

3D SYSTEMS CORP
Form S-8
May 19, 2004

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As filed with the Securities and Exchange Commission on May 19, 2004

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

Under

The Securities Act of 1933

3D SYSTEMS CORPORATION

(Exact name of registrant as specified in its charter)

Delaware

(State or Other Jurisdiction of Incorporation or Organization)

95-4431352

(I.R.S. Employer Identification No.)

26081 Avenue Hall Valencia, California

(Address of Principal Executive Offices)

91355

(Zip Code)

**2004 Incentive Stock Plan of 3D Systems Corporation
Restricted Stock Plan for Non-Employee Directors of 3D Systems Corporation**

(Full titles of the Plans)

Robert M. Grace, Jr., Esq.

Vice President, General Counsel and Secretary

3D Systems Corporation

26081 Avenue Hall, Valencia, California 91355

(Name and Address of Agent for Service)

(661) 295-5600

(Telephone number, including area code, of agent for service)

Copies to:

Peter F. Ziegler, Esq.

Gibson, Dunn & Crutcher LLP

333 South Grand Avenue

Los Angeles, CA 90071

(213) 229-7000

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price	Proposed Maximum Aggregate	Amount of Registration Fee
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		per Share(2)	Offering Price	
Common Stock, par value \$0.001 per share	1,000,000 shares	\$11.41	\$11,410,000	\$1,445.65
Common Stock, par value \$0.001 per share	200,000 shares	\$11.41	\$2,282,000	\$289.13
Total	1,200,000 shares	\$11.41	\$13,692,000	\$1,734.78

(1) The 1,200,000 shares of Common Stock being registered hereunder are reserved for issuance pursuant to the 2004 Incentive Stock Plan of 3D Systems Corporation (1,000,000 shares reserved for issuance) and the Restricted Stock Plan for Non-Employee Directors of 3D Systems Corporation (200,000 shares reserved for issuance) (collectively, the "Plans").

(2) Estimated in accordance with Rules 457(h) and 457(c) under the Securities Act of 1933, as amended (the "Securities Act"), solely for the purpose of calculating the total registration fee. The price per share and aggregate offering price are based upon the average of the high and low prices of the Registrant Common Stock, as reported on the NASDAQ National Market on May 17, 2004.

INTRODUCTION

This Registration Statement on Form S-8 is filed by 3D Systems Corporation (the "Registrant"), relating to 1,200,000 shares of the Registrant's common stock ("Common Stock") to be issued in accordance with the terms of the Plans.

PART I

Information Required in the Section 10(a) Prospectus

The information required in Part I of this Registration Statement is included in the prospectuses for the Plans, which the Registrant has excluded from this Registration Statement in accordance with the instructions to Form S-8.

PART II

Information Required in the Registration Statement and Explanatory Note

Item 3. Incorporation of Documents by Reference

The Registrant hereby incorporates by reference into this Registration Statement the following documents previously filed with the Securities and Exchange Commission (the "Commission"):

- (a) Annual Report on Form 10-K for the year ended December 31, 2003 as filed on March 15, 2004; and
- (b) The description of Registrant's Common Stock contained in Registrant's Registration Statement on Form S-2, dated May 10, 1995, as amended by Amendment No. 1 dated May 25, 1995, Amendment No. 2 dated June 13, 1995 and Amendment No. 3 dated June 19, 1995.

All documents filed pursuant to Sections 13(a), 13(c), 14, and 15(d) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), after the date of this Registration Statement and prior to the filing of a post-effective amendment that indicates that all securities offered hereby have been sold or that deregisters all securities then remaining unsold shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents.

Any document and any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein, or in any other subsequently filed document that also is incorporated or deemed to be incorporated by reference herein, modifies or supersedes such document or statement. Any such document or statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement. Subject to the foregoing, all information appearing in this Registration Statement is qualified in its entirety by the information appearing in the documents incorporated by reference.

Item 4. Description of Securities

Not Applicable.

Item 5. Interests of Named Experts and Counsel

The validity of the shares of Common Stock offered under this Registration Statement has been passed upon for the Registrant by Robert M. Grace, Jr., Esq., Vice President, General Counsel and Secretary of the Registrant. As of the date of this Registration Statement, Mr. Grace was employed by the Registrant and was the beneficial owner of approximately 14,912 shares of Common Stock of the Registrant and 40,000 unvested options to purchase Common Stock of the Registrant.

Item 6. Indemnification of Directors and Officers

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities (including reimbursement for expenses incurred) arising under the Securities Act of 1933, as amended, to which we refer to as the Securities Act.

As permitted by the Delaware General Corporation Law, our Certificate of Incorporation, as amended, includes a provision that eliminates the personal liability of our directors for monetary damages for breach of fiduciary duty as a director, except for liability:

for any breach of the director's duty of loyalty to us or our stockholders;

for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

under section 174 of the Delaware General Corporation law regarding unlawful dividends and stock purchases; or

for any transaction for which the director derived an improper personal benefit.

