

CUTERA INC
Form SC TO-I
June 08, 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

Cutera, Inc.

(Name of Subject Company (Issuer) and Filing Person (Offeror))

Options to Purchase Common Stock, \$0.001 par value

(Title of Class of Securities)

232109108

(CUSIP Number of Class of Securities Underlying Common Stock)

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Kevin P. Connors

President and Chief Executive Officer

Cutera, Inc.

3240 Bayshore Boulevard

Brisbane, CA 94005

(415) 657-5500

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

Copies to:

Philip H. Oettinger, Esq.

Elton Satusky, Esq.

Wilson Sonsini Goodrich & Rosati

Professional Corporation

650 Page Mill Road

Palo Alto, CA 94304-1050

(650) 493-9300

CALCULATION OF FILING FEE

Transaction Valuation*
\$1,565,000

Amount of Filing Fee**
\$87.33

* Calculated solely for purposes of determining the filing fee. This amount assumes that options to purchase 936,573 shares of common stock of Cutera, Inc. having an aggregate value of \$1,565,000 as of May 29, 2009 will be exchanged or cancelled pursuant to this offer. The aggregate value of such options was calculated based on the Black-Scholes option pricing model.

** The amount of the filing fee, calculated in accordance with the Securities Exchange Act of 1934, as amended, equals \$55.80 for each \$1,000,000 of the value of the transaction.

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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:	Not applicable.
Form or Registration No.:	Not applicable.
Filing party:	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:

This Tender Offer Statement on Schedule TO relates to an offer by Cutera, Inc., a Delaware corporation (*Cutera* or the *Company*), to exchange (the *Exchange Offer*) certain outstanding options, whether vested or unvested, for new options to purchase shares of the *Company*'s common stock, provided the vesting criteria are satisfied, that (i) were granted with an exercise price greater than or equal to \$9.00; (ii) were granted under the Cutera, Inc. 2004 Equity Incentive Plan or the 1998 Stock Plan; and (iii) are held by eligible participants (the *Eligible Options*).

These *Eligible Options* may be exchanged for new options that will be granted under the *Company*'s 2004 Equity Incentive Plan (the *New Options*), upon the terms and subject to the conditions set forth in (i) the Offer to Exchange Certain Outstanding Options for New Options, dated June 8, 2009 (the *Offer to Exchange*), attached hereto as Exhibit (a)(1)(A), and (ii) the Election Form, attached hereto as Exhibit (a)(1)(C). These documents, as they may be amended or supplemented from time to time, together constitute the *Disclosure Documents*. An *eligible employee* refers to all U.S. based employees of Cutera, Inc. who are employees at the time of this offer and who remain employed through the date of the Cancellation Date and the New Option Grant Date. However, the Executive Officers and the independent members of our board of directors may not participate in this offer.

The information in the *Disclosure Documents*, including all schedules and annexes to the *Disclosure Documents*, is incorporated herein by reference to answer the items required in this Schedule TO.

Item 1. Summary Term Sheet.

The information set forth under the caption *Summary Term Sheet* in the Offer to Exchange is incorporated herein by reference.

Item 2. Subject Company Information.

(a) *Name and Address.*

Cutera is the issuer of the securities subject to the Exchange Offer. The address of the *Company*'s principal executive office is 3240 Bayshore Boulevard, Brisbane, CA 94005, and the telephone number at that address is (415) 657-5500. The information set forth in the Offer to Exchange under the caption *The Offer Information concerning Cutera* is incorporated herein by reference.

(b) *Securities.*

The subject class of securities consists of the *Eligible Options*. The actual number of shares of common stock subject to the *New Options* to be issued in the Exchange Offer will depend on the number of shares of common stock subject to the unexercised options tendered by eligible employees and accepted for exchange and cancelled. The information set forth in the Offer to Exchange under the captions *Summary Term Sheet*, *Risks of Participating in the Offer*, and the sections under the caption *The Offer* titled *Number of New Options; Expiration Date*, *Acceptance of options for exchange and issuance of New Options*, and *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 the caption *The Offer Price range of shares underlying the options* is incorporated herein by reference.

Item 3. Identity and Background of Filing Person.

(a) *Name and Address.*

The filing person is the issuer. The information set forth under Item 2(a) above is incorporated by reference.

Pursuant to General Instruction C to Schedule TO, the information set forth on Schedule A to the Offer to Exchange is incorporated herein by reference.

Item 4. Terms of the Transaction.

