

EBAY INC  
Form SC TO-I/A  
September 01, 2009

**SECURITIES AND EXCHANGE COMMISSION**

**WASHINGTON, D.C. 20549**

**SCHEDULE TO**

**(RULE 13e-4)**

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

**OF THE SECURITIES EXCHANGE ACT OF 1934**

**(AMENDMENT NO. 3)**

**eBay Inc.**

**(Name of Subject Company (Issuer))**

**eBay Inc.**

**(Name of Filing Person (Offeror))**

**Options to Purchase Common Stock, Par Value \$0.001 Per Share**

**With an Exercise Price Equal to or Greater Than \$27.01 Per Share**

**(Title of Class of Securities)**

**27864210**

**(CUSIP Number of Class of Securities)**

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(Underlying Common Stock)

**Michael R. Jacobson, Esq.**

**Senior Vice President, Legal Affairs, General Counsel and Secretary**

**eBay Inc.**

**2145 Hamilton Avenue**

**San Jose, California 95125**

**(408) 376-7400**

(Name, Address and Telephone Number of Person Authorized to Receive

Notices and Communications on Behalf of the Filing Person)

*With a copy to:*

**Robert A. Koenig, Esq.**

**Latham & Watkins LLP**

**140 Scott Drive**

**Menlo Park, California 94025**

**(650) 328-4600**

**Transaction Valuation\***  
\$ 171,136,485

**Amount of Filing Fee\*\***  
\$9,549.42

\* Estimated solely for purposes of determining the filing fee. The calculation of the Transaction Valuation assumes that all outstanding options to purchase shares of eBay Inc. common stock that may be eligible for exchange in the offer will be exchanged pursuant to the offer. These options cover an aggregate of 57,333,362 shares of eBay Inc. common stock and have an aggregate value of \$171,136,485 as of August 5, 2009, calculated using the Black-Scholes option pricing model.

\*\* The amount of the filing fee, calculated in accordance with Rule 0-11(b) of the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory #5 for fiscal year 2009, issued March 11, 2009, equals \$55.80 per \$1,000,000 of the aggregate amount of the Transaction Valuation. The Transaction Valuation set forth above was calculated for the sole purpose of determining the filing fee and should not be used for any other purpose.

x 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.

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Amount Previously Paid: \$9,549.42  
Form or Registration No.: Schedule TO

Filing Party: eBay Inc.  
Date Filed: August 10, 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:

This Amendment No. 3 (this Amendment No. 3) amends and supplements the Tender Offer Statement on Schedule TO (the Schedule TO) originally filed by eBay Inc. (eBay) with the Securities and Exchange Commission on August 10, 2009, as previously amended and supplemented on August 26, 2009 and August 28, 2009. Pursuant to Rule 12b-15 under the Securities Exchange Act of 1934, as amended, this Amendment No. 3 amends and restates only the items and exhibits to the Schedule TO that are being amended and restated, and unaffected items and exhibits are not included herein. This Amendment No. 3 should be read in conjunction with the Schedule TO.

The Schedule TO relates to a stock option exchange program (the Stock Option Exchange Program) pursuant to which eBay is offering certain employees the opportunity to exchange certain options to purchase up to an aggregate of 57,333,362 shares of eBay's common stock, whether vested or unvested, that were granted under one of eBay's existing equity incentive plans and have a per share exercise price equal to or greater than \$27.01, as described in the Offer to Exchange Certain Outstanding Stock Options for Restricted Stock Units, Options or Cash Payments dated August 10, 2009 provided as Exhibit (a)(1)(i) (as subsequently amended, the Offer to Exchange) to the Schedule TO. Capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Offer to Exchange.

The Company has amended and supplemented the terms of the Stock Option Exchange Program as follows. The following amendments and supplements apply to the Offer to Exchange as well as the other documents filed as exhibits to the Schedule TO, to the extent the original provisions of such other documents would conflict or otherwise be inconsistent with the Schedule TO and the Offer to Exchange, as so amended.