As permitted by the Delaware General Corporation Law, our Amended and Restated By-Laws provide that:

with respect to any action or proceeding not brought by us, we have the power to indemnify any person who was or is a party or is threatened to be made a party to any action or proceeding if that person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of our company, and with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful;

with respect to any action or proceeding brought by us, we have the power to indemnify any person who was or is a party or is threatened to be made a party to any action or proceeding if that person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of our company; provided, however, no indemnification shall be made in respect of any claim, issue or matter as to which that person is adjudged to be liable to us, unless, and only to the extent that the court determines that the person is fairly and reasonably entitled to indemnity;

to the extent that a director, officer, employee or agent of our company has been successful on the merits or otherwise in defense of any action or proceeding, he or she shall be indemnified against expenses incurred by him or her;

expenses incurred in defending a civil or criminal action or proceeding shall be paid by us in advance of the final disposition of the action or proceeding upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay that amount if it is ultimately determined that he or she is not entitled to indemnification; and

the rights conferred in the Amended and Restated By-Laws are not exclusive.

We have entered into indemnification agreements with certain of our directors and officers to give these directors and officers additional contractual assurances regarding the scope of the indemnification set forth in our amended Certificate of Incorporation and to provide additional procedural protections. At present, there is no pending litigation or proceeding involving any of our directors, officers or employees regarding which indemnification is sought, nor are we aware of any threatened litigation that may result in claims for indemnification.

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The indemnification provisions in our amended Certificate of Incorporation and Amended and Restated By-Laws and the indemnification agreements entered into between us and certain of our directors and officers may be sufficiently broad to permit indemnification of our directors and officers for liabilities arising under the Securities Act.

Item 7. *Exemption from Registration Claimed*

Not Applicable.

Item 8. *Exhibits*

Exhibit Number	Exhibit*
4.1	2004 Incentive Stock Plan of 3D Systems Corporation.
4.2	Form of Restricted Stock Purchase Agreement for Employees.
4.3	Form of Restricted Stock Purchase Agreement for Officers.
4.4	Restricted Stock Plan for Non-Employee Directors of 3D Systems Corporation.
4.5	Form of Restricted Stock Purchase Agreement for Non-Employee Directors.
4.6	Certificate of Incorporation of Registrant. [Exhibit 3.1 to Form 8-B filed on August 16, 1993, and the amendment thereto, filed on Form 8-B/A on February 4, 1994]
4.7	Amendment to Certificate of Incorporation filed on May 23, 1995. [Exhibit 3.2 to Registrant's Registration Statement on Form S-2/A, filed on May 25, 1995]
4.8	Certificate of Designations of the Series B Convertible Preferred Stock, filed with the Secretary of State of Delaware on May 2, 2003. [Exhibit 3.1 to Registrant's Current Report on Form 8-K, filed on May 7, 2003]
4.9	Amended and Restated By-Laws of the Registrant. [Exhibit 3.5 of Registrant's Annual Report on Form 10-K for the year ended December 31, 2003, filed on March 15, 2004]
5.1	Opinion of Robert M. Grace, Jr., Esq.
23.1	Consent of Deloitte & Touche, LLP, Independent Auditors.
23.2	Consent of BDO Seidman, LLP, Independent Certified Public Accountants.
23.2	Consent of Robert M. Grace, Jr. Esq. (contained in Exhibit 5.1).
24.1	Power of Attorney (included on the signature pages to this Registration Statement on Form S-8).

*

Material in brackets is incorporated herein by reference

Item 9. *Undertakings*

A. The undersigned Registrant hereby undertakes: (1) to file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement (i) to include any prospectus required by Section 10(a)(3) of the 1933 Act; (ii) to reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement; and (iii) to include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement; *provided, however*, that clauses

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(1)(i) and (1)(ii) shall not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or Section 15(d) of the 1934 Act that are incorporated by reference into this Registration Statement; (2) that for the purpose of determining any liability under the 1933 Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof; and (3) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold upon the termination of the offering.

B. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the 1933 Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the 1934 Act that is incorporated by reference into this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

C. Insofar as indemnification for liabilities arising under the 1933 Act may be permitted to directors, officers, and controlling persons of the Registrant pursuant to the indemnity provisions incorporated by reference in Item 6, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the 1933 Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer, or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the 1933 Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8, and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Valencia, State of California, on this 19th day of May, 2004.

3D SYSTEMS CORPORATION

By:

/s/ ABRAHAM N. REICHENTAL

Abraham N. Reichental
President, Chief Executive Officer and Director

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POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints each of Robert M. Grace, Jr. and Fred R. Jones, severally, his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the 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 to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of 1933 Act, as amended, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ ABRAHAM N. REICHENTAL</u> Abraham N. Reichental	President, Chief Executive Officer and Director (Principal Executive Officer)	May 19, 2004
<u>/s/ FRED R. JONES</u> Fred R. Jones	Vice President and Chief Financial Officer (Principal Financial Officer)	May 19, 2004
<u>/s/ G. PETER V. WHITE</u> G. Peter V. White	Vice President, Finance (Principal Accounting Officer)	May 19, 2004
<u>/s/ G. WALTER LOEWENBAUM II</u> G. Walter Loewenbaum II	Director	May 19, 2004
<u>/s/ MIRIAM V. GOLD</u> Miriam V. Gold	Director	May 19, 2004
<u>/s/ CHARLES W. HULL</u> Charles W. Hull	Director	May 19, 2004
<u>/s/ JIM D. KEVER</u> Jim D. Kever	Director	May 19, 2004
<u>/s/ KEVIN S. MOORE</u> Kevin S. Moore	Director	May 19, 2004
<u>/s/ RICHARD C. SPALDING</u> Richard C. Spalding	Director	May 19, 2004

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