(a) *Material Terms.*

The information set forth in the Offer to Exchange under the caption *Summary Term Sheet* and the sections under the caption *The Offer* titled *Eligibility*, *Number of New Options*; *Expiration Date*, *Purpose of the offer*, *Procedures for electing to exchange options*, *Withdrawal rights and change of election*, *Acceptance of options for exchange and issuance of New Options*, *Conditions of the offer*, *Price range of shares underlying the options*, *Source and amount of consideration*; *terms of New Options*, *Status of options acquired by us in the offer*; *accounting consequences of the offer*, *Legal matters*; *regulatory approvals*, *Material U.S. federal income tax consequences*, *Material non-U.S. income tax consequences* and certain other non-U.S. considerations, and *Extension of offer*; *termination*; *amendment* is incorporated herein by reference.

(b) *Purchases.*

The information set forth in the Offer to Exchange under the caption *The Offer* *Interests of directors and Executive Officers*; *transactions and arrangements concerning the options* is incorporated herein by reference.

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 the caption *The Offer* *Interests of directors and Executive Officers*; *transactions and arrangements concerning the options* is incorporated herein by reference. The eligible option plan and related option agreement attached hereto as Exhibit (d) contain information regarding the subject securities.

Item 6. Purposes of the Transaction and Plans or Proposals.

(a) *Purposes.*

The information set forth in the Offer to Exchange under the captions *Summary Term Sheet* and *The Offer* *Purpose of the offer* is incorporated herein by reference.

(b) *Use of Securities Acquired.*

The information set forth in the Offer to Exchange under the captions "The Offer - Acceptance of options for exchange and issuance of New Options" and "The Offer - Status of options acquired by us in the offer; accounting consequences of the offer" is incorporated herein by reference.

(c) *Plans.*

The information set forth in the Offer to Exchange under the caption "The Offer - Purpose of the offer" 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 the caption "The Offer - Source and amount of consideration; terms of New Options" is incorporated herein by reference.

(b) *Conditions.*

The information set forth in the Offer to Exchange under the caption "The Offer - Conditions of the offer," is incorporated herein by reference.

(d) *Borrowed Funds.*

Not applicable.

Item 8. Interest in Securities of the Subject Company.

(a) *Securities Ownership.*

The information set forth in the Offer to Exchange under the caption "The Offer - Interests of directors and Executive Officers; transactions and arrangements concerning the options" is incorporated herein by reference.

(b) *Securities Transactions.*

The information set forth in the Offer to Exchange under the caption "The Offer - Interests of directors and Executive Officers; transactions and arrangements concerning the options" is incorporated herein by reference.

Item 9. Person/Assets, Retained, Employed, Compensated or Used.

(a) *Solicitations or Recommendations.*

Not applicable.

Item 10. Financial Statements.

(a) Financial Information.

The information set forth in Schedule B to the Offer to Exchange and in the Offer to Exchange under the captions The Offer Information concerning Cutera, The Offer Financial statements and The Offer Additional information is incorporated herein by reference. The Company's Annual Report on Form 10-K and the Quarterly Reports on Form 10-Q can also be accessed electronically on the Securities and Exchange Commission's website at <http://www.sec.gov>.

(b) Pro Forma Information.

Not applicable.

Item 11. Additional Information.

(a) Agreements, Regulatory Requirements and Legal Proceedings.

The information set forth in the Offer to Exchange under the captions The Offer Interests of directors and Executive Officers; transactions and arrangements concerning the options and The Offer Legal matters; regulatory approvals is incorporated herein by reference.

(b) Other Material Information.

Not applicable.

Item 12. Exhibits.

- (a)(1)(A) Offer to Exchange Certain Outstanding Options for New Options, dated June 8, 2009.
- (a)(1)(B) Form of E-Mail Announcement of Offer to Exchange (from Kevin Connors).
- (a)(1)(C) Election Form.
- (a)(1)(D) Confirmation E-mail/ Letter to Employees who Elect to Participate in the Exchange Program.
- (a)(1)(E) Form of Reminder E-mail/ Letter.
- (b) Not applicable.
- (d)(1) The Cutera, Inc. 1998 Stock Plan, incorporated herein by reference to Exhibit 10.2 to the Company's registration statement on Form S-1, filed with the SEC on January 15, 2004.
- (d)(2) The Cutera, Inc. 2004 Equity Incentive Plan, as amended, incorporated herein by reference to the Company's 2008 Definitive Proxy Statement, filed with the SEC on April 28, 2008.

- (d)(3) The Cutera, Inc. 2004 Employee Stock Purchase Plan, incorporated herein by reference to Exhibit 10.4 to the Company's 2006 Annual Report on Form 10-K, filed with the SEC on March 16, 2007.
- (g) Not applicable.
- (h) Not applicable.

Item 13. Information Required by Schedule 13E-3.

- (a) Not applicable.

SIGNATURE

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

CUTERA, INC.

/s/ Kevin P. Connors
Kevin P. Connors

President and Chief Executive Officer

Date: June 8, 2009

INDEX TO EXHIBITS

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