

# **CARBON BLACK, INC.**

Filed by  
**VMWARE, INC.**

## **FORM SC TO-T/A**

(Amended tender offer statement by Third Party)

Filed 09/26/19

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SIC Code	7372 - Services-Prepackaged Software
Industry	IT Services & Consulting
Sector	Technology
Fiscal Year	12/31

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

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**SCHEDULE TO**

**Tender Offer Statement Under Section 14(d)(1) or 13(e)(1)  
of the Securities Exchange Act of 1934  
(Amendment No. 3)**

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**CARBON BLACK, INC.**  
(Name of Subject Company)

**CALISTOGA MERGER CORP.**  
(Offeror)  
(Names of Filing Persons)

**VMWARE, INC.**  
(Parent of Offeror)  
(Names of Filing Persons)

**Common stock, par value \$0.001 per share**  
(Title of Class of Securities)

**14081R103**  
(CUSIP Number of Class of Securities)

**Patrick Gelsinger  
Chief Executive Officer  
VMware, Inc.  
3401 Hillview Avenue  
Palo Alto, CA  
(650) 427-5000**

(Name, address and telephone numbers of person authorized to receive notices and communications on behalf of filing persons)

*With a copy to:*

**Brandon C. Parris  
Michael G. O'Bryan  
Morrison & Foerster LLP  
425 Market Street  
San Francisco, CA 94105-2482  
(415) 268-7000**

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**CALCULATION OF FILING FEE**

Transaction Valuation*	Amount of Filing Fee**
<b>\$2,102,212,897</b>	<b>\$254,789***</b>

\* Calculated solely for purposes of determining the filing fee. The transaction value was calculated by adding (a) 74,931,471 shares of issued and outstanding common stock, par value \$0.001 per share (the "Shares"), of Carbon Black, Inc., a Delaware corporation ("Carbon Black"), multiplied by the offer price of \$26.00 per Share and (b) 7,396,477 Shares issuable pursuant to outstanding vested options to acquire Shares from Carbon Black with an exercise price less than the offer price of \$26.00 per share, multiplied by \$20.82, which is the offer price of \$26.00 per Share less the weighted-average exercise price for such options of \$5.18 per Share.

\*\* The filing fee was calculated in accordance with Rule 0-11 under the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory No. 1 for fiscal year 2019, effective October 1, 2018, by multiplying the transaction value by 0.0001212.

\*\*\* Previously paid.

- ☒ 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: \$254,789  
Form or Registration No.: Schedule TO

Filing Party: Calistoga Merger Corp. and VMware, Inc.  
Date Filed: September 6, 2019

- ☐ 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.
- ☐ 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: ☐

If applicable, check the appropriate box(es) below to designate the appropriate rule provision(s) relied upon:

- ☐ Rule 13e-4(i) (Cross-Border Issuer Tender Offer)
  - ☐ Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)
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This Amendment No. 3 (this “**Amendment**”) amends and supplements the Tender Offer Statement on Schedule TO (as amended and together with any subsequent amendments and supplements thereto, the “**Schedule TO**”), filed with the Securities and Exchange Commission (“**SEC**”) on September 6, 2019, by Calistoga Merger Corp. (“**Purchaser**”), a Delaware corporation and a wholly owned subsidiary of VMware, Inc. (“**Parent**”), a Delaware corporation. The Schedule TO relates to the tender offer by Purchaser for all of the outstanding shares of common stock, par value \$0.001 per share (“**Shares**”), of Carbon Black, Inc. (“**Carbon Black**”), at a price of \$26.00 per Share, without interest, net to the seller in cash, and subject to any required withholding of taxes, upon the terms and subject to the conditions set forth in the offer to purchase, dated September 6, 2019 (the “**Offer to Purchase**”), a copy of which is attached as Exhibit (a)(1)(A), and in the related letter of transmittal (the “**Letter of Transmittal**”, a copy of which is attached as Exhibit (a)(1)(B), and which, together with the Offer to Purchase and other related materials, as each may be amended or supplemented from time to time, constitutes the “**Offer**”).

