

NETSCOUT SYSTEMS INC  
Form DEF 14A  
August 13, 2004

**SCHEDULE 14A INFORMATION**

Proxy Statement Pursuant to Section 14(a) of  
the Securities Exchange Act of 1934

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement  Confidential, For Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Under Rule 14a-12

**NETSCOUT SYSTEMS, INC.**

(Name of Registrant as Specified in Its Charter)

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(Name of Person(s) Filing Proxy Statement, if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box):

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No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:  
Not Applicable

(2) Aggregate number of securities to which transaction applies:  
Not Applicable

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):  
Not Applicable

(4) Proposed maximum aggregate value of transaction:  
Not Applicable

(5) Total fee paid:  
Not Applicable

Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

(1) Amount previously paid:  
Not Applicable

(2) Form, Schedule or Registration Statement No.:  
Not Applicable

(3) Filing Party:  
Not Applicable

(4) Date Filed:

Not Applicable

August 13, 2004

Dear Stockholder:

You are cordially invited to attend the Annual Meeting of Stockholders of NetScout Systems, Inc. to be held at 9:00 a.m., local time, on Wednesday, September 15, 2004, at Testa, Hurwitz & Thibault, LLP, High Street Tower, 125 High Street, Boston, Massachusetts.

At this Annual Meeting, you will be asked to elect two directors to a three-year term and to ratify the selection of the firm of PricewaterhouseCoopers LLP, independent registered public accounting firm, as auditors for the fiscal year ending March 31, 2005.

Details regarding the matters to be acted upon at this meeting appear in the accompanying Proxy Statement. Please give this material your careful attention.

If you are a stockholder of record, please sign, date and otherwise complete the enclosed proxy card and return it promptly in the enclosed postage-prepaid envelope whether or not you plan to attend the meeting. If your shares are held in a bank or brokerage account, you may be eligible to vote electronically or by telephone please refer to your enclosed vote instruction form for instructions. It is important that your shares be voted whether or not you attend the meeting in person. If you attend the meeting, you may vote in person even if you have previously returned your vote in accordance with the foregoing. Your prompt cooperation will be greatly appreciated.

Very truly yours,

ANIL K. SINGHAL

*President and Chief Executive Officer*

**NETSCOUT SYSTEMS, INC.**

**310 Littleton Road**

**Westford, MA 01886**

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**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**

**To Be Held September 15, 2004**

To the Stockholders of NetScout Systems, Inc.:

The Annual Meeting of Stockholders of NetScout Systems, Inc., a Delaware corporation, will be held on Wednesday, September 15, 2004, at 9:00 a.m., local time, at Testa, Hurwitz & Thibault, LLP, High Street Tower, 125 High Street, Boston, Massachusetts, for the following purposes:

1. To elect two (2) Class II directors to serve for a three-year term or until their respective successors are elected and qualified.
2. To ratify the selection of the firm of PricewaterhouseCoopers LLP, independent registered public accounting firm, as auditors for the fiscal year ending March 31, 2005.
3. To transact such other business as may properly come before the meeting or any adjournments thereof.

Only stockholders of record at the close of business on July 22, 2004 are entitled to notice of and to vote at the meeting.

All stockholders are cordially invited to attend the meeting in person. However, to assure your representation at the meeting, you are urged to sign, date and otherwise complete the enclosed proxy card and return it promptly in the enclosed postage-prepaid envelope whether or not you plan to attend the meeting. If your shares are held in a bank or brokerage account, you may be eligible to vote electronically or by telephone please refer to your enclosed vote instruction form for instructions. If you attend the meeting, you may vote in person even if you have previously returned your vote in accordance with the foregoing.

By Order of the Board of Directors,

ANIL K. SINGHAL

*President and Chief Executive Officer*

Westford, Massachusetts

August 13, 2004

**WHETHER OR NOT YOU EXPECT TO ATTEND THE MEETING, PLEASE SIGN, DATE AND OTHERWISE COMPLETE THE ENCLOSED PROXY CARD AND RETURN IT PROMPTLY IN THE ENCLOSED ENVELOPE IN ORDER TO ASSURE REPRESENTATION OF YOUR SHARES. NO POSTAGE NEED BE AFFIXED IF THE PROXY CARD IS MAILED IN THE UNITED STATES. IF YOUR SHARES ARE HELD IN A BANK OR BROKERAGE ACCOUNT, YOU MAY BE ELIGIBLE TO VOTE ELECTRONICALLY OR BY TELEPHONE PLEASE REFER TO YOUR ENCLOSED VOTE INSTRUCTION FORM FOR INSTRUCTIONS.**

