

IDT CORP  
Form S-8  
November 21, 2003

As filed with the Securities and Exchange Commission on November 21, 2003

Registration No. 333-

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**SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, D.C. 20549

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**FORM S-8**

**REGISTRATION STATEMENT**

*UNDER*

*THE SECURITIES ACT OF 1933*

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**IDT CORPORATION**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**22-3415036**  
(I.R.S. Employer  
Identification Number)

**520 Broad Street**  
**Newark, New Jersey 07102**  
**(973) 438-1000**

(Address of Principal Executive Offices, including Zip Code and Telephone Number)

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# **IDT Corporation Employee Stock Purchase Plan**

(Full Title of the Plan)

**James A. Courter**

**Chief Executive Officer**

**IDT Corporation**

**520 Broad Street**

**Newark, New Jersey 07102**

**(973) 438-1000**

(Name, Address, including Zip Code, and Telephone Number, including Area Code, of Agent for Service)

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*Copies to:*

**Joyce J. Mason, Esq.**

**General Counsel**

**IDT Corporation**

**520 Broad Street**

**Newark, New Jersey 07102**

**(973) 438-1000**

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**CALCULATION OF REGISTRATION FEE**

| <b>Title of Securities to be Registered</b>      | <b>Amount to be Registered(1)</b> | <b>Proposed Maximum Offering Price Per Share(2)</b> | <b>Proposed Maximum Aggregate Offering Price(2)</b> | <b>Amount of Registration Fee</b> |
|--|-----------------------------------|---|---|-----------------------------------|
| Class B Common Stock, par value \$0.01 per share | 500,000                           | \$15.50   | \$7,750,000   | \$626.98                          |

- (1) Represents shares issuable under the IDT Corporation Employee Stock Purchase Plan (the Plan). Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act), this registration statement also covers such additional indeterminate number of shares as may be issuable pursuant to the anti-dilution provisions of the Plan.
- (2) Estimated solely for the purpose of computing the amount of the registration fee under Rule 457(c) and (h). The Plan establishes a purchase price equal to 85% of the fair market value of the Registrant's Class B Common Stock. Accordingly, the price per share and the aggregate offering price are based on \$15.50 per share, which is 85% of \$18.24, the average of the high and low prices per share of the Registrant's Class B Common Stock on the New York Stock Exchange on November 17, 2003.

**PART I**

**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

The document(s) containing the information specified in Part I will be sent or given to employees as specified by Rule 428(b)(1) of the Securities Act of 1933, as amended (the Securities Act ). Such documents are not required to be, and are not being, filed by the Registrant with the Securities and Exchange Commission (the SEC ) either as part of this registration statement or as prospectuses or prospectus supplements pursuant to Rule 424 of the Securities Act. Such documents, together with the documents incorporated by reference in this registration statement pursuant to Item 3 of Part II of this registration statement, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents By Reference.**

The following documents filed with the SEC by the Registrant, pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act ), are incorporated by reference in this registration statement:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended July 31, 2003, filed with the SEC on October 30, 2003; and
- (b) The description of the Class B common stock, par value \$.01 per share (the Class B Common Stock ), of the Registrant set forth as Item 1 under the caption Description of Securities in the Registrant's Registration Statement on Form 8-A, filed with the SEC on May 4, 2001 pursuant to Section 12(b) of the Exchange Act, including any amendment or report filed for the purpose of updating such information.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing of such documents.

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 which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

Certain legal matters with respect to the Class B Common Stock have been passed on by Joyce J. Mason, Esq. Ms. Mason is Senior Vice President, Secretary, General Counsel and a director of the Registrant and is the beneficial owner of 16,416 shares of common stock, par value \$.01 per share (the Common Stock ), of the Registrant and 281,819 shares of Class B Common Stock, including 4,640 shares of Common Stock and 11,065 shares of Class B Common Stock held by members of her immediate family and 257,699 shares of Class B Common Stock issuable upon the exercise of employee stock options exercisable within 60 days. Ms. Mason is the sister of Howard Jonas, Chairman of the Board of the Registrant.

**Item 6. Indemnification of Directors and Officers.**

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The Registrant's Restated Certificate of Incorporation, as amended, provides that, to the extent permitted by the Delaware General Corporation Law ( DGCL ), directors of the Registrant shall not be personally liable to the Registrant or its stockholders for monetary damages for breach of fiduciary duty as a director. Section 102(b)(7) of the DGCL, however, states that such a provision may not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the Registrant or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL relating to unlawful dividends, distributions or the repurchase or redemption of stock or (iv) for any transaction from which the director derives an improper personal benefit.

Section 145 of the DGCL empowers a Delaware corporation to indemnify its officers and directors and specific other persons to the extent and under the circumstances set forth therein.

The Registrant's Amended and Restated By-Laws provide that the Registrant shall indemnify and hold harmless, to the fullest extent permitted by the DGCL, any person against expenses (including attorney's fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred in connection with any threatened, pending or completed legal proceedings in which such person is involved by reason of the fact that he is or was a director, officer, employee or agent of the Registrant (or serving in any such capacity with another business organization at the request of the Registrant) if he acted in good faith and in a manner that he reasonably believed to be in or not opposed to the best interests of the Registrant, and, with respect to any criminal action or proceeding, if he had no reasonable cause to believe that his conduct was unlawful. If the legal proceeding, however, is by or in the right of the Registrant, such director, officer, employee or agent may not be indemnified in respect of any claim, issue or matter as to which he shall have been adjudged to be liable to the Registrant unless a court determines otherwise.

The Registrant maintains insurance policies that insure its directors and officers against damages arising out of claims which might be made against them based on their negligent acts or omissions while acting in their capacity as officers and directors.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

| <u>Exhibit No.</u> | <u>Description</u>  |
|--------------------|---|
| 5.1                | Legal Opinion of Joyce J. Mason, Esq.   |
| 10.1               | IDT Corporation Employee Stock Purchase Plan.                                       |
| 23.1               | Consent of Joyce J. Mason, Esq. (included in Exhibit 5.1 hereto).                   |
| 23.2               | Consent of Ernst & Young LLP, independent auditors.                                 |
| 24.1               | Power of Attorney (included in the signature pages to this registration statement). |

**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 Securities Act of 1933;

(ii) to reflect in the prospectus any facts or events arising after the effective date of the 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 the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Securities and Exchange Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the





maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

- (iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Securities and Exchange Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

- (2) That, for the purpose of determining any liability under the Securities Act of 1933, 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.
  - (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the 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 Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities 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 Securities Act and will be governed by the final adjudication of such issue.



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MARCELO FISCHER

(Principal Accounting Officer)

/s/ JOYCE J. MASON

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Director

JOYCE J. MASON

/s/ MARC E. KNOLLER

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Director

MARC E. KNOLLER

/s/ MOSHE KAGANOFF

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Director

MOSHE KAGANOFF

| <u>Signature</u>  | <u>Title</u> |
|---|--------------|
| /s/ J. WARREN BLAKER<br>_____<br>J. WARREN BLAKER           | Director     |
| /s/ RUDY BOSCHWITZ<br>_____<br>RUDY BOSCHWITZ               | Director     |
| /s/ SAUL K. FENSTER<br>_____<br>SAUL K. FENSTER             | Director     |
| /s/ JAMES S. GILMORE, III<br>_____<br>JAMES S. GILMORE, III | Director     |
| /s/ JACK F. KEMP<br>_____<br>JACK F. KEMP                   | Director     |
| /s/ MICHAEL J. LEVITT<br>_____<br>MICHAEL J. LEVITT         | Director     |
| /S/ WILLIAM ARTHUR OWENS<br>_____<br>WILLIAM ARTHUR OWENS   | Director     |
| /S/ WILLIAM F. WELD<br>_____<br>WILLIAM F. WELD             | Director     |

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