

3COM CORP
Form 8-K
September 22, 2008

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**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 22, 2008

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))
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ITEM 2.02 Results of Operations and Financial Condition

Financial Results.

On September 22, 2008, 3Com Corporation (the Company) (i) issued a press release regarding its financial results for its fiscal quarter ended August 29, 2008 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 (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.

The attached press release contains 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 (GAAP).

More specifically, the Company uses the following non-GAAP financial measures: non-GAAP operating profit/loss (and margin), non-GAAP net income/loss (and margin), non-GAAP net income/loss per share and non-GAAP research and development, sales and marketing and general and administrative expenses.

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.

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 are excluded, as discussed below.

The **non-GAAP operating loss or income (and margin) measure** used by the Company is defined to exclude the following charges and benefits: restructuring, amortization, in-process research and development, stock-based compensation expense and special items that management believes are unusual and outside of the Company s on-going operations, such as, for some of the periods presented in the press release, the inventory-related adjustment portion of the purchase accounting effects of the Company s acquisition of 49% of H3C, a patent litigation success fee, a VAT recovery dispute, IPO write-off fees, a goodwill impairment charge, a benefit in the form of an offset to operating expenses for the \$70 million Realtek patent dispute resolution, and expenses related to the Company s terminated acquisition by affiliates of Bain Capital.

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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 also 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.

In-process R&D Expenses

In addition, the Company has non-recurring in-process research and development expenses which are non-cash and related to acquisitions as opposed to the Company's core operations.

Stock-based Compensation

Further, stock-based compensation expenses are non-cash charges that relate to restricted stock amortization and stock-based compensation costs associated with acquisitions, as well as additional stock-based compensation expense that represents the fair value of stock-based compensation required pursuant to FAS 123 (R). The expense related to acquisitions is not part of the Company's normal operating costs and is non-cash. The FAS 123 (R)-related expense is excluded because management believes as a non-cash charge it does not provide a meaningful indicator of the 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.

Inventory-Related Adjustment from H3C Acquisition

The Company has excluded the purchase accounting inventory-related adjustment from the 49% acquisition of H3C. Similar to IPR&D and amortization described above with respect to acquisitions, these adjustments represent non-cash, one-time items relating to a specific acquisition as opposed to core operations.

Patent Litigation Success Fee

The Company won a recent jury verdict as a plaintiff in a patent litigation case, and is obligated to pay its external counsel certain contingent fees based on the size of the award. This is a one-time, non-recurring cost tied to the success of the case, and not based on hourly rates charged by the law firm. Because it is not part of our core operations or expenses, management has determined it is appropriate to exclude it from our operational results. Management does not measure the performance of the business with this figure included.

VAT Recovery Dispute

Value-added tax is not typically charged to a company's income statement because it is collected by the company on behalf of a governmental agency and remitted to that agency, or paid by the company to a third party and later recovered by the company from the government. In this case, management has deemed it appropriate to exclude a one-time, non-cash charge relating to European VAT tax matters under dispute. We are currently seeking recovery of these amounts as we believe we are entitled to collect them from the European tax authorities, but under applicable accounting regulations have determined we need to take a charge for the amount at this time.

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IPO Fees Write-Off

The Company excludes external expenses (primarily accounting, auditing and legal) related to the proposed IPO of its TippingPoint division which has been postponed. These expenses are one-time charges that are not indicative of core operations as they relate to a one-time specific transaction to take TippingPoint public that would normally be netted against IPO sales proceeds as opposed to being included in operating expenses.

Goodwill Impairment Charge

Our recent stock price decline triggered an accounting impairment review of our goodwill booked for our H3C and TippingPoint acquisitions, resulting in an impairment charge on the goodwill we booked in connection with our 2005 acquisition of TippingPoint. This charge is a one-time, non-cash charge. We believe that it is unlikely that such an impairment will be a recurring event. Ultimately, this is not a measurement of our ongoing operations, and management does not consider this charge when measuring our business.

Benefit from Realtek Patent Resolution

We recorded a \$70 million benefit in the form of an offset to operating expenses for the payments we received in connection with a one-time patent dispute resolution with Realtek. This is a non-recurring item, and not part of our ordinary course business operations. Accordingly, it was determined by management to adjust our results to exclude this benefit. Management does not measure our performance with this benefit included.

Terminated Bain Acquisition Expenses

The Company excludes external expenses (including bankers , accounting and legal fees) related to its terminated acquisition by affiliates of Bain Capital. These expenses are one-time charges that are not indicative of core operations as they relate to a one-time specific transaction to take the Company private that did not occur.

The Company also uses a **non-GAAP net income/loss measure**. All of the items described above are relevant to why management believes this measure is meaningful. In addition, the following further items, which are special items for the relevant fiscal periods, were excluded, from this measure: gains/losses on sales of assets and investments, gain from insurance settlement, tax reserve release and change in tax status in PRC.

Gains/Losses on Asset Sales and Investments

Gains/losses on asset sales and investments are outside of the ordinary course of business and not representative of core operations.

Gain on Insurance Settlement

The insurance settlement related to monies paid under a policy insuring our Hemel, UK property which was destroyed by an oil depot explosion are outside the ordinary course of business and are not operational. This was a one-time unusual event. We do not own any other real property.

Tax Reserve Release

We recently resolved two tax matters in our favor resulting in a reserve release that provides a benefit to the income statement relating to a booked reserve. Accordingly, we believe an adjustment is appropriate, as this positive impact to our results is not indicative of our ongoing operations.

3Com also uses a **non-GAAP net income/loss measure on a per share basis**. All of the adjustments described above are relevant to this per share measure. The Company believes that it is important to provide per

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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.

Finally, the Company uses **non-GAAP research and development, sales and marketing and general and administrative expenses measures**, which are adjusted to exclude some of the items described above for the reasons discussed above.

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.

General. These non-GAAP measures have limitations, however, 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 loss, net loss and loss 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 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 Securities Exchange Act of 1934, as amended (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 |
|-----------------------|----------------------------------------------------------------------------------------------------------------|
| 99.1 | Text of Press Release, dated September 22, 2008, titled "3Com Reports First Quarter Fiscal Year 2009 Results." |
| 99.2 | Supplemental Financial Information - Fiscal Quarter Ended August 29, 2008 |
| 99.3 | H3C - Summary Financial Information Provided to Bank Lenders |

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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 22, 2008

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

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| Exhibit Number | Description |
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| 99.1 | Text of Press Release, dated September 22, 2008, titled 3Com Reports First Quarter Fiscal Year 2009 Results. |
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