**NETSCOUT SYSTEMS, INC.**

**310 Littleton Road**

**Westford, MA 01886**

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**PROXY STATEMENT**

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**August 13, 2004**

**General**

Proxies in the form enclosed with this Proxy Statement are solicited by the Board of Directors of NetScout Systems, Inc., a Delaware corporation (the Corporation), for use at the Annual Meeting of Stockholders to be held on Wednesday, September 15, 2004, at 9:00 a.m., local time, at Testa, Hurwitz & Thibault, LLP, High Street Tower, 125 High Street, Boston, Massachusetts, or at any adjournments thereof (the Meeting). An Annual Report to Stockholders containing financial statements for the fiscal year ended March 31, 2004 is being mailed together with this Proxy Statement to all stockholders entitled to vote at the Meeting. This Proxy Statement and the form of proxy were first mailed to stockholders on or about August 13, 2004.

The purpose of the Meeting is to elect two Class II directors to the Corporation's Board of Directors and to ratify the selection of the firm of PricewaterhouseCoopers LLP, independent registered public accounting firm, as auditors for the fiscal year ending March 31, 2005.

**Record Date and Voting Securities**

Only stockholders of record at the close of business on July 22, 2004 (the Record Date) will be entitled to receive notice of and to vote at the Meeting. As of that date, 30,524,657 shares of common stock of the Corporation were issued and outstanding. The holders of common stock are entitled to one vote per share on any proposal presented at the Meeting. Stockholders may vote whether or not they plan to attend the Meeting by completing, signing and dating the accompanying proxy card and returning it in the postage-prepaid envelope enclosed for that purpose. If a stockholder's shares are held in a bank or brokerage account, such stockholder may be eligible to vote electronically or by telephone such stockholder should refer to the enclosed form for instructions. If a stockholder attends the Meeting, such stockholder may vote in person even if such stockholder has previously returned his or her vote in accordance with the foregoing.

**Revocability of Proxies**

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Any proxy given pursuant to this solicitation may be revoked by the person giving it at any time before it is voted. Proxies may be revoked by (i) filing with the Secretary of the Corporation, before the taking of the vote at the Meeting, a written notice of revocation bearing a later date than the proxy submitted previously; (ii) duly completing a later-dated proxy, including a proxy completed electronically or by telephone, relating to the same shares and delivering it to the Secretary of the Corporation before the taking of the vote at the Meeting; or (iii) attending the Meeting and voting in person (although attendance at the Meeting will not in and of itself constitute a revocation of a proxy). *Any written notice of revocation or subsequent proxy should be sent so as to be delivered to NetScout Systems, Inc., 310 Littleton Road, Westford, MA 01886, Attention: Secretary, at or before the taking of the vote at the Meeting.*

### **Quorum and Voting**

The representation in person or by proxy of at least a majority of the outstanding shares of common stock entitled to vote at the Meeting is necessary to constitute a quorum for the transaction of business. Votes withheld



from any nominee, abstentions and broker non-votes are counted as present or represented for purposes of determining the presence or absence of a quorum for the Meeting. A non-vote occurs when a nominee holding shares for a beneficial owner votes on one proposal but does not vote on another proposal because, in respect of such other proposal, the nominee does not have discretionary voting power and has not received instructions from the beneficial owner.

In the election of directors, the nominees receiving the highest number of affirmative votes of the shares present or represented and entitled to vote at the Meeting shall be elected as directors. On all other matters being submitted to stockholders, an affirmative vote of a majority of the shares present or represented and voting on each such matter is required for approval. An automated system administered by the Corporation's transfer agent tabulates the votes. The vote on each matter submitted to stockholders is tabulated separately. Abstentions are included in the number of shares present or represented and voting on each matter and, therefore, with respect to votes on specific proposals, will have the effect of negative votes. Broker non-votes are not so included.

The persons named as attorneys-in-fact in the proxies, Anil K. Singhal, Narendra V. Popat and David P. Sommers, were selected by the Board of Directors and are officers of the Corporation. All properly executed proxies returned in time to be counted at the Meeting will be voted. Where a choice has been specified on the proxy with respect to the foregoing matters, the shares represented by the proxy will be voted in accordance with the specifications. If no such specifications are indicated, such proxies will be voted FOR the nominees to the Board of Directors and FOR ratifying the selection of PricewaterhouseCoopers LLP, independent registered public accounting firm, as auditors for the fiscal year ending March 31, 2005.

The Board of Directors knows of no other matters to be presented at the Meeting. If any other matter should be presented at the Meeting upon which a vote properly may be taken, shares represented by all proxies received by the Board of Directors will be voted with respect thereto in accordance with the judgment of the persons named as attorneys-in-fact in the proxies.