The information set forth in the Offer to Purchase, including Schedule I thereto, is incorporated by reference to the extent stated herein in response to Items 1 through 9 and Item 11 of the Schedule TO, and is supplemented by the information specifically provided in this Amendment.

Capitalized terms used and not otherwise defined in this Amendment shall have the meanings assigned to such terms in the Offer to Purchase or in the Schedule TO.

#### Amendments to the Offer to Purchase

##### **Items 1 through 9 and Item 11.**

1. The information set forth in the Offer to Purchase under “The Tender Offer—Section 16—Certain Legal Matters; Regulatory Approvals” and Items 1 through 9 and Item 11 of the Schedule TO, to the extent such Items incorporate by reference the information contained in the Offer to Purchase, are hereby further amended and supplemented as follows:

The following is added as a new subsection titled “*Securityholder Litigation*” after the subsection titled “*Antitrust Compliance*” on page 60 of the Offer to Purchase:

##### ***“Securityholder Litigation.***

On September 11, 2019, Bernard Winkler, a purported stockholder of Carbon Black, filed a class action lawsuit against Carbon Black, the Carbon Black Board, Purchaser and Parent in the United States District Court for the District of Delaware, captioned Winkler v. Carbon Black, Inc. et al, case number 1:19-cv-01704 (the “**Winkler Complaint**”). The complaint alleges, among other things, that the defendants violated Section 14(e) of the Exchange Act by causing a materially incomplete and misleading Schedule 14D-9 Recommendation Statement to be filed with the SEC on September 6, 2019, and against the Carbon Black Board under Section 20(a) of the Exchange Act as control persons. As relief, the complaint seeks, among other things, an injunction preventing consummation of the proposed transaction, rescission of the proposed transaction or rescissory damages in the event it is consummated, an accounting by defendants for all damages caused to the plaintiff and the class, and the award of attorneys’ fees and expenses.

On September 13, 2019, John Bayles, a purported stockholder of Carbon Black, filed a lawsuit against Carbon Black and the Carbon Black Board in the United States District Court for the Southern District of New York, captioned Bayles v. Carbon Black, Inc. et al, case number 1:19-cv-08543 (the “**Bayles Complaint**”). The complaint alleges, among other things, that the defendants violated Sections 14(d)(4) and 14(e) of the Exchange Act by causing a materially incomplete and misleading Schedule 14D-9 Recommendation Statement to be filed with the SEC on September 6, 2019. As relief, the complaint seeks, among other things, an injunction preventing consummation of the proposed transaction, rescission of the Merger Agreement or rescissory damages in the event it is consummated, an accounting by defendants for all damages caused to the plaintiff, and the award of attorneys’ fees and expenses.

On September 13, 2019, Stephen Bushansky, a purported stockholder of Carbon Black, filed a lawsuit against Carbon Black and the Carbon Black Board in the United States District Court for the District of Massachusetts, captioned Bushansky v. Carbon Black, Inc. et al, case number 1:19cv11951 (the “**Bushansky Complaint**”). The complaint alleges, among other things, that the defendants violated Sections 14(d)(4) and 14(e) of the Exchange Act by causing a Schedule 14D-9 Recommendation Statement to be filed with the SEC on September 6, 2019 that omits or misrepresents material information, and against the Carbon Black Board under Section 20(a) of the Exchange Act as control persons. As relief, the complaint seeks, among other things, an injunction preventing consummation of the proposed transaction, rescission of the proposed transaction or rescissory damages in the event it is consummated, and the award of attorneys’ fees and expenses.

On September 13, 2019, Michael Grobman, a purported stockholder of Carbon Black, filed a lawsuit against Carbon Black and the Carbon Black Board in the United States District Court for the Southern District of New York, captioned Grobman v. Carbon Black, Inc. et al, case number 1:19-cv-08538 (the “**Grobman Complaint**”). The complaint alleges, among other things, that the defendants violated Sections 14(d)(4) and 14(e) of the Exchange Act by causing a materially incomplete and misleading Schedule 14D-9 Recommendation Statement to be filed with the SEC on September 6, 2019. As relief, the complaint seeks, among other things, an injunction preventing consummation of the proposed transaction, rescission of the Merger Agreement or rescissory damages in the event it is consummated, an accounting by defendants for all damages caused to the plaintiff, and the award of attorneys’ fees and expenses.

