

DIGITALTHINK INC
Form SC 13D
April 05, 2004

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 13D

Under The Securities Exchange Act of 1934

(Amendment No.)*

DigitalThink, Inc.

(Name of Issuer)

Common Stock, \$0.001 par value per share

(Title of Class of Securities)

25388M 10 00

(CUSIP Number)

Convergys Corporation

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201 East Fourth Street

Cincinnati, Ohio 45202

(513) 723-7000

Attn: William H. Hawkins

Senior Vice President, General Counsel and Secretary

with a copy to:

Frost Brown Todd LLC

2200 PNC Center

201 East Fifth Street

Cincinnati, Ohio 45202

Attn: Neil Ganulin

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

March 24, 2004

(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box. "

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See §240.13d-7 for other parties to whom copies are to be sent.

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be filed for the purpose of Section 18 of the Securities Exchange Act of 1934 (Act) or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

CUSIP No. 25388M 10 00

1. Names of Reporting Persons: I.R.S. Identification Nos. of above persons (entities only):

Convergys Customer Management Group Inc.

31-1260729

2. Check the Appropriate Box if a Member of a Group (See Instructions):

(a)

(b)

3. SEC Use Only:

4. Source of Funds (See Instructions):

AF

5. Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e):

6. Citizenship or Place of Organization:

Ohio

NUMBER OF 7. Sole Voting Power:

SHARES

BENEFICIALLY None.

OWNED BY 8. Shared Voting Power:

EACH

REPORTING 10,698,839¹

PERSON 9. Sole Dispositive Power:

WITH

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None.

10. Shared Dispositive Power:

None.

11. Aggregate Amount Beneficially Owned by Each Reporting Person:

10,698,839¹

12. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions):

13. Percent of Class Represented by Amount in Row (11):

21.5%²

14. Type of Reporting Person (See Instructions):

CO

1 Beneficial ownership of the common stock referred to herein is being reported hereunder solely because Convergys Customer Management Group Inc. may be deemed to have beneficial ownership of such shares as a result of the Voting Agreement described in Item 4 hereof. Neither the filing of this Statement on Schedule 13D nor any of its contents shall be deemed to constitute an admission by Convergys Customer Management Group Inc. that it is the beneficial owner of any of the common stock referred to herein for purposes of Section 13(d) of the Securities Exchange Act of 1934, as amended, or for any other purpose, and such beneficial ownership is expressly disclaimed.

2 The calculation of the foregoing percentage is based on 49,785,858 shares of DigitalThink, Inc. common stock outstanding as of February 11, 2004 as set forth in its Quarterly Report on Form 10-Q for the quarterly period ended December 31, 2003 filed with the Securities and Exchange Commission.

Schedule 13D

Item 1. Security and Issuer

The class of equity securities to which this Schedule 13D relates is the common stock, \$0.001 par value per share (the Common Stock), of DigitalThink, Inc., a Delaware corporation (the Issuer), with its principal executive office at 601 Brannan Street, San Francisco, California 94107.

Item 2. Identity and Background

This Schedule 13D is being filed by Convergys Customer Management Group Inc. (CMG), an Ohio corporation and wholly owned subsidiary of Convergys Corporation (Convergys), an Ohio corporation and New York Stock Exchange listed company. Convergys is a holding company and CMG provides outsourced marketing, customer support services and employee care services. The principal offices of Convergys and CMG are located at 201 East Fourth Street, Cincinnati, Ohio 45202.

Attached as Annex A is a chart setting forth, with respect to each executive officer and director of Convergys and CMG, respectively, his or her name, residence or business address, present principal occupation or employment (along with the name, principal business and address of any corporation or other organization in which such employment is conducted) and citizenship, in each case as of the date hereof.

During the last five years, neither Convergys or CMG nor, to the best knowledge of Convergys or CMG, any executive officer or director of Convergys or CMG named on Annex A have been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors).

During the last five years, neither Convergys or CMG nor, to the best knowledge of Convergys or CMG, any executive officer or director of Convergys or CMG named on Annex A is or has been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

To the best knowledge of Convergys and CMG, each executive officer or director of Convergys and CMG is a citizen of the United States.

