

3COM CORP
Form 8-K
September 24, 2009

Table of Contents

**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):

September 23, 2009

3COM CORPORATION

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation)

0-12867

(Commission
File Number)

94-2605794

(IRS Employer
Identification No.)

350 Campus Drive

Marlborough, Massachusetts

01752

(Address of Principal Executive Offices)

(Zip Code)

Registrant's telephone number, including area code: **(508) 323-1000**

(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):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
-

TABLE OF CONTENTS

ITEM 2.02 Results of Operations and Financial Condition

ITEM 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

ITEM 7.01 Regulation FD Disclosure

ITEM 9.01 Financial Statements and Exhibits

SIGNATURE

EXHIBIT INDEX

EX-3.1 Amended and Restated Certificate of Incorporation of 3Com Corporation

EX-99.1 Text of Press Release, dated September 24, 2009, titled "3Com Reports Results for First Quarter Fiscal Year 2010"

EX-99.2 Supplemental Financial Information - Fiscal Quarter Ended August 28, 2009

EX-99.3 H3C - Summary Financial Information Provided to Bank Lenders

Table of Contents

ITEM 2.02 Results of Operations and Financial Condition

Financial Results.

On September 24, 2009, 3Com Corporation, or the Company, (i) issued a press release regarding its financial results for its fiscal quarter ended August 28, 2009 and (ii) posted supplementary financial information concerning the Company to the investor relations portion of its web site, www.3Com.com. The full text of the press release is attached hereto as Exhibit 99.1. The supplementary financial material is attached hereto as Exhibit 99.2.

The information in Item 2.02 of this Form 8-K and the exhibits attached hereto as Exhibit 99.1 and Exhibit 99.2 shall not be deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or the Exchange Act, or incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in such a filing.

Non-GAAP Financial Measures.

In evaluating the Company's performance, management uses certain non-GAAP financial measures to supplement consolidated financial statements prepared under generally accepted accounting principles in the United States, or GAAP.

More specifically, the Company uses one or more of the following non-GAAP financial measures: non-GAAP gross profit/loss (and margin), non-GAAP operating profit/loss (and margin), non-GAAP net income/loss (and margin), non-GAAP net income/loss per share, non-GAAP research and development, sales and marketing and general and administrative expenses and non-GAAP operating profit/loss before taxes. We also disclose non-GAAP gross margin and non-GAAP operating profit and margin measures for our Networking and TippingPoint businesses. These measures are adjusted to exclude some or all of the items discussed below. Management believes these supplemental measures contribute to management's ability, and the ability of the investor and financial analyst community, to compare our businesses to those of our competitors who report similar metrics.

It should be noted that the non-GAAP operating profit measure used as a metric in several components of our executive compensation is defined to exclude the following charges and benefits: restructuring, amortization, stock-based compensation expense and special items that the Compensation Committee believes are unusual and outside of the Company's on-going operations. Such measure may be different than our publicly reported non-GAAP operating profit measure discussed in this Form 8-K because the Compensation Committee independently considers the appropriateness of excluding various items for the purposes of measuring executive compensation.

Discussion. The Company uses these measures in its public statements. Management believes these non-GAAP measures help indicate the Company's baseline performance before gains, losses or charges that are considered by management to be outside on-going operating results. Accordingly, management uses these non-GAAP measures to gain a better understanding of the Company's comparative operating performance from period-to-period and as a basis for planning and forecasting future periods. Management believes these non-GAAP measures, when read in conjunction with the Company's GAAP financials, provide useful information to investors by offering:

the ability to make more meaningful period-to-period comparisons of the Company's on-going operating results;

the ability to better identify trends in the Company's underlying business and perform related trend analysis;

a higher degree of transparency for certain expenses (particularly when a specific charge impacts multiple line items);

a better understanding of how management plans and measures the Company's underlying business; and

an easier way to compare the Company's most recent results of operations against investor and analyst financial models.

Table of Contents

In order to provide meaningful comparisons, the Company believes that it needs to adjust for gains as well as charges that are outside the core operations. Accordingly, certain gains may be excluded.

The non-GAAP measures used by the Company are defined to exclude one or more of the following items:

Restructuring

Management believes the costs related to restructuring activities are not indicative of the Company's normal operating costs. The restructuring charge consists primarily of severance expense and facility closure costs.

Amortization of Intangibles

Management believes that the expense associated with the amortization of acquisition-related intangible assets is appropriate to be excluded because a significant portion of the purchase price for acquisitions may be allocated to intangible assets that have short lives and exclusion of the amortization expense allows comparisons of operating results that are consistent over time for both the Company's newly acquired and long-held businesses. Also, amortization is a non-cash charge for the periods presented.

