

Cogent, Inc.
Form SC TO-T/A
October 08, 2010

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE TO
TENDER OFFER STATEMENT UNDER SECTION 14(D)(L) OR 13(E)(L)
OF THE SECURITIES EXCHANGE ACT OF 1934

(Amendment No. 5)

COGENT, INC.

(Name of Subject Company (Issuer))

3M COMPANY
VENTURA ACQUISITION CORPORATION

(Name of Filing Persons (Offerors))

Common Stock, \$0.001 Par Value Per Share
(Title of Class of Securities)

19239Y 10 8
(CUSIP Number of Class of Securities)

Gregg M. Larson

Deputy General Counsel and Secretary

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3M Company

3M Center

St. Paul, Minnesota 55133

(651) 733-2204

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications on Behalf of Filing Persons)

Copies to:

Christopher E. Austin

Cleary Gottlieb Steen & Hamilton LLP

One Liberty Plaza
New York, New York 10006
(212) 225-2000

CALCULATION OF FILING FEE

Transaction Valuation*
\$ 950,582,062.50

Amount of Filing Fee**
\$67,776.50

* Estimated solely for purposes of calculating the filing fee pursuant to Rule 0-11(d) under the Securities Exchange Act of 1934, as amended (the Exchange Act). The Transaction Valuation was calculated on the basis of (a) 90,531,625 shares of common stock, \$0.001 par value per share, of Cogent, Inc. (the Shares), the estimated maximum number of Common Shares that may be acquired in this tender offer (representing as of August 27, 2010 (i) 88,389,700 Common Shares issued and outstanding, (ii) 1,144,226 Common Shares issuable upon the exercise of outstanding options and (iii) 997,699 Common Shares issuable upon the exercise of outstanding restricted stock units), multiplied by (b) the offer price of \$10.50 per Common Share.

** The filing fee, calculated in accordance with Rule 0-11 of the Securities Exchange Act of 1934, and Fee Rate Advisory #4 for fiscal year 2010, issued December 17, 2009, by multiplying the transaction value by 0.00007130.

☒ 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: \$67,776.50

Filing Party: 3M Company, Ventura Acquisition Corporation

Form or Registration No.: Schedule TO

Date Filed: September 10, 2010

☐ 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.

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- ☐ 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: ☐

CUSIP No. 19239Y 10 8

13D

- 1 NAMES OF REPORTING PERSONS
3M COMPANY
- 2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) ☒ (b) ☐
- 3 SEC USE ONLY
- 4 SOURCE OF FUNDS
OO
- 5 CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) or 2(e) ☐
N/A
- 6 CITIZENSHIP OR PLACE OF ORGANIZATION
DELAWARE
- | | | |
|--------------------------|----|--------------------------|
| NUMBER OF
SHARES | 7 | SOLE VOTING POWER |
| | | 0 |
| BENEFICIALLY
OWNED BY | 8 | SHARED VOTING POWER |
| EACH | 9 | 46,381,779 |
| REPORTING | | SOLE DISPOSITIVE POWER |
| PERSON WITH | 10 | 0 |
| | | SHARED DISPOSITIVE POWER |
| | | 46,381,779 |
- 11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
46,381,779
- 12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES ☐
- 13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW 11
52.4%
- 14 TYPE OF REPORTING PERSON
CO

* The calculation is based on 88,536,001 shares of Cogent common stock outstanding as of October 7, 2010, which figure is based on information provided by Cogent.