**PROPOSAL 1****ELECTION OF DIRECTORS****Nominees**

The size of the Board of Directors is currently fixed at seven members. The Corporation's by-laws and its certificate of incorporation divide the Board of Directors into three classes. The members of each class of directors serve for staggered three-year terms. Messrs. Singhal and Egan are the Class II directors whose terms expire at this Annual Meeting of Stockholders and are nominees for re-election as directors of the Corporation. The Board of Directors is also composed of (i) two Class III directors (Messrs. Papat and Hadzima), whose terms expire upon the election and qualification of directors at the Annual Meeting of Stockholders to be held in 2005, and (ii) three Class I directors (Messrs. DeMarines, Mullarkey and Schiciano), whose terms expire upon the election and qualification of directors at the Annual Meeting of Stockholders to be held in 2006.

The Board of Directors has nominated and recommended that Messrs. Singhal and Egan who are currently members of the Board of Directors be re-elected as Class II directors, to hold office until the Annual Meeting of Stockholders to be held in the year 2007 or until their successors have been duly elected and qualified or until their earlier resignation or removal. The Board of Directors knows of no reason why the nominees would be unable or unwilling to serve, but if either should for any reason be unable or unwilling to serve, the proxies will be voted for the election of such other person for the office of director as the Board of Directors may recommend in the place of such nominee. Unless otherwise instructed, the proxy holders will vote the proxies received by them for the nominees named below.

**THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS****A VOTE FOR THE NOMINEES LISTED BELOW**

The following table sets forth the nominees to be elected at the Meeting and, for each director whose term of office will extend beyond the Meeting, the year such nominee or director was first elected a director, the positions currently held by the nominee and each director with the Corporation, the year each nominee's or director's term will expire and class of director of each nominee and each director:

**Nominee s or Director s**

Name and Year		Year Term	Class of
First Became a Director	Position(s) with the Corporation	Will Expire	Director
<b>Nominees:</b>			
Anil K. Singhal	President, Chief Executive Officer, Treasurer and Director	2004	II
1984			
John R. Egan	Director	2004	II
2000			
<b>Continuing Directors:</b>			
Narendra V. Papat	Chairman of the Board and Secretary	2005	III

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1984				
Joseph G. Hadzima, Jr.	Director		2005	III
1998				
Victor A. DeMarines	Director		2006	I
2004				
Vincent J. Mullarkey	Director		2006	I
2000				
Kenneth T. Schiciano	Director		2006	I
1999				

**PROPOSAL 2**

**RATIFICATION OF SELECTION OF AUDITORS**

The Audit Committee of the Board of Directors has selected the firm of PricewaterhouseCoopers LLP, independent registered public accounting firm, to serve as auditors for the fiscal year ending March 31, 2005. PricewaterhouseCoopers LLP has served as the Corporation's accountants since 1993. It is expected that a member of the firm of PricewaterhouseCoopers LLP will be present at the Meeting with an opportunity to make a statement if so desired and will be available to respond to appropriate questions from the Corporation's stockholders. The ratification of this selection is not required under the laws of the State of Delaware, where the Corporation is incorporated, but the results of this vote will be considered by the Audit Committee of the Board of Directors in selecting auditors for future fiscal years.

**THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE FOR THE**

**RATIFICATION OF THIS SELECTION OF AUDITORS**

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**DIRECTORS AND EXECUTIVE OFFICERS**

The following table sets forth the director nominees to be elected at the Meeting, the directors and the executive officers of the Corporation, their ages, and the positions currently held by each such person with the Corporation.

<u>Name</u>	<u>Age</u>	<u>Position(s)</u>
Anil K. Singhal	50	President, Chief Executive Officer, Treasurer and Director
Narendra V. Popat	55	Chairman of the Board and Secretary
David P. Sommers	57	Senior Vice President, General Operations and Chief Financial Officer
John W. Downing	46	Vice President, Worldwide Sales Operations
Lisa A. Fiorentino	38	Vice President, Finance and Administration and Chief Accounting Officer
Michael Szabados	52	Senior Vice President, Product Operations
Victor A. DeMarines	67	Director
John R. Egan	46	Director
Joseph G. Hadzima, Jr.	52	Director
Vincent J. Mullarkey	56	Director
Kenneth T. Schiciano	41	Director

*Anil K. Singhal* co-founded the Corporation in June 1984 and has served as the Corporation's President, Chief Executive Officer, Treasurer and Director since January 2001. Prior to this, Mr. Singhal had served as Chairman of the Board, Chief Executive Officer and Treasurer from July 1993 to December 2000. Mr. Singhal has served as a director of the Corporation since its inception.

*Narendra V. Popat* co-founded the Corporation in June 1984 and has served as the Corporation's Chairman of the Board and Secretary since January 2001. Prior to this, Mr. Popat had served as President, Chief Operating Officer and Secretary from July 1993 to December 2000. Mr. Popat has served as a director of the Corporation since its inception.

