWER
31,303,362**

9. SOLE DISPOSITIVE POWER
0

10. SHARED DISPOSITIVE POWER
31,303,362**

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31,303,362**

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CERTAIN SHARES []

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

6.3%

14. TYPE OF REPORTING PERSON

PN

*See Item 3

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SCHEDULE 13D

CUSIP NO. 00724F101

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1. NAME OF REPORTING PERSON/S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE
PERSON (entities only)

ValueAct Holdings GP, LLC

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP* (a) [X]
(b) []

3. SEC USE ONLY

4. SOURCE OF FUNDS*

00*

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED
PURSUANT TO ITEMS 2(d) or 2(e) []

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6. CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

	7. SOLE VOTING POWER
	0
NUMBER OF	-----
SHARES	8. SHARED VOTING POWER
BENEFICIALLY	31,303,362**
OWNED BY EACH	-----
PERSON WITH	9. SOLE DISPOSITIVE POWER
	0

	10. SHARED DISPOSITIVE POWER
	31,303,362**

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6.3%

14. TYPE OF REPORTING PERSON

00 (LLC)

*See Item 3

**See Items 2 and 5

CUSIP NO. 00724F101

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THE PURPOSE OF THIS AMENDMENT NO. 2 TO SCHEDULE 13D IS TO AMEND THE OWNERSHIP REPORTS OF THE REPORTING PERSONS AND TO AMEND ITEM 4 (PURPOSE OF TRANSACTION), ITEM 6 (CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO SECURITIES OF THE ISSUER) AND ITEM 7 (MATERIAL TO BE FILED AS EXHIBITS). THE INFORMATION BELOW SUPPLEMENTS THE INFORMATION PREVIOUSLY PROVIDED.

Item 1. Security and Issuer

This Schedule 13D relates to the Common Stock, \$.001 par value per share (the "Common Stock") of Adobe Systems Incorporated, a Delaware corporation (the "Issuer"). The address of the principal executive offices of the Issuer is 345 Park Avenue, San Jose, California, 95110-2704.

Item 2. Identity and Background

This statement is filed jointly by (a) ValueAct Capital Master Fund, L.P. ("ValueAct Master Fund"), (b) VA Partners I, LLC ("VA Partners I"), (c) ValueAct Capital Management, L.P. ("ValueAct Management L.P."), (d) ValueAct Capital Management, LLC ("ValueAct Management LLC"), (e) ValueAct Holdings, L.P. ("ValueAct Holdings") and (f) ValueAct Holdings GP, LLC ("ValueAct

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Holdings GP")(collectively, the "Reporting Persons").

ValueAct Master Fund is a limited partnership organized under the laws of the British Virgin Islands. It has a principal business address of 435 Pacific Avenue, Fourth Floor, San Francisco, CA 94133.

VA Partners I is a Delaware limited liability company, the principal business of which is to serve as the General Partner to ValueAct Master Fund. It has a principal business address of 435 Pacific Avenue, Fourth Floor, San Francisco, CA 94133.

ValueAct Management L.P. is a Delaware limited partnership which renders management services to ValueAct Master Fund. ValueAct Management LLC is a Delaware limited liability company, the principal business of which is to serve as the General Partner to ValueAct Management L.P. Each has a principal business address of 435 Pacific Avenue, Fourth Floor, San Francisco, CA 94133.

ValueAct Holdings is a Delaware limited partnership and is the sole owner of the limited partnership interests of ValueAct Management L.P. and the membership interests of ValueAct Management LLC and is the majority owner of the membership interests of VA Partners I. ValueAct Holdings GP is a Delaware limited liability company, the principal business of which is to serve as the General Partner to ValueAct Holdings. Each has a principal business address of 435 Pacific Avenue, Fourth Floor, San Francisco, CA 94133.