CUSIP No. 19239Y 10 8

13D

- 1 NAMES OF REPORTING PERSONS
VENTURA ACQUISITION CORPORATION
- 2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) ☒ x
(b) ☐ o
- 3 SEC USE ONLY
- 4 SOURCE OF FUNDS
OO
- 5 CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) or 2(e) ☐ o
N/A
- 6 CITIZENSHIP OR PLACE OF ORGANIZATION
DELAWARE
- | | | |
|---------------------|----|--------------------------|
| NUMBER OF
SHARES | 7 | SOLE VOTING POWER |
| | | 0 |
| BENEFICIALLY | 8 | SHARED VOTING POWER |
| OWNED BY | | 46,381,779 |
| EACH | 9 | SOLE DISPOSITIVE POWER |
| REPORTING | | 0 |
| PERSON WITH | 10 | SHARED DISPOSITIVE POWER |
| | | 46,381,779 |
- 11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
46,381,779
- 12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES ☐ o
- 13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW 11
52.4%*
- 14 TYPE OF REPORTING PERSON
CO

* The calculation is based on 88,536,001 shares of Cogent common stock outstanding as of October 7, 2010, which figure is based on information provided by Cogent.

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This Amendment No. 5 (**Amendment No. 5**) amends and supplements the Tender Offer Statement on Schedule TO (as amended, the **Schedule TO**) originally filed on September 10, 2010, as amended and supplemented prior to the date hereof, by Ventura Acquisition Corporation, a Delaware corporation (**Purchaser**) and a direct wholly-owned subsidiary of 3M Company, a Delaware corporation (**3M**), to purchase all outstanding shares of common stock, par value \$0.001 (the **Shares**), of Cogent, Inc., a Delaware corporation (**Cogent**), at a price of \$10.50 per share, net to the seller in cash, without interest thereon and less any required withholding taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase dated September 10, 2010 (the **Offer to Purchase**), which is annexed to and filed with the Schedule TO as Exhibit (a)(1)(A), and in the related Letter of Transmittal and Notice of Guaranteed Delivery, which are annexed to and filed with the Schedule TO as Exhibits (a)(1)(B) and (a)(1)(C), respectively, which, together with any amendments or supplements thereto, collectively constitute the **Offer**.

All capitalized terms used in this Amendment No. 5 without definition have the meanings ascribed to them in the Schedule TO.

The information in the Offer to Purchase and related Letter of Transmittal is incorporated into this Amendment No. 5 by reference to all of the applicable items in the Schedule TO, except that such information is hereby amended and supplemented to the extent provided herein.

Items 1, 4, 8 and 11.

Items 1, 4, 8 and 11 of the Schedule TO are hereby amended and supplemented by adding the following text thereto:

The Offer expired at 12:00 midnight, New York City time, on Thursday, October 7, 2010. The Depositary for the Offer has advised 3M and Purchaser that, as of such time, an aggregate of approximately 46.4 million Shares (not including Shares tendered by notice of guaranteed delivery, which Shares may be validly tendered until Wednesday, October 13, 2010) were validly tendered into, and not withdrawn from, the Offer, representing approximately 52% of the outstanding Shares calculated on a fully diluted basis. Purchaser has accepted for payment all Shares that were validly tendered and not withdrawn, and payment will be made promptly, in accordance with the terms of the Offer.

On October 8, 2010, 3M and Purchaser commenced a subsequent offering period for all remaining untendered Shares. The subsequent offering period will expire at 12:00 midnight, New York City time, on October 22, 2010, unless extended. Any such extension will be followed by a public announcement no later than 9:00 a.m., New York City time, on the next business day after the subsequent offering period was scheduled to expire.

The same \$10.50 per Share price, net to the seller in cash, without interest thereon and less any required withholding taxes, offered in the initial offering period of the Offer will be paid during the subsequent offering period. Purchaser will immediately accept for payment all Shares validly tendered during this subsequent offering period, and payment will be made promptly after acceptance in accordance with the terms of the Offer. Procedures for tendering Shares during the subsequent offering period are the same as during the initial offering period with two exceptions: (1) Shares cannot be delivered by the guaranteed delivery procedure, and (2) pursuant to Rule 14d-7(a)(2) promulgated under the Securities Exchange Act of 1934, as amended, Shares tendered during the subsequent offering period may not be withdrawn. Shares validly tendered during the initial offering period of the Offer may not be withdrawn during the subsequent offering period.

