

MEMORANDUM TO THE BOARD OF DIRECTORS  
M&T BANK CORPORATION

April 18, 2025

RE: formal notice regarding Cogent Communications Holdings, Inc. IPv4 securitization executed by Wilmington Trust, N.A.

FROM: David J. Koch  
Federal whistleblower – case involving Cogent Communications (NASDAQ: CCOI)

To the Members of the M&T Bank Corporation Board of Directors:

This memorandum provides formal legal and ethical notice regarding a material transaction executed on April 11, 2025 by your wholly owned subsidiary, Wilmington Trust, N.A.—the \$174.4 million IPv4 securitization with Cogent Communications Holdings, Inc. (NASDAQ: CCOI).

That transaction was finalized despite the existence of formal legal notices and whistleblower disclosures, both public and private, detailing Cogent’s concealed acquisition of Fiber Network Solutions, Inc. (FNSI) and the existence of active federal investigations by multiple agencies.

This memorandum is submitted to preserve the record of M&T’s potential institutional exposure, to notify your board of the underlying facts, and to invite corrective governance responses before further public and regulatory scrutiny unfolds.

## 1. BACKGROUND: THE 2003 FNSI ACQUISITION

I was the co-founder, President, CEO, and Chairman of Fiber Network Solutions, Inc., a Tier-1 Internet backbone based in Ohio with over \$10 million in annual revenue and unqualified audit opinions from KPMG.

In early 2003, while I was incapacitated due to severe illness, I was forcibly and unlawfully divested of control of my company and 1.2 million shares. Rather than a lawful acquisition, a financial conspiracy was executed involving individuals now tied to Cogent's formation. That transaction:

- Occurred while the co-founder was medically incapacitated and not expected to survive.
- Was structured as an asset sale, nullifying shareholder equity and bypassing disclosure.
- Was buried in Exhibit 2.5 of Cogent's S-1 registration, unindexed and categorized as "miscellaneous assets" with no ownership schedules or board records.

This event became the concealed foundation of Cogent Communications. The company's infrastructure, client base, and operating model derive directly from FNSI's assets—acquired through conduct now under federal investigation.

## 2. THE 2025 IPV4 SECURITIZATION

Wilmington Trust finalized the IPv4 securitization on April 11, 2025, despite Cogent having received four separate

legal notices between March 14 and March 19, 2025. Those notices disclosed:

- Active federal investigations involving the DOJ, SEC, FBI, IRS-CI, and FINRA.
- The concealed history of the FNSI acquisition.
- The whistleblower's standing and evidentiary record.

Cogent acknowledged receipt in writing but made no disclosure to Wilmington Trust, to institutional investors, or in its offering materials. There was:

- No mention of the whistleblower disclosures
- No mention of Cogent's origin story involving FNSI
- No transparency regarding legal risks

Wilmington Trust executed the transaction unaware that the collateralized assets trace back to a concealed, now-documented criminal history. M&T's ownership of Wilmington Trust places you on formal record as fiduciaries with institutional oversight of this exposure.

### 3. TIMELINE OF DISCLOSURES AND EVENTS:

- March 14–19, 2025: Four legal notices delivered to Cogent leadership and legal counsel.
- March 19, 2025: Written acknowledgment from Cogent's Chief Legal Officer.
- April 5, 2025: Memorandum sent to Cogent's Board of Directors.
- April 11, 2025: IPv4 securitization closed by Wilmington Trust.

- April 14–15, 2025: Public news releases issued disclosing the matter.
- April 17–18, 2025: Memos sent to Cogent’s board and Wilmington Trust’s board.
- April 20, 2025: This memorandum delivered to M&T Bank Corporation’s board.

At multiple stages, opportunities existed to delay, investigate, or disclose. All of these points are now part of the evidentiary record.

#### 4. ETHICAL CONSIDERATIONS

While M&T’s direct involvement in the transaction may appear indirect, its institutional responsibility is not.

Your subsidiary monetized assets born of concealment, while formal legal notices and whistleblower warnings were active. The founder of FNSI was presumed too ill to survive. His company was stripped, his ownership erased, and his role erased from the record.

When the founder didn’t die, the concealment continued, becoming a 22-year coordinated criminal effort to hide the origin of Cogent’s business model.

Seven acts of concealment and retaliation since December 2023 have reset the statute of limitations to March 6, 2025, under controlling Supreme Court and federal circuit precedent:

- *Klehr v. A.O. Smith Corp.*, 521 U.S. 179 (1997)
- *Merck & Co. v. Reynolds*, 559 U.S. 633 (2010)

- United States v. Smith, 740 F.2d 734 (9th Cir. 1984)
- United States v. Arnold, 117 F.3d 1308 (11th Cir. 1997)
- United States v. Levine, 457 F.2d 1186 (10th Cir. 1972)
- Toussie v. United States, 397 U.S. 112 (1970)

You now hold legal and reputational exposure as the corporate parent of the indenture trustee that securitized these assets.

#### 5. CURRENT STANDING AND LEGAL POSTURE

Whistleblower submissions are on file with:

- U.S. Department of Justice (DOJ)
- Federal Bureau of Investigation (FBI)
- Securities and Exchange Commission – Office of the Whistleblower (SEC)
- Internal Revenue Service – Criminal Investigations (IRS-CI)
- Financial Industry Regulatory Authority (FINRA)

The statute of limitations has been reset. Cogent's written acknowledgment of notice is archived. A 147-page investigative report is on file with each agency. Publicly accessible evidence and news releases are available at:

<https://FiberNetworkSolutions.net>

## 6. PATH FORWARD

This memorandum does not allege misconduct by M&T Bank. It ensures you are now fully informed and can act independently.

You may choose to:

- Initiate a parent-level review of the transaction
- Confer with Wilmington Trust's board or compliance team
- Notify institutional clients or legal insurers
- Or take no action

Whatever you decide, your institution is now on formal legal and ethical record.

## FINAL WORD

This was not simply a securitization.

It was the conversion of a concealed and now documented twenty-two-year criminal history into tradable securities.

You now hold the paper.

You now hold the truth.

Respectfully,



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