*David P. Sommers* has served as the Corporation's Senior Vice President, General Operations and Chief Financial Officer since January 2001. Prior to this, Mr. Sommers served as the Corporation's Vice President and Chief Financial Officer from April 2000 to December 2000. From November 1998 until January 2000, Mr. Sommers was Senior Vice President and Chief Financial Officer of FlexiInternational Software, Inc., a publicly-held developer and marketer of financial accounting software.

*John W. Downing* has served as the Corporation's Vice President, Worldwide Sales Operations since September 2000, when he joined the Corporation. Prior to joining the Corporation, he was Vice President, Worldwide Sales at GenRad Corporation, a manufacturer of electronic testing equipment and production solutions, from April 1998 until September 2000.

*Lisa A. Fiorentino* has served as the Corporation's Vice President, Finance and Administration since January 2001. In January 2002, Ms. Fiorentino was also appointed to the position of Chief Accounting Officer. Ms. Fiorentino joined the Corporation in August 1995 and served as Vice President, Finance from January 2000 until December 2000, as Director of Finance from May 1997 until January 2000 and as Controller from August 1995 until April 1997.

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*Michael Szabados* has served as the Corporation's Senior Vice President, Product Operations since January 2001. Mr. Szabados joined the Corporation in August 1997 and served as Vice President, Marketing from August 1997 to December 2000.

*Victor A. DeMarines* has been a director of the Corporation since June 2004. From 1962 until his retirement in 2000, Mr. DeMarines was the President and Chief Executive Officer of MITRE Corporation, a not-for-profit organization that manages Federally Funded Research and Development Centers for the Department of Defense, Federal Aviation Administration and Internal Revenue Service. Mr. DeMarines continues to serve as a member of the Board of Trustees and of the Executive Committee and as Chairman of the Technology Committee of MITRE Corporation. Since 2002, he has been a member of the Board of Directors and the Stock Option Committee and the Chairman of the Audit Committee of Verint Systems Inc., a publicly-held provider of systems for security applications and enterprise business intelligence.

*John R. Egan* has been a director of the Corporation since October 2000. Mr. Egan is a founding managing partner of Egan-Managed Capital, a Boston-based venture capital fund specializing in New England, information technology, and early-stage investments, which began in the fall of 1996. Since 1992, he has been a member of the Board of Directors at EMC Corporation, a publicly-held provider of computer storage systems and software.

*Joseph G. Hadzima, Jr.* has been a director of the Corporation since July 1998. Mr. Hadzima has been a Managing Director of Main Street Partners, LLC, a venture capital investing and technology commercialization company, since April 1998. Since June 1996, he has also served as Of Counsel at Sullivan & Worcester LLP, a law firm where he was a partner from October 1987 to June 1996. Mr. Hadzima is also a Senior Lecturer at MIT Sloan School of Management.

*Vincent J. Mullarkey* has been a director of the Corporation since November 2000. Mr. Mullarkey was the Senior Vice President, Finance and Chief Financial Officer of Digital Equipment Corporation from 1994 until his retirement in September 1998. Since leaving Digital Equipment Corporation, Mr. Mullarkey has also been involved with several companies in the real estate industry.

*Kenneth T. Schiciano* has been a director of the Corporation since January 1999. Mr. Schiciano has been a Managing Director of TA Associates, Inc., a venture capital firm, since December 1999. Mr. Schiciano served as a Principal of TA Associates from January 1995 to December 1999.

There are no family relationships among any of the Corporation's executive officers and directors.

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**SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The following table sets forth certain information regarding beneficial ownership of the Corporation's common stock as of the Record Date by (i) each beneficial owner of more than 5% of the Corporation's common stock, (ii) each executive officer named in the Summary Compensation Table, (iii) each director, and (iv) all executive officers and directors as a group.

Unless otherwise noted, the address of each person listed on the table is c/o NetScout Systems, Inc., 310 Littleton Road, Westford, MA 01886, and each person has sole voting and investment power over the shares shown as beneficially owned, except to the extent authority is shared by spouses under applicable law or as unless otherwise noted below.

Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission (SEC). Shares of common stock issuable by the Corporation to a person or entity named below pursuant to options which may be exercised within 60 days of the Record Date are deemed to be beneficially owned and outstanding for purposes of calculating the number of shares and the percentage beneficially owned by that person or entity. However, these shares are not deemed to be beneficially owned and outstanding for purposes of computing the percentage beneficially owned by any other person or entity.

Name and Address of Beneficial Owner	Number of Shares	Percentage of Class
	Beneficially Owned	Beneficially Owned
Anil K. Singhal(1)	3,370,015	11.0%
Narendra V. Popat(2)	2,758,968	9.0%
David P. Sommers(3)	212,771	*
Michael Szabados(4)	234,126	*