**Item 1. Summary Term Sheet, Item 2. Subject Company Information, Item 4. Terms of the Transaction and Item 6. Purposes of the Transaction and Plans or Proposals**

Items 1, 2, 4 and 6 of the Schedule TO are hereby amended and supplemented by replacing the reference to Q32 in the Index to Questions and Answers with the following Q32 and by replacing in its entirety Q&A 32 in the Summary Term Sheet and Questions and Answers with the following:

**Q32. If I am a Skype employee, can I still participate in the eBay Stock Option Exchange Program? What will happen to my eligible options and new RSUs if the sale of Skype is completed?**

A32. Our agreement to sell Skype raises important matters for you to consider in making a decision whether or not to participate in eBay's Stock Option Exchange Program. Here are some things you should consider in evaluating whether or not to participate in the Stock Option Exchange Program.

As we have announced, we expect that the sale of Skype will close during the fourth quarter of 2009. If the sale of Skype is completed, as of the closing date of the sale you will no longer be an employee of eBay or one of its majority-owned subsidiaries. If you participate in the Stock Option Exchange Program and exchange your eligible options for new RSUs, you must be an employee of eBay or one of its majority-owned subsidiaries on the vesting date of the RSUs in order for the RSUs to vest. If your RSUs do not vest, you will not receive shares of eBay common stock under your new RSUs. The earliest vesting date for any new RSUs received in the Stock Option Exchange Program will be the first anniversary of the completion date (i.e., in September 2010).

As a Skype employee, if you decide not to exchange eligible options through the Stock Option Exchange Program, you generally will have three months or 90 days from the completion of the sale of Skype to exercise any vested options. Your vested options will only have value if eBay's stock price is higher than the exercise price during the period in which you are eligible to exercise your vested options. Unvested options will expire upon completion of the sale.

Only you can decide whether or not to participate in the Stock Option Exchange Program.

Items 4 and 6 of the Schedule TO are hereby amended and supplemented by replacing the first sentence of the fifth paragraph of Section 3 ( Purposes of the Offer and Reasons for Structure of the Offer ) with the following:

On September 1, 2009, we entered into a share purchase agreement with eBay International AG, a company organized under the laws of Switzerland and our wholly owned subsidiary ( International ), and Sonorit Holdings, AS, a Norwegian company and our wholly owned subsidiary ( Sonorit, and together with eBay and International, the Sellers ), and an entity organized and owned by an investment group led by Silver Lake and including the Canadian Pension Plan (CPP) Investment Board, Index Ventures and Andreessen Horowitz (the Buyer ), pursuant to which the Sellers agreed to sell the share capital of Skype Luxembourg Holdings S.a.r.l., Skype Inc., Camino Networks, Inc. and Sonorit (collectively with their respective subsidiaries the Skype Companies ) to the Buyer. The transaction values the Skype Companies at approximately \$2.75 billion and is expected to close in the fourth quarter of 2009.

**Item 10. Financial Statements**

Item 10 of the Schedule TO is hereby amended and supplemented by replacing the fifth numbered line in the first paragraph of Section 17 ( Additional Information ) with the following:

5. Our Current Reports on Form 8-K filed with the SEC on March 12, 2009, April 1, 2009, April 16, 2009, May 1, 2009 and September 1, 2009; and

**Item 12. Exhibits**

The Exhibit Index attached to this Amendment No. 3 is incorporated herein by reference.

**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: September 1, 2009

**eBay Inc.**

By: /s/ Brian H. Levey  
Brian H. Levey  
Vice President, Deputy General Counsel  
and Assistant Secretary