The full text of the press release issued by 3M regarding the expiration of the Offer and the announcement of the subsequent offering period is filed as Exhibit (a)(5)(I) hereto and is incorporated herein by reference.

Item 11 of the Schedule TO is hereby further amended and supplemented by deleting the third sentence of the third paragraph under "Pending Litigation" and replacing it with the following:

The plaintiff in the suit filed in United States District Court for the Central District of California moved for expedited proceedings, and on October 7, 2010, the court denied plaintiff's motion.

Item 12. Exhibits.

Item 12 of the Schedule TO is hereby amended and supplemented by adding the following text thereto:

(a)(5)(I) Press Release issued by 3M Company on October 8, 2010

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.

Dated: October 8, 2010

3M COMPANY

By: /s/ Gregg M. Larson
Name: Gregg M. Larson
Title: Deputy General Counsel and Secretary

VENTURA ACQUISITION CORPORATION

By: /s/ Michael P. Delkoski
Name: Michael P. Delkoski
Title: President and Director

EXHIBIT INDEX

- (a)(1)(A) Offer to Purchase, dated September 10, 2010 *
- (a)(1)(B) Form of Letter of Transmittal (including Guidelines for Certification of Taxpayer Identification Number (TIN) on Substitute Form W-9) *
- (a)(1)(C) Form of Notice of Guaranteed Delivery *
- (a)(1)(D) Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees *
- (a)(1)(E) Form of Letter to Clients for Use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees *
- (a)(5)(A) Press Release issued by 3M Company on August 30, 2010 (1)
- (a)(5)(B) 3M Company Presentation to Cogent, Inc. Employees, dated August 30, 2010 (2)
- (a)(5)(C) 3M Company Presentation to Cogent, Inc. Employees, dated August 30, 2010 (3)
- (a)(5)(D) 3M Company Presentation for Morgan Stanley Global Industrials Conference, dated August 31, 2010 (4)
- (a)(5)(E) 3M Company Presentation Transcript for Morgan Stanley Global Industrials Conference, dated August 31, 2010 (5)
- (a)(5)(F) Form of summary advertisement, published September 10, 2010 in *The Wall Street Journal* *
- (a)(5)(G) Form of Press Release issued by 3M Company on September 10, 2010
- (a)(5)(H) Opinion of the Court of Chancery of the State of Delaware issued on October 5, 2010
- (a)(5)(I) Form of Press Release issued by 3M Company on October 8, 2010
- (b) Not applicable
- (c) Not applicable
- (d)(1) Agreement and Plan of Merger, dated as of August 29, 2010, by and among Ventura Acquisition Corporation, 3M Company and Cogent, Inc. (6)
- (d)(2) Tender and Voting Agreement, dated as of August 29, 2010, by and among Ventura Acquisition Corporation, 3M Company and certain stockholders of Cogent, Inc. (7)
- (d)(3) Confidentiality Agreement, dated as of July 31, 2008, by and between 3M Company and Cogent, Inc., as amended as of May 31, 2010
- (e) Not applicable
- (f) Not applicable
- (g) Not applicable
- (h) Not applicable

* Included in mailing to stockholders
Previously filed

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- (1) Incorporated by reference to Exhibit 99.1 to the Form 8-K filed by 3M Company on August 30, 2010
- (2) Incorporated by reference to Exhibit 99.1 to the Schedule TO-C filed by 3M Company on August 30, 2010
- (3) Incorporated by reference to Exhibit 99.2 to the Schedule TO-C filed by 3M Company on August 30, 2010

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- (4) Incorporated by reference to Exhibit 99.1 to the Schedule TO-C filed by 3M Company on August 31, 2010
- (5) Incorporated by reference to Exhibit 99.2 to the Schedule TO-C filed by 3M Company on August 31, 2010
- (6) Incorporated by reference to Exhibit 2.1 to the Form 8-K filed by Cogent, Inc. on August 31, 2010
- (7) Incorporated by reference to Exhibit 10.1 to the Form 8-K/A filed by Cogent, Inc. on September 3, 2010