

## Edgar Filing: PIVOTAL CORP - Form 425

PIVOTAL CORP  
Form 425  
November 21, 2003

Filed by chinadotcom corporation

pursuant to Rule 425 under the Securities Act of 1933

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Securities Exchange Act of 1934

Subject Company: Pivotal Corporation

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On November 20, 2003, chinadotcom corporation issued the following press release:

### **CDC Software Supplements its Proposal to Acquire Pivotal Corporation**

**Hong Kong, November 20, 2003.** CDC Software, a wholly owned subsidiary and software unit of chinadotcom corporation (NASDAQ: CHINA; Website: www.corp.china.com), a leading integrated enterprise software and mobile applications company in China and internationally, today provided additional information related to its conditional proposal of November 18, 2003 which it made to acquire Pivotal Corporation ( Pivotal ) (NASDAQ: PVTL and TSX: PVT) whereby Pivotal shareholders will be allowed to choose to receive either US\$2.00 in cash or US\$2.14 in cash and shares (US\$1.00 in cash and US\$1.14 in chinadotcom shares) for each common share of Pivotal.

As an indication of CDC Software's sincerity, responsiveness and commitment, CDC Software is willing to commit to a more aggressive timetable than is customary in its practice for the completion of due diligence on Pivotal. CDC Software will commit to complete all of its due diligence on or prior to December 4, 2003. This new, revised timetable is based upon the assumption and full expectation that CDC Software will receive the cooperation of Pivotal's officers and Board of Directors to complete the diligence process. CDC Software has adopted this more aggressive timetable in consideration of the termination date of December 9, 2003 set forth in the Pivotal agreement with the Oak/Talisma Group. CDC Software believes that following the completion of its due diligence, Pivotal will have ample time to either (1) agree to do a transaction with CDC Software or, in the alternative, should it desire, (2) complete any shareholder and/or court action that may be necessary for the closing of a transaction with the Oak/Talisma Group.

CDC Software is frustrated that contractual restrictions have essentially meant that communication with Pivotal is through press releases only. Clearly this is not the ideal process for Pivotal and CDC Software to efficiently and effectively balance the mandates of their respective boards of directors and shareholders. Unfortunately, due to miscommunication and lack of meaningful communication, largely as a result of the auction process and contractual restrictions, CDC Software has not been able to effectively communicate with Pivotal or conduct due diligence.

Were CDC Software to negotiate a new agreement with Pivotal based on the existing agreement with Oak/Talisma Group, CDC Software would ask that the ambiguity of Section 8(a) of that agreement be resolved. It currently states that over the next six years the annualized aggregate premiums for insurance under this Section 8(a) [shall not be] in excess of \$750,000. We believe that this language allows for a basket of up to US\$750,000 per year, implying an aggregate of up to US\$4.5 million for the entire six year period.

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CDC Software notes that whatever the outcome of the Pivotal shareholders meeting and the approval by the Supreme Court of British Columbia, it respects and appreciates the challenging decision that must be made, and welcomes future initiatives with Pivotal.

chinadotcom notes that there is no assurance that Pivotal will accept the proposal, or even if it does, whether the transaction underlying the proposal will be consummated. This communication is not a solicitation of a proxy from any security holder of Pivotal. Nor is this communication an offer to purchase nor a solicitation of an offer to sell securities.

### **About chinadotcom corporation**

chinadotcom corporation (NASDAQ: CHINA; Website: [www.corp.china.com](http://www.corp.china.com)) is a leading integrated enterprise software and mobile applications company focused on two of the fastest growing business segments — manufacturing and mobile — in China and internationally. The company has over 1,000 employees with operations in over 14 countries.

CDC Software, a wholly owned subsidiary, is focused on the large manufacturing for export sector in China, as well as internationally. Recently it completed the acquisition of a controlling stake in Industri Matematik International ( IMI ), an international provider of mission critical SCM software for multinationals and large enterprises, based in New Jersey, U.S. with key operations in the U.S and Europe. In addition, the company has established strategic partnerships with leading international software vendors to localize and resell their software products throughout the Asia Pacific region. It currently has over 1,000 customer site installations and 600 enterprise customers in China and internationally. The company recently announced the intention to acquire Ross Systems, Inc. ( Ross ), a NASDAQ-listed global provider of enterprise software for process manufacturers based in Atlanta, U.S. with significant subsidiary operations in Western Europe. It expects to conclude the acquisition of Ross by no later than the first quarter of calendar year 2004, subject to Ross' shareholder approval and certain regulatory approvals.

CDC Outsourcing, a wholly owned subsidiary, aims to take advantage of the global trend of companies looking to outsource to China by positioning its CMM (Capability Maturity Model) Level 3 certified Software Development Center's capabilities as an outsourcing conduit for economical, high-quality software development for the large customer base of our acquired companies. Its current outsourcing capability includes operations in the United Kingdom, Australia, and the US, with some 350 consultants, complemented by a partnership with vMoksha in India with over 500 more outsourcing staff servicing software companies internationally.

For more information about chinadotcom corporation, CDC Software and CDC Outsourcing, please visit the Web site <http://www.corp.china.com>.

### **Safe Harbor Statements**

This communication is not a solicitation of a proxy from any security holder of Pivotal. Nor is this communication an offer to purchase nor a solicitation of an offer to sell securities. Any offer will be made only through an exchange offer statement, information circular, proxy statement or similar document. Investors and security holders are strongly advised to read such document regarding the proposed all-cash or cash-and-stock transaction referred to in this communication, if and when such document is filed and becomes available, because it will contain important information. Any such document would be filed by CDC Software with the United States Securities and Exchange Commission ( SEC ). Investors and security holders may obtain a free copy of such document (if and when filed and available) and other relevant documents related to the proposed all-cash or cash-and-stock transaction on the SEC's web site at: <[www.sec.gov](http://www.sec.gov)>. Any such document and related materials may also be obtained for free by directing such requests to CDC Software at the contact details set forth below. CDC Software and its executive officers and directors may be deemed to be participants in the solicitation of proxies from Pivotal security holders in favor of the proposed transaction, should CDC Software solicit such proxies. Information regarding the security ownership and other interests of CDC Software's executive officers and directors will be included in any such exchange offer statement, information circular, proxy statement or similar document.

This press release includes certain forward-looking statements within the meaning of the United States Private Securities Litigation Reform Act of 1995. These statements are based on chinadotcom management's current expectations and are subject to risks and uncertainties and changes in circumstances. All forward-looking statements included in this press release are based upon information available to chinadotcom as of the date of the press release, and it assumes no obligation to update or alter its forward looking statements whether as a result of new information, future events or otherwise. Further information on risks or other factors that could affect chinadotcom's results of operations is detailed in its filings with the SEC, including the Annual Report for the year ended December 31, 2002 on Form 20-F filed on June 16, 2003 and the Form 6-K filed on October 3, 2003 which contain revised and updated sections of the Form 20-F.

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