(d) and (e). None of the entities or persons identified in this Item 2 has during the past five years been convicted of any criminal proceeding (excluding traffic violations or similar misdemeanors), nor been a party to a civil proceeding of a judicial or administrative body of competent judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

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Item 4. Purpose of Transaction

On December 4, 2012, the Board of Directors (the "Board") of Adobe Systems Incorporated (the "Issuer") increased the size of the Board from twelve to thirteen directors and the Issuer entered into a Nomination and Standstill Agreement (the "Agreement") with VA Partners I, LLC, ValueAct Capital Master Fund, L.P., ValueAct Capital Management, L.P., ValueAct Capital Management, LLC, ValueAct Holdings, L.P., ValueAct Holdings GP, LLC and Kelly J. Barlow (collectively, the "ValueAct Group"). The ValueAct Group represented in the Agreement that, as of December 4, 2012, they collectively owned approximately 31.3 million shares (approximately 6.3% of the outstanding common stock of the Issuer).

Pursuant to the Agreement, the Board appointed Kelly J. Barlow as a member of the Board, effective immediately, to serve until the Issuer's 2013 Annual Meeting and the election and qualification of his successor or, if earlier, his death or resignation or removal from the Board. The Board also appointed Mr. Barlow to the Executive Compensation Committee.

Under the Agreement, the Issuer agreed to nominate Mr. Barlow for election to the Board at the Issuer's 2013 annual meeting of stockholders (the "2013 Annual Meeting"). In the event Mr. Barlow resigns or is otherwise

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removed prior to the Issuer's 2014 annual meeting of stockholders, the Issuer and the ValueAct Group shall work in good faith to appoint a mutually acceptable replacement nominee who meets the Issuer's historical standards and criteria, so long as the ValueAct Group then owns at least 5% of the outstanding common stock of the Issuer.

Mr. Barlow has agreed, while serving as a member of the Board (1) to meet all director independence and other standards of the Issuer, The NASDAQ Stock Market and the Securities and Exchange Commission, (2) to remain qualified to serve as a director under the Delaware General Corporation Law, (3) to comply with all of the policies, procedures, standards and guidelines applicable to Board members, including the Issuer's Code of Business Conduct, Insider Trading Policy, Stock Ownership Guidelines and Corporate Governance Guidelines, and (4) to protect Issuer confidential information, including discussions in Board or committee meetings. The Issuer has also agreed that the ValueAct Group may receive certain information about the Issuer in accordance with a confidentiality agreement entered into by the parties.

The Issuer's obligations under the Agreement will cease, and Mr. Barlow (or his replacement) must offer to resign from the Board if the ValueAct Group ceases to hold at least 5% of the Issuer's common stock, Mr. Barlow ceases to satisfy the conditions set forth above, any member of the ValueAct Group breaches the Agreement or Mr. Barlow (or his replacement) ceases to meet the requirements for Board service.

The Agreement terminates on the date that is the earliest of: (1) the date of the 2014 annual meeting; (2) if the Issuer does not include Mr. Barlow (or his replacement) in its slate of nominees for the Issuer's 2014 annual meeting of stockholders, the date Mr. Barlow (or his replacement) ceases to be a member of the Board; (3) the date that is 10 days following the date that the Issuer materially breaches its nomination obligations under the Agreement; or (4) the date that is three months after the date Mr.

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Barlow (or his replacement) ceases to be a member of the Board and is not replaced.

During the term of the Agreement, the ValueAct Group agrees, subject to certain exceptions, that it shall not:

- make, participate in or encourage any solicitation of proxies or consents;
- deposit any securities of the Issuer in any voting trust or similar arrangement;
- own in excess of 12% of the Issuer's stock;
- sell or transfer shares of the Issuer's stock to any third party such that the third party would own more than 9.9% of the Issuer's stock;
- effect, propose, participate in or facilitate any tender or exchange offer, merger, consolidation, acquisition, scheme, arrangement, business combination, recapitalization, reorganization, sale or acquisition of material assets, liquidation, dissolution or other extraordinary transaction involving the Issuer or any of its subsidiaries;
- engage in hedging transactions with respect to the Issuer's stock;

