

Cogent, Inc.
Form SC TO-T/A
October 06, 2010

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**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. 4)

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
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

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*

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.

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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.

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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: | \$67,776.50 | Filing Party: | 3M Company, Ventura Acquisition Corporation |
| Form or Registration No.: | Schedule TO | Date Filed: | September 10, 2010 |

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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:

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third-party tender offer subject to Rule 14d-1.

o

issuer tender offer subject to Rule 13e-4.

o

going-private transaction subject to Rule 13e-3.

o

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: o

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This Amendment No. 4 ("**Amendment No. 4**") 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. 4 without definition have the meanings ascribed to them in the Schedule TO.

The items of the Schedule TO set forth below are hereby amended and supplemented as follows:

Item 4. Terms of the Transaction

Item 4 of the Schedule TO is hereby amended and supplemented by adding the following text thereto:

On September 10, 2010, the FTC granted Purchaser's request for early termination of the waiting period required under the HSR Act, thus ending the required waiting period with respect to the Offer and the Merger.

Clearance from the Austrian FCA was received effective October 2, 2010.

Item 11. Additional Information.

The paragraph under Item 11 "Pending Litigation" is hereby amended and restated in its entirety as follows

Pending Litigation

Between August 31 and September 16, 2010, nine plaintiffs filed purported class actions against Cogent, its directors, 3M and, in some of the complaints, Purchaser, in connection with the proposed Merger. Three suits were filed in Delaware Chancery Court and six were filed in California Superior Court for Los Angeles County. These suits allege that the defendants breached and/or aided and abetted the breach of their fiduciary duties to Cogent by seeking to sell Cogent through an allegedly unfair process and for an unfair price and on unfair terms. The suits seek various equitable relief that would delay or enjoin the Merger based on allegations regarding the process by which offers or potential offers were evaluated by Cogent.

The three cases in Delaware Chancery Court were consolidated and on October 5, 2010 the Court denied the plaintiffs' motion for a preliminary injunction enjoining completion of the Offer, concluding that plaintiffs had not established either a reasonable probability of success on the merits of their claims or irreparable injury. The six suits in California were consolidated and on September 24, 2010, the Superior Court of California denied the California plaintiffs' application for expedited proceedings and stayed the cases until November 2, 2010. 3M believes the allegations are without merit, and will continue to defend the actions vigorously. The absence of an injunction or court order preventing the consummation of the transaction is a condition to 3M's obligation to complete the Offer pursuant to the Merger Agreement.

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In addition, Cogent advised us that on September 16, 2010 an additional suit was filed in United States District Court for the Central District of California against Cogent and its directors. The claims asserted in this action are similar to those asserted in the California state court actions (except that no aiding or abetting claims are asserted against 3M or Purchaser). The plaintiff in that case moved for expedited proceedings and Cogent opposed the motion; the court has not ruled on the motion or granted the plaintiff any relief.

Additional details regarding the ten actions are as follows:

| Court | Filing Date | Case Name | Case Number |
|--|--------------------|--|---------------------|
| Court of Chancery of the State of Delaware | September 15, 2010 | Cockle v. Cogent, Inc. | 5819 |
| Court of Chancery of the State of Delaware | September 1, 2010 | St. Nevan US Ltd. v. Cogent, Inc. | 5780 |
| Court of Chancery of the State of Delaware | September 1, 2010 | Bell v. Hsieh | 5784 |
| Superior Court of California, Country of Los Angeles | September 13, 2010 | Berman v. Cogent, Inc. | BC445456 |
| Superior Court of California, Country of Los Angeles | September 10, 2010 | Kepple v. Hsieh | BC445362 |
| Superior Court of California, Country of Los Angeles | September 8, 2010 | Berman v. Cogent, Inc. | BC445189 |
| Superior Court of California, Country of Los Angeles | September 2, 2010 | Gusinsky Revocable Trust v. Cogent, Inc. | BC444852 |
| Superior Court of California, Country of Los Angeles | August 30, 2010 | Slovin v. Cogent, Inc. | BC444654 |
| Superior Court of California, Country of Los Angeles | September 16, 2010 | Lau v. Cogent, Inc. | BC445738 |
| United States District Court, Central District of California | September 16, 2010 | Shanhan v. Cogent, Inc. | CV-10-6911-RGK-FMOX |

Item 12. Exhibits.

(a)(5)(H) Opinion of the Court of Chancery of the State of Delaware issued on October 5, 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 6, 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

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(a)(5)(H) Opinion of the Court of Chancery of the State of Delaware issued on October 5, 2010.

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