Stock-based Compensation

Stock-based compensation expenses are non-cash charges that relate to restricted stock amortization, as well as additional stock-based compensation expense that represents the fair value of stock-based compensation required pursuant to FAS 123 (R). The FAS 123 (R)-related expense is excluded because management believes as a non-cash charge it is not a meaningful indicator of core operating business results. Management manages the business primarily without regard to these non-cash expenses. In addition, because the calculation of these expenses is dependent on factors such as forfeiture rate, volatility of the Company's stock and a risk-free interest rate, all of which are subject to fluctuation, these charges are expected to be variable over time, and therefore may not provide a meaningful comparison of core operating results among periods. It is useful to note that these factors are generally outside the Company's control.

Benefit from Realtek Patent Resolution and Gain on Sale of Related Patents

We recorded a benefit in the form of an offset to operating expenses for the payments we received in connection with a patent dispute resolution with Realtek. We subsequently sold most of the underlying patents and recorded a gain in connection with such sale. These are non-recurring items, and not part of our ordinary course business operations. Accordingly, management determined to adjust our results to exclude these items. Management does not measure our performance with these items included.

Recovery of Uninsured Losses for Hemel Land

We recovered monies for certain uninsured losses in connection with our Hemel, UK property which was destroyed by an oil depot explosion. As management views this item to be outside the ordinary course of business and not operational, it determined to exclude this item. This was a one-time unusual event. We do not own any other real property.

Per Share Metrics. The Company believes that it is important to provide per share metrics, in addition to absolute dollar measures, when describing its business, including when presenting non-GAAP measures. To the extent 3Com is in an income position on a non-GAAP basis, we use our diluted shares (as opposed to our basic shares) in order to calculate the non-GAAP per share measures.

Forward-Looking Measures. For the Company's forward-looking non-GAAP measures, the Company is unable to provide a quantitative reconciliation because the information is not available without unreasonable effort.

Table of Contents

General. These non-GAAP measures have limitations because they do not include all items of income and expense that impact the Company's operations. Management compensates for these limitations by also considering the Company's GAAP results. The non-GAAP financial measures the Company uses are not prepared in accordance with, and should not be considered an alternative to, measurements required by GAAP, such as operating income, net income and income per share, and should not be considered measures of the Company's liquidity. The presentation of this additional information is not meant to be considered in isolation or as a substitute for the most directly comparable GAAP measures. In addition, these non-GAAP financial measures may not be comparable to similar measures reported by other companies.

ITEM 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

On September 23, 2009, at the Company's 2009 annual meeting of stockholders, the stockholders of the Company approved an amendment and restatement of the Company's certificate of incorporation to de-classify the Company's Board of Directors and ensure consistency with the Company's bylaws. The Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on September 23, 2009 and became effective as of that date.

The Amended and Restated Certificate of Incorporation provides that each director will be elected for a term of office that will expire at the next annual meeting of stockholders following his or her election. Accordingly, at the 2009 annual meeting, stockholders elected the directors up for election at the meeting for a one-year term. The Company's entire Board of Directors will be up for election for a one-year term at the 2010 annual meeting and each subsequent annual meeting. The Company's prior certificate of incorporation divided the Board of Directors into two classes with directors elected for two-year terms. Class I directors were up for election in a particular year and Class II directors were up for election in the following year.

In addition, certain sections of the Amended and Restated Certificate of Incorporation have been amended to ensure consistency with the Company's bylaws.

The foregoing description of changes set forth in the Company's Amended and Restated Certificate of Incorporation is qualified in its entirety by reference to the complete text of the Amended and Restated Certificate of Incorporation, which is attached hereto as Exhibit 3.1.

ITEM 7.01 Regulation FD Disclosure

As required by its senior secured credit facility the Company made available to its senior secured bank lenders certain summary financial information concerning H3C. This financial data is attached hereto as Exhibit 99.3 and is hereby incorporated by reference into this Item 7.01.

The information in Item 7.01 of this Form 8-K and the exhibit attached hereto as Exhibit 99.3 shall not be deemed filed for purposes of Section 18 of the Exchange Act, or incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in such a filing.

ITEM 9.01 Financial Statements and Exhibits

(d) Exhibits

| Exhibit Number | Description |
|-----------------------|---|
| 3.1 | Amended and Restated Certificate of Incorporation of 3Com Corporation |
| 99.1 | Text of Press Release, dated September 24, 2009, titled "3Com Reports Results for First Quarter Fiscal Year 2010" |
| 99.2 | Supplemental Financial Information - Fiscal Quarter Ended August 28, 2009 |
| 99.3 | H3C - Summary Financial Information Provided to Bank Lenders |

Table of Contents

SIGNATURE

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.

3COM CORPORATION

Date: September 24, 2009

By: /s/ Jay Zager
Jay Zager
Executive Vice President, Chief
Financial Officer

Table of Contents

EXHIBIT INDEX

| Exhibit Number | Description |
|-----------------------|---|
| 3.1 | Amended and Restated Certificate of Incorporation of 3Com Corporation |
| 99.1 | Text of Press Release, dated September 24, 2009, titled 3Com Reports Results for First Quarter Fiscal Year 2010 |
| 99.2 | Supplemental Financial Information Fiscal Quarter Ended August 28, 2009 |
| 99.3 | H3C - Summary Financial Information Provided to Bank Lenders |