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- call or seek to call any meeting of stockholders, including by written consent;
- seek representation on the Board, except as set forth in the Agreement;
- seek the removal of any member of the Board;
- make a request for any stockholder list or other Issuer books and records;
- act to control or to influence or act to seek control or influence the management, Board or policies of the Issuer (except that the Mr. Barlow or his replacement may act solely in his capacity as a director consistent with his fiduciary duties as a director);
- take any action in support of or make any proposal or request that constitutes:
 - advising, controlling, changing or influencing the Board or management of the Issuer, including any plans or proposals to change the number or term of directors or to fill any vacancies on the Board;
 - any material change in the capitalization, stock repurchase programs and practices or dividend policy of the Issuer;
 - any other material change in the Issuer's management, business or corporate structure; or
 - seeking to have the Issuer waive or make amendments or modifications to its Certificate of Incorporation or Bylaws, or other actions

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that may impede or facilitate the acquisition of control of the Issuer by any person;

- disparage the Issuer, its affiliates or any of its current or former officers or directors; or
- encourage a third party to do any of the foregoing.

The foregoing description of the Agreement is qualified in its entirety by reference to the full text of the Agreement, which is attached as Exhibit 99.1 to the Issuer's Current Report on Form 8-K dated December 5, 2012 and incorporated herein by reference.

Item 5. Interest in Securities of the Issuer

(a) and (b). Set forth below is the beneficial ownership of shares of Common Stock of the Issuer for each person named in Item 2. Shares reported as beneficially owned by ValueAct Master Fund are also reported as beneficially owned by (i) ValueAct Management L.P. as the manager of each such investment partnership, (ii) ValueAct Management LLC, as General Partner of ValueAct Management L.P., (iii) ValueAct Holdings, as the sole owner of the limited partnership interests of ValueAct Management L.P. and the membership interests of ValueAct Management LLC and as the majority owner of the membership interests of VA Partners I and (iv) ValueAct Holdings GP, as General Partner of ValueAct Holdings. Shares reported as beneficially owned

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by ValueAct Master Fund are also reported as beneficially owned by VA Partners I, as General Partner of ValueAct Master Fund. VA Partners I, ValueAct Management L.P., ValueAct Management LLC, ValueAct Holdings and ValueAct Holdings GP also, directly or indirectly, may own interests in one or more than one of the partnerships from time to time. Unless otherwise indicated below, by reason of such relationship ValueAct Master Fund is reported as having shared power to vote or to direct the vote, and shared power to dispose or direct the disposition of, such shares of Common Stock, with VA Partners I (only with respect to ValueAct Master Fund), ValueAct Management L.P., ValueAct Management LLC, ValueAct Holdings and ValueAct Holdings GP.

As of the date hereof, ValueAct Master Fund is the beneficial owner of 31,303,362 shares of Common Stock, representing approximately 6.3% of the Issuer's outstanding Common Stock (which shares may also be deemed to be beneficially owned by VA Partners I).

ValueAct Management L.P., ValueAct Management LLC, ValueAct Holdings and ValueAct Holdings GP may each be deemed the beneficial owner of an aggregate of 31,303,362 shares of Common Stock, representing approximately 6.3% of the Issuer's outstanding Common Stock.

All percentages set forth in this Schedule 13D are based upon the Issuer's reported 495,054,621 outstanding shares of Common Stock as reported in the Issuer's Form 10-Q for the quarterly period ended August 31, 2012.

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(c) The Reporting Persons have not made any transactions in the Issuer's Common Stock in the sixty days prior to the date of this Report.

(d) and (e) Not applicable.

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer

Other than as described elsewhere in this Report and as previously reported, the Reporting Persons have no understandings, arrangements, relationships or contracts relating to the Issuer's Common Stock which are required to be described hereunder.