Item 3. Source and Amount of Funds or Other Consideration

CMG, Issuer and Socrates Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of CMG (the Merger Sub), entered into an Agreement and Plan of Merger, dated as of March 24, 2004 (the Merger Agreement). Pursuant to the Merger Agreement, Merger Sub will be merged with and into Issuer with Issuer continuing as the surviving corporation and a wholly owned subsidiary of CMG (the Merger). As a result of the Merger, each issued and outstanding share of Issuer s Common Stock (other than shares held by the Issuer or CMG, Merger Sub or any subsidiary of them and other than shares held by a stockholder who properly demands statutory appraisal rights) will be automatically converted into the right to receive \$2.40. In addition, holders of any options that are not exercised prior to the Merger will be entitled to receive, for each stock option, an amount in cash equal to the excess of \$2.40 over the exercise price of such stock option, multiplied by the number of shares subject to such stock option, less any required deductions or withholdings. The total amount of funds required by CMG to consummate the merger will be approximately \$125 million. CMG will obtain all such funds from its parent corporation, Convergys. Convergys will advance such funds to CMG from its available cash balances and existing credit facility. Its existing credit facility is a revolving credit agreement with a

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consortium of banks.

The Agreement and Plan of Merger is attached to this filing as Exhibit 1 and any references to or descriptions of the Merger and the Merger Agreement are qualified in their entirety by reference to the Merger Agreement, which is incorporated by reference herein in its entirety where such references or descriptions appear.

In addition, as an inducement for CMG to enter into the Merger Agreement, certain directors and their affiliates and two of the executive officers of Issuer, as identified in Item 6, entered into a voting agreement, dated as of March 24, 2004, with respect to an aggregate of 10,698,839 shares of Issuer Common Stock (the Voting Agreement). CMG did not pay additional consideration to these stockholders in connection with the execution and delivery of the Voting Agreement. For a description of the Voting Agreement,

see Item 6 below, which description is incorporated herein by reference in response to this Item 3. The form of Voting Agreement is filed herewith as Exhibit 2.

Item 4: Purpose of Transaction

1. (a)-(j). The purpose of the Merger and the Merger Agreement is to enable CMG to consummate the Merger pursuant to the terms of the Merger Agreement. For a description of the Merger Agreement and Voting Agreement, see Item 3 above and Item 6 below, which descriptions are incorporated herein by reference in response to this Item 4.

2. Once the Merger is consummated, the separate existence of the Issuer will cease, Merger Sub will be merged with and into Issuer with Issuer continuing as the surviving corporation and a wholly owned subsidiary of CMG. At the effective time of the Merger, (i) the certificate of incorporation and bylaws of Merger Sub will become the certificate of incorporation and bylaws of the surviving corporation except that the name of the surviving corporation will be DigitalThink, Inc.; (ii) the directors of Merger Sub will be the directors of the surviving corporation; and (iii) the officers of Merger Sub will be the officers of the surviving corporation. After the closing of the merger, CMG intends to terminate the listing of DigitalThink shares on the Nasdaq National Market and terminate DigitalThink's registration pursuant to Section 12(g)(4) of the Act.

Item 5. Interest in Securities of the Issuer

- (a) According to Issuer's most recent Quarterly Report on Form 10-Q for the quarterly period ended December 31, 2003, as filed with the Securities and Exchange Commission, there were issued and outstanding 49,785,858 shares of Issuer's Common Stock on February 11, 2004. As of the date hereof, CMG has beneficial ownership of 10,698,839 of such shares, representing approximately 21.5% of the outstanding shares of Common Stock of Issuer. Except as set forth in this Item 5, neither Convergys or CMG, nor any other person controlling CMG nor, to the best knowledge of Convergys and CMG, any individual named in Annex A to this Schedule 13D, beneficially owns any shares of Issuer's Common Stock.
- (b) CMG has the shared power to vote or to direct the vote of the shares of Issuer's Common Stock deemed beneficially owned by CMG.
- (c) No transactions in the Issuer's Common Stock were effected during the past 60 days or since the most recent filing of Schedule 13D, whichever is less, by the persons named in response to Item 5(a), except for the entering into of the Merger Agreement and the Voting Agreement.
- (d) To the knowledge of Convergys and CMG, no other person has the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, the securities of the Issuer.
- (e) Not applicable.

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer

The following directors and their affiliates and two of the executive officers of the Issuer entered into a Voting Agreement, dated as of March 24, 2004, with respect to an aggregate of 10,698,839 shares of Issuer Common Stock: Walden VC II, L.P., Walden Media and Information Technology Fund, L.P., Walden Capital Partners II, L.P., Walden VC II-Side, L.P., Steven L. Eskenazi, Roger V. Goddu, Peter J. Goettner, Samuel D. Kingsland, William H. Lane III, John C. Madonna, Roderick C. McGeary, Michael W. Pope and Umberto Milletti.

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The Voting Agreement provides that the respective stockholders shall not, among other things, transfer any of such party's shares of Issuer Common Stock subject to the Voting Agreement until the expiration date of the Voting Agreement. The expiration of the Voting Agreement is the earlier of (i) the effective time of the Merger or (ii) the termination of the Merger Agreement. In addition, the Voting Agreement provides that, until the expiration of the Merger Agreement, the respective stockholders shall vote (i) in favor of the Merger Agreement and the Merger contemplated thereby, (ii) against any action or agreement that would result in a breach of any covenant, representation or warranty or any other obligation or agreement of the Issuer under the Merger Agreement, and (iii) against any action or agreement that would impede, interfere with, delay, postpone or attempt to discourage the Merger or any other transactions contemplated by the Merger Agreement.

In connection with the Voting Agreement, each stockholder listed above has also granted to CMG an irrevocable proxy with respect to the Issuer Common Stock held by such stockholder and subject to the Voting Agreement, which allows representatives of CMG to vote as set forth above.

References to and descriptions of the Voting Agreement in this Item 6 and throughout this Statement on Schedule 13D are qualified in their entirety by this reference to the form of Voting Agreement, which is filed as Exhibit 2 to this Statement on Schedule 13D, where such references or descriptions appear.

To the best knowledge of Convergys and CMG, except as described above and in Items 3 through 5 of this Statement on Schedule 13D, which are incorporated by reference in this Item 6, there are no contracts, arrangements, understandings or relationship (legal or otherwise) among Convergys, CMG and any other person with respect to any securities of the Issuer, including but not limited to transfer or voting of any of the securities, finders fees, joint ventures, loan or option arrangements, puts or calls, guarantees of profits, division of profits or loss, or the giving or withholding of proxies.

Item 7. Material to Be Filed as Exhibits

1. Agreement and Plan of Merger, dated as of March 24, 2004, among Convergys Customer Management Group Inc., Socrates Acquisition Corp. and DigitalThink, Inc.
2. Voting Agreement, dated as of March 24, 2004, among Convergys Customer Management Group Inc. and certain directors and their affiliates and two of the executive officers of DigitalThink, Inc.

Signature

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

April 5, 2004

Date

/s/ Steven G. Rolls

Signature

Steven G. Rolls, Executive Vice President

Name/Title

Annex A

Set forth below is the name, residence or business address, present principal occupation or employment (along with the name, principal business address and address of any other corporation or organization in which such employment is conducted) and citizenship of each director and executive officer of Convergys Corporation and Convergys Customer Management Group Inc. Unless otherwise indicated, each person identified below is employed by Convergys Corporation and/or Convergys Customer Management Group Inc. The principal address of Convergys Corporation and Convergys Customer Management Group Inc. and, unless otherwise indicated below, the current business address for each individual listed below is 201 East Fourth Street, Cincinnati, Ohio 45202.

Convergys Corporation

Name and Business Address	Position with Reporting	Present Principal	Citizenship
	Company	Occupation or Employment	
James F. Orr	Chairman, President and Chief Executive Officer	Same	United States
David F. Dougherty	Executive Vice President, Global Information Management	Same	United States
Steven G. Rolls	Executive Vice President, Global Customer Management and Employee Care	Same	United States
Earl C. Shanks	Chief Financial Officer	Same	United States
Thomas A. Cruz, Jr.	Senior Vice President, Human Resources and Administration	Same	United States
Maureen P. Govern	Chief Technology Officer	Same	United States
William H. Hawkins II	Senior Vice President, General Counsel and Secretary	Same	United States
Ronald E. Schultz	Senior Vice President, Business Development	Same	United States
Karen R. Bowman	President, Employee Care	Same	United States
John C. Freker	President, Customer Management	Same	United States
Stephen L. Robertson	President, Information Management International	Same	United States
Larry S. Schwartz	President, Information Management North America	Same	United States
Zoë Baird	Member of Board of Directors	President, Markle Foundation	United States

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c/o Markle Foundation

16th Floor

10 Rockefeller Plaza

New York, New York 10020

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Name and Business Address	Position with Reporting	Present Principal	Citizenship
	Company	Occupation or Employment	
John F. Barrett c/o Western & Southern Financial Group 400 Broadway Cincinnati, Ohio 45202	Member of Board of Directors	Chairman, President and Chief Executive Officer, The Western & Southern Financial Group, Inc. and The Western and Southern Life Insurance Company	United States
Gary C. Butler c/o Automatic Data Processing, Inc. One ADP Boulevard Roseland, New Jersey 07068	Member of Board of Directors	President and Chief Operating Officer, Automatic Data Processing, Inc.	United States
David B. Dillon c/o The Kroger Co. 6 th Floor 1014 Vine Street Cincinnati, Ohio 45202	Member of Board of Directors	Chief Executive Officer, The Kroger Co.	United States
Eric C. Fast c/o Crane Co. 100 First Stamford Place Stamford, Connecticut 06902	Member of Board of Directors	President and Chief Executive Officer, Crane Co.	United States
Joseph E. Gibbs c/o Gibbs Investments LLC Suite 210 2101 Park Center Drive Orlando, Florida 32835	Member of Board of Directors	Chairman, Gibbs Investments LLC	United States
Roger L. Howe c/o Convergys Corporation	Member of Board of Directors	Retired Chairman, U.S. Precision Lens, Inc.	United States

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201 East Fourth Street

Cincinnati, Ohio 45202

Steven C. Mason

Member of Board of Directors

Retired Chairman and Chief
Executive Officer, Mead
Corporation

United States

c/o Convergys Corporation

201 East Fourth Street

Cincinnati, Ohio 45202

Phillip A. Odeen

Member of Board of Directors

Retired Chairman, TRW Inc.

United States

c/o Convergys Corporation

201 East Fourth Street

Cincinnati, Ohio 45202

Sidney A. Ribeau

Member of Board of Directors

President, Bowling Green State
University

United States

c/o Bowling Green University

Bowling Green, Ohio 43402

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Name and Business Address	Position with Reporting	Present Principal	Citizenship
	Company	Occupation or Employment	
David R. Whitwam c/o Whirlpool Corporation 2000 M-63 N. MD 2600 Benton Harbor, Michigan 49022	Member of Board of Directors	Chairman and Chief Executive Officer, Whirlpool Corporation	United States
James M. Zimmerman c/o Federated Department Stores 7 West 7th Street 20th Floor Cincinnati, Ohio 45202	Member of Board of Directors	Retired Chairman and Chief Executive Officer, Federated Department Stores	United States

Convergys Customer Management Group Inc.

Name and Business Address	Position with Reporting	Present Principal Occupation or Employment	Citizenship
	Company		
John C. Freker	President	Same	United States
Steven G. Rolls	Executive Vice President, Member of Board of Directors	Same	United States
Karen R. Bowman	President, Employee Care	Same	United States
William R. Coleman	Vice President Treasurer	Same	United States
William H. Hawkins II	Member of Board of Directors	Same	United States
Earl C. Shanks	Member of Board of Directors	Same	United States

AGREEMENT AND PLAN OF MERGER

dated as of March 24, 2004

among

Convergys Customer Management Group Inc.

Socrates Acquisition Corp.

and

DigitalThink, Inc.

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