On September 16, 2019, Jack Wolf, a purported stockholder of Carbon Black, filed a class action lawsuit against Carbon Black, the Carbon Black Board, Purchaser and Parent in the United States District Court for the District of Delaware, captioned Wolf v. Carbon Black, Inc. et al, case number 1:19-cv-01739 (the “**Wolf Complaint**”). The complaint alleges, among other things, that the defendants violated Section 14(e) and 14(d) of the Exchange Act by causing a false and misleading Schedule 14D-9 Recommendation Statement to be filed with the SEC on September 6, 2019, and against the Carbon Black Board under Section 20(a) of the Exchange Act as control persons. As relief, the complaint seeks, among other things, an injunction preventing consummation of the proposed transaction, rescission of the proposed transaction or rescissory damages in the event it is consummated, declaration that defendants violated certain sections of the Exchange Act and rules promulgated thereunder, and the award of attorneys’ fees and expenses.

On September 17, 2019, Brian P. Jacques, a purported stockholder of Carbon Black, filed a lawsuit against Carbon Black, the Carbon Black Board, Purchaser and Parent in the United States District Court for the District of Massachusetts, captioned Jacques v. Carbon Black, Inc. et al, case number 1:19-cv-11971 (the “**Jacques Complaint**”). The complaint alleges, among other things, that the defendants violated Section 14(e) of the Exchange Act by causing a materially deficient and misleading Schedule 14D-9 Recommendation Statement to be filed with the SEC on September 6, 2019, and against the Carbon Black Board under Section 20(a) of the Exchange Act as control persons. As relief, the complaint seeks, among other things, declaration that the Recommendation Statement is materially false or misleading, an injunction preventing consummation of the proposed transaction, rescission of the proposed transaction or rescissory damages in the event it is consummated, an accounting by defendants for all damages caused to the plaintiff and for all profits and any special benefits obtained as a result of the defendants breaches of their fiduciary duties, and the award of attorneys’ fees and expenses.

On September 17, 2019, Daniel Frey, a purported stockholder of Carbon Black, filed a lawsuit against Carbon Black and the Carbon Black Board in the United States District Court for the District of Colorado, captioned Frey v. Carbon Black, Inc. et al, case number 1:19-cv-02659 (the “**Frey Complaint**”, and together with the Winkler Complaint, the Bayles Complaint, the Bushansky Complaint, the Grobman Complaint, the Wolf Complaint, and the Jacques Complaint, collectively, the “**Securities Complaints**”). The complaint alleges, among other things, that the defendants violated Section 14(e) and 14(d)(4) of the Exchange Act by causing a Schedule 14D-9 Recommendation Statement to be filed with the SEC on September 6, 2019 that omits and/or misrepresents material information and against the Carbon Black Board under Section 20(a) of the Exchange Act as control persons. As relief, the complaint seeks, among other things, an injunction preventing consummation of the proposed transaction, rescission of the proposed transaction or rescissory damages in the event it is consummated, declaration that defendants violated certain sections of the Exchange Act and rules promulgated thereunder, and the award of attorneys’ fees and expenses.

Purchaser and Parent believe the Securities Complaints lack merit, and the Carbon Black Board, Purchaser and Parent intend to defend vigorously against such claims. Additional similar cases may also be filed in connection with the Offer or the Merger.”

The following paragraph is added as a new paragraph to the end of the subsection titled “*Antitrust in Germany*” on page 60 of the Offer to Purchase:

“On September 23, 2019 the FCO granted clearance of the proposed acquisition. Accordingly, the portion of the Regulatory Conditions to the Offer relating to German regulatory clearance, expiration of the waiting period or disclaimer of jurisdiction has been satisfied.”

The following paragraph is added as a new paragraph to the end of the subsection titled “*Antitrust in Austria*” on page 60 of the Offer to Purchase:

“On September 24, 2019, the Austrian Federal Competition Authority (*Bundeswettbewerbsbehörde*) provided verbal confirmation that they do not have any objections or further questions on the proposed transaction, however, the four-week waiting period contemplated by the Austrian Cartel Act must first terminate before the transaction is considered to have been cleared by the Bundeswettbewerbsbehörde. The four-week waiting period will expire at midnight, Central European Time, on Friday, October 4, 2019, unless extended by the Bundeswettbewerbsbehörde contrary to the verbal confirmation.”

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2. The information set forth in the Offer to Purchase under “The Tender Offer—Section 10—Background of the Offer; Past Contacts or Negotiations with Carbon Black” and Items 1 through 9 and Item 11 of the Schedule TO, to the extent such Items incorporate by reference the information contained in the Offer to Purchase, are hereby further amended and supplemented as follows:

The following sentence is added at the end of the fourth paragraph that begins “On December 24, 2017...” under the subheading “*Background of the Offer*” on page 28 of the Offer to Purchase:

“In May 2018, Carbon Black completed its IPO.”

3. The information set forth in the Offer to Purchase and Items 1 through 9 and Item 11 of the Schedule TO, to the extent such Items incorporate by reference the information contained in the Offer to Purchase, is hereby amended and supplemented as follows:

“On September 26, 2019, the Offer was extended pursuant to the Merger Agreement. The Offer was previously scheduled to expire at midnight, New York City time on Thursday October 3, 2019. The expiration date of the Offer is extended to 5:00 p.m., New York City time, on Monday, October 7, 2019, unless it is extended further in accordance with the Merger Agreement. The Depositary has advised Parent that, as of 5:46 p.m., New York City Time, on September 25, 2019, approximately 12,104,717 Shares of Carbon Black had been validly tendered and received, and not validly withdrawn, pursuant to the Offer, representing approximately 16% of Carbon Black’s Shares.

This extension extends the expiration of the Offer beyond the end of the four-week waiting period contemplated by the Austrian Cartel Act, which is scheduled to expire at midnight, Central European Time, on Friday, October 4, 2019, unless extended by the Bundeswettbewerbsbehörde.

As previously disclosed, the Merger remains expected to occur as soon as practicable following the consummation of the Offer and subject to the satisfaction or waiver of certain conditions set forth in the Merger Agreement.”

## EXHIBIT INDEX

Exhibit No.	Description
(a)(1)(A)*	Offer to Purchase, dated September 6, 2019.
(a)(1)(B)*	Letter of Transmittal, dated September 6, 2019.
(a)(1)(C)*	Notice of Guaranteed Delivery, dated September 6, 2019.
(a)(1)(D)*	Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees, dated September 6, 2019.
(a)(1)(E)*	Letter to Clients for Use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees, dated September 6, 2019.
(a)(1)(F)*	Summary Advertisement, as published in the <i>New York Times</i> on September 6, 2019.
(a)(5)(A)	Press Release of VMware, Inc., dated August 22, 2019 (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K filed by VMware, Inc. on August 22, 2019).
(a)(5)(B)	Q&A, dated August 22, 2019 (incorporated by reference to Exhibit 99.1 to the Schedule TO-C filed by VMWare, Inc. on August 23, 2019).
(a)(5)(C)	Blog Post by VMware, Inc., dated August 22, 2019 (incorporated by reference to Exhibit 99.2 to the Schedule TO-C filed by VMWare, Inc. on August 23, 2019).
(a)(5)(D)	Blog Post by Dell Inc., dated August 22, 2019 (incorporated by reference to Exhibit 99.3 to the Schedule TO-C filed by VMWare, Inc. on August 23, 2019).
(a)(5)(E)	E-mails to employees, dated August 22, 2019 (incorporated by reference to Exhibit 99.4 to the Schedule TO-C filed by VMWare, Inc. on August 23, 2019).
(a)(5)(F)	Talking Points, distributed August 22, 2019 (incorporated by reference to Exhibit 99.5 to the Schedule TO-C filed by VMWare, Inc. on August 23, 2019).
(a)(5)(G)	Customer Presentation, dated August 22, 2019 (incorporated by reference to Exhibit 99.6 to the Schedule TO-C filed by VMWare, Inc. on August 23, 2019).
(a)(5)(H)	Earnings Conference Call Slides, dated August 22, 2019 ((incorporated by reference to Exhibit 99.7 to the Schedule TO-C filed by VMWare, Inc. on August 23, 2019).
(a)(5)(I)	Earnings Call Transcript, dated August 22, 2019 (incorporated by reference to Exhibit 99.8 to the Schedule TO-C filed by VMWare, Inc. on August 23, 2019).
(a)(5)(J)	Carbon Black Town Hall Meeting Talking Points (incorporated by reference to Exhibit 99.1 to the Schedule TO-C filed by VMWare, Inc. on August 23, 2019).
(a)(5)(K)	Social Media Posts (incorporated by reference to Exhibit 99.2 to the Schedule TO-C filed by VMWare, Inc. on August 23, 2019).
(a)(5)(L)	Internal Blog to Dell Sales Community by Dell dated August 26, 2019 (incorporated by reference to Exhibit 99.1 to the Schedule TO-C filed by VMWare, Inc. on August 26, 2019).
(a)(5)(M)	Customer Communication (incorporated by reference to Exhibit 99.1 to the Schedule TO-C filed by VMWare, Inc. on August 28, 2019).
(a)(5)(N)	Transcript of VMworld Strategy Session with VMware, Carbon Black and Pivotal Executives, August 28, 2019 (incorporated by reference to Exhibit 99.1 to the Schedule TO-C filed by VMWare, Inc. on August 29, 2019).
(a)(5)(O)	Supplemental Slides from VMworld Strategy Session with VMware, Carbon Black and Pivotal Executives, August 28, 2019 (incorporated by reference to Exhibit 99.2 to the Schedule TO-C filed by VMWare, Inc. on August 29, 2019).
(a)(5)(P)	Transcript of Dell, Inc. Investor Call, August 29, 2019 (incorporated by reference to Exhibit 99.1 to the Schedule TO-C filed by VMWare, Inc. on August 30, 2019).
(a)(5)(Q)*	Joint Press Release issued by VMware, Inc. and Carbon Black, Inc., dated September 10, 2019.
(a)(5)(R)*	Sanjay Poonen Interview on CNBC.

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- (b) Not applicable.
- (c) Not applicable.
- (d)(1) Agreement and Plan of Merger, dated as of August 22, 2019, by and among VMware, Inc., Calistoga Merger Corp. and Carbon Black, Inc. (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K filed by VMware, Inc. on August 22, 2019).
- (d)(2)\* Confidentiality/Nondisclosure Agreement, dated July 23, 2019, by and between Carbon Black, Inc. and VMware, Inc.
- (d)(3) Form of Tender and Support Agreement, dated as of August 22, 2019, by and among VMware, Inc., Calistoga Merger Corp. and certain Carbon Black stockholders (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K filed by VMware, Inc. on August 22, 2019).
- (d)(4)\* Exclusivity Agreement, dated as of August 12, 2019, by and among VMware, Inc. and Carbon Black, Inc.
- (d)(5)\* Thomas Hansen Offer Letter.
- (d)(6)\* Patrick Morley Offer Letter.
- (d)(7)\* Ryan Polk Offer Letter.
- (e) Not applicable.
- (f) Not applicable.
- (g) Not applicable.
- (h) Not applicable.

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\* Previously filed.



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**SIGNATURES**

After due inquiry and to the best of their knowledge and belief, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

**CALISTOGA MERGER CORP.**

By: /s/ Craig Norris

Name: Craig Norris

Title: President and Secretary

**VMWARE, INC.**

By: /s/ Craig Norris

Name: Craig Norris

Title: Vice President, Deputy General Counsel and  
Assistant Secretary

Dated: September 26, 2019