Item 7. Material to Be Filed as Exhibits

(1) Joint Filing Agreement

(2) Nomination and Standstill Agreement (the "Agreement") with VA Partners I, LLC, ValueAct Capital Master Fund, L.P., ValueAct Capital Management, L.P., ValueAct Capital Management, LLC, ValueAct Holdings, L.P., ValueAct Holdings GP, LLC and Kelly J. Barlow (collectively, the "ValueAct Group") and Adobe Systems Incorporated ("the Issuer"), filed as Exhibit 99.1 to the Issuer's Current Report on Form 8-K dated December 5, 2012 and incorporated herein by reference.

SIGNATURE

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

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below on this Schedule 13D hereby constitutes and appoints Jeffrey W. Ubben, George F. Hamel, Jr., G. Mason Morfit and Allison Bennington, and each of them, with full power to act without the other, his or its true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or it and in his or its name, place and stead, in any and all capacities (until revoked in writing) to sign any and all amendments to this Schedule 13D, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary fully to all intents and purposes as he or it might or could do in person, thereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

ValueAct Capital Master Fund L.P., by
VA Partners I, LLC, its General Partner

By: /s/ George F. Hamel, Jr.

Dated: December 6, 2012

George F. Hamel, Jr., Chief Operating Officer

VA Partners I, LLC

By: /s/ George F. Hamel, Jr.

Dated: December 6, 2012

George F. Hamel, Jr., Chief Operating Officer

ValueAct Capital Management, L.P., by
ValueAct Capital Management, LLC its
General Partner

By: /s/ George F. Hamel, Jr.

Dated: December 6, 2012

George F. Hamel, Jr., Chief Operating Officer

ValueAct Capital Management, LLC

By: /s/ George F. Hamel, Jr.

Dated: December 6, 2012

George F. Hamel, Jr., Chief Operating Officer

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CUSIP NO. 00724F101

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ValueAct Holdings, L.P., by
ValueAct Holdings GP, LLC, its
General Partner

By: /s/ George F. Hamel, Jr.

Dated: December 6, 2012

George F. Hamel, Jr., Chief Operating Officer

ValueAct Holdings GP, LLC

By: /s/ George F. Hamel, Jr.

Dated: December 6, 2012

George F. Hamel, Jr., Chief Operating Officer

CUSIP NO. 00724F101

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Exhibit 1

JOINT FILING UNDERTAKING

The undersigned parties hereby agree that the Schedule 13D filed herewith (and any amendments thereto) relating to the Common Stock of Adobe Systems Incorporated, is being filed jointly on behalf of each of them with the Securities and Exchange Commission pursuant to Section 13(d) of the Securities Exchange Act of 1934, as amended.

ValueAct Capital Master Fund L.P., by
VA Partners I, LLC, its General Partner

By: /s/ George F. Hamel, Jr.

Dated: December 6, 2012

George F. Hamel, Jr., Chief Operating Officer

VA Partners I, LLC

By: /s/ George F. Hamel, Jr.

Dated: December 6, 2012

George F. Hamel, Jr., Chief Operating Officer

ValueAct Capital Management, L.P., by
ValueAct Capital Management, LLC its
General Partner

By: /s/ George F. Hamel, Jr.

Dated: December 6, 2012

George F. Hamel, Jr., Chief Operating Officer

ValueAct Capital Management, LLC

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By: /s/ George F. Hamel, Jr.

Dated: December 6, 2012

George F. Hamel, Jr., Chief Operating Officer

ValueAct Holdings, L.P., by
ValueAct Holdings GP, LLC, its
General Partner

By: /s/ George F. Hamel, Jr.

Dated: December 6, 2012

George F. Hamel, Jr., Chief Operating Officer

ValueAct Holdings GP, LLC

By: /s/ George F. Hamel, Jr.

Dated: December 6, 2012

George F. Hamel, Jr., Chief Operating Officer