

COMPUTER ASSOCIATES INTERNATIONAL INC
Form DEFA14A
April 12, 2005

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported) **April 7, 2005**

Computer Associates International, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

1-9247
(Commission
File Number)

13-2857434
(IRS Employer
Identification No.)

One Computer Associates Plaza, Islandia, New York
(Address of principal executive offices)

11749
(Zip Code)

Registrant's telephone number, including area code **(631) 342-6000**

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

 - ý Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

 - o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

 - o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01. Entry into a Material Definitive Agreement.

On April 7, 2005, Computer Associates International, Inc., a Delaware corporation ("Computer Associates"), Minuteman Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Computer Associates (the "Merger Sub"), and Concord Communications, Inc. ("Concord"), a Massachusetts corporation, entered into an Agreement and Plan of Merger (the "Merger Agreement"), pursuant to which the Merger Sub will merge with and into Concord, with Concord as the surviving corporation (the "Merger"). As a result of the Merger, Concord will become a wholly owned subsidiary of Computer Associates.

Pursuant to the Merger Agreement, at the effective time of the Merger, each outstanding share of common stock, \$0.01 par value, of Concord (other than any such shares owned by Computer Associates, Concord, or Merger Sub, or by any Concord stockholders who are entitled to and properly exercise dissenter's rights under Massachusetts law) shall be converted into the right to receive \$17.00 in cash, without interest. Additionally, at the effective time of the Merger, each outstanding option to purchase common stock of Concord, whether vested or unvested, will be assumed by Computer Associates and become an option to acquire shares of common stock of Computer Associates, on the terms and conditions set forth in the Merger Agreement. The aggregate amount of consideration to be paid by CA to Concord shareholders pursuant to the Merger is approximately \$330 million. CA will also assume approximately \$20 million in net debt from Concord pursuant to the Merger.

Consummation of the Merger is subject to customary conditions, including, among others, (i) the adoption of the Merger Agreement by the stockholders of Concord, (ii) the termination or expiration of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, (iii) the absence of any governmental action or proceeding (A) challenging or seeking to restrain or prohibit the consummation of the Merger or (B) seeking to prohibit or materially impair CA's ability to operate any of the material businesses or assets of CA or Concord or prohibit or limit in any material respect CA's ability to exercise certain ownership rights with respect to Concord after the effective time and (iv) the absence of any law or order having any of the effects referred to in (A) or (B) of clause (iii) above. In addition, each of CA's and Concord's obligation to consummate the Merger is subject to certain other conditions, including, among others, (i) the accuracy of the representations and warranties of the other party (subject to certain exceptions) and (ii) material compliance of the other party with its covenants.

The foregoing description of the Merger Agreement does not purport to be complete and is qualified in its entirety by reference to the Merger Agreement, which is incorporated by reference herein.

Cautionary Statement Regarding Forward-Looking Statements

Certain statements in this communication may constitute forward-looking statements. Actual results could differ materially from those projected or forecast in the forward-looking statements. The factors that could cause actual results to differ materially include the following: the possibility that the parties may be unable to achieve expected synergies and operating efficiencies in the merger within the expected time-frames or at all and to successfully integrate Concord's operations into those of Computer Associates; such integration may be more difficult, time-consuming or costly than expected; revenues following the transaction may be lower than expected; operating costs, customer loss and business disruption (including, without limitation, difficulties in maintaining relationships with employees, customers, clients or suppliers) may be greater than expected following the transaction; the retention of certain key employees at Concord; the conditions to the completion of the transaction may not be satisfied, or the regulatory approvals required for the transaction may not be obtained on the terms expected or on the anticipated schedule; and the parties' ability to meet expectations regarding the timing, completion and accounting and tax treatments of the merger; the Computer Associates deferred prosecution agreement with the United States Attorney's Office of the Eastern District, including that Computer Associates could be charged with criminal offenses if it violates this agreement; the agreement that Computer Associates entered into with the Securities and Exchange Commission (SEC), including that Computer Associates may be subject to substantial civil penalties and fines if it violates this agreement; civil litigation arising out of the matters that are the subject of the Department of Justice and the Securities and Exchange Commission investigations, including shareholder derivative litigation; Computer Associates and Concord are subject to intense competition and increased competition is expected in the future; risks associated with the recent loss and ongoing replacement of key personnel; our products must remain compatible with, and our product development is dependent upon access to, changing operating environments; we have a significant amount of debt; our credit ratings have been downgraded and could be downgraded further; customers are still adapting to Computer Associates' Business Model; the failure to protect our intellectual property rights may weaken our competitive position; certain software is licensed from third parties who require, among other things, the payment of royalties, which could affect the development and enhancement of our products; we may become dependent upon large transactions; the market for some or all of our key product areas may not grow; customer decisions are influenced by general economic conditions; third parties may claim that our products infringe their intellectual property rights; fluctuations in foreign currencies could result in transaction losses; acts of war and terrorism may adversely affect our business; the volatility of the international marketplace; and the other factors discussed in Risk Factors in the Computer Associates Annual Report or Form 10-K for the most recently ended fiscal year and Computer Associates' other filings with the SEC, which are available at <http://www.sec.gov>. Computer Associates assumes no obligation to update the information in this communication, except as otherwise required by law. Readers are cautioned not to place undue reliance on these forward-looking statements that speak only as of the date hereof.

Additional Information and Where to Find It

This communication may be deemed to be solicitation material in respect of the proposed acquisition of Concord by Computer Associates. In connection with the proposed acquisition, Computer Associates and Concord intend to file relevant materials with the SEC, including Concord's proxy statement on Schedule 14A. **STOCKHOLDERS OF CONCORD ARE URGED TO READ ALL RELEVANT DOCUMENTS FILED WITH THE SEC, INCLUDING CONCORD'S PROXY STATEMENT, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION.** Investors and security holders will be able to obtain the documents free of charge at the SEC's web site, <http://www.sec.gov>, and Concord stockholders will receive information at an appropriate time on how to obtain transaction-related documents for free from Concord. Such documents are not currently available.

Participants in Solicitation

Computer Associates and its directors and executive officers, and Concord and its directors and executive officers, may be deemed to be participants in the solicitation of proxies from the holders of Concord common stock in respect of the proposed transaction. Information about the directors and executive officers of Computer Associates is set forth in the proxy statement for Computer Associates' 2004 Annual Meeting of Stockholders, which was filed with the SEC on July 29, 2004. Information about the directors and executive officers of Concord is set forth in the proxy statement for Concord's 2005 Annual Meeting of Stockholders, which was filed with the SEC on March 31, 2005. Investors may obtain additional information regarding the interest of such participants by reading the proxy statement regarding the acquisition when it becomes available.

Item 9.01. Financial Statements and Exhibits.

(c) Exhibits.

| Exhibit No. | Exhibit |
|--------------------|--|
| 2.1 | Agreement and Plan of Merger, dated as of April 7, 2005, by and among Computer Associates International, Inc., Minuteman Acquisition Corp. and Concord Communications, Inc. |

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Computer Associates International, Inc.

By: /s/ Jeff Clarke
Name: Jeff Clarke
Title: Chief Operating Officer

Dated: April 11, 2005

EXHIBIT INDEX

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