**EXHIBIT INDEX**

<b>Exhibit</b>	<b>Description</b>
(a)(1)(i)*	Offer to Exchange Certain Outstanding Stock Options for Restricted Stock Units, Options or Cash Payments, dated August 10, 2009
(a)(1)(ii)*	Form of communication to employees from John Donahoe, eBay's President and Chief Executive Officer, dated August 10, 2009
(a)(1)(iii)*	Transcript and slides from video presentation
(a)(1)(iv)*	Election Form
(a)(1)(v)*	Form of Agreement to Terms of Election
(a)(1)(vi)*	Form of letter provided to employees requesting hardcopy materials
(a)(1)(vii)*	Form of email to employees in Canada
(a)(1)(viii)*	Screen shots of election website
(a)(1)(ix)*	Intranet posting for Offer to Exchange
(a)(1)(x)*	Tax Ruling for Eligible Employees Subject to Tax in the Netherlands
(a)(1)(xi)*	Form of Consent Agreement to Tax Ruling for Eligible Employees Subject to Tax in the Netherlands
(a)(1)(xii)*	Tax Ruling for Eligible Employees Subject to Tax in Israel
(a)(1)(xiii)*	Form of Consent Agreement to Tax Ruling for Eligible Employees Subject to Tax in Israel
(a)(1)(xiv)*	Form of email confirmation
(a)(1)(xv)*	Form of flier reminder
(a)(1)(xvi)*	Form of email provided to eligible employees holding eligible options granted in Israel
(a)(1)(xvii)*	Form of email provided to eligible employees holding eligible options granted in the Netherlands
(a)(1)(xviii)*	Form of email provided to employees on expatriate assignments
(a)(1)(xix)*	Form of Communications Guidelines
(a)(1)(xx)*	Form of email reminders to eligible employees
(a)(1)(xxi)*	Form of email to eligible employees eligible to receive cash payments (notification of additional disclosure and calculation tool available on election website)
(a)(1)(xxii)*	Form of email to eligible employees eligible to receive cash payments (regarding closing stock price)
(a)(1)(xxiii)*	Screen shot of cash payment calculator (available on election website for eligible employees eligible to receive cash payments)
(a)(1)(xxiv)	Excerpt from Q&A provided to Springboard employees on September 1, 2009
(a)(2)	Not applicable
(a)(3)	Not applicable
(a)(4)	Not applicable
(b)	Not applicable
(d)(1)	eBay Inc. 2008 Equity Incentive Award Plan, as amended (1)
(d)(2)	Form of Notice of Grant and Restricted Stock Unit Agreement under the eBay Inc. 2008 Equity Incentive Award Plan (U.S. Employees) (2)
(d)(3)*	Form of Notice of Grant, Restricted Stock Unit Agreement and Special Provisions for Restricted Stock Unit Awards for Participants Outside the U.S, under the eBay Inc. 2008 Equity Incentive Award Plan

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- (d)(4)\* Form of Notice of Grant (Israel Employees), Appendix Israel Taxpayers and Restricted Stock Unit Agreement (Israel Employees), under the eBay Inc. 2008 Equity Incentive Award Plan
- (d)(5) eBay Inc. 2001 Equity Incentive Plan, as amended (3)
- (d)(6)\* Form of Notice of Grant, Option Agreement and Special Provisions for Stock Options for Optionholders Outside the U.S. under the eBay Inc. 2001 Equity Incentive Plan
- (d)(7) eBay Inc. 2003 Deferred Stock Unit Plan, as amended (4)

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<b>Exhibit</b>	<b>Description</b>
(d)(8)*	Form of Notice of Grant, Restricted Stock Unit Agreement for Employees in France under the eBay Inc. 2003 Deferred Stock Unit Plan and Rules of the eBay Inc. 2003 Deferred Stock Unit Plan for the Grant of Restricted Stock Units to Participants in France
(g)	Not applicable
(h)	Not applicable

\* Previously Filed.

- (1) Incorporated by reference to Exhibit 99.1 of eBay's Form S-8 (SEC File No. 333-41944) filed with the SEC on June 5, 2009.
- (2) Incorporated by reference to Exhibit 10.2 of eBay's Current Report on Form 8-K (SEC File No. 000-24821) filed with the SEC on June 25, 2008.
- (3) Incorporated by reference to Exhibit 10.13 of eBay's Annual Report on Form 10-K (SEC File No. 000-24821) filed with the SEC on February 28, 2007.
- (4) Incorporated by reference to Exhibit 10.15 of eBay's Annual Report on Form 10-K (SEC File No. 000-24821) filed with the SEC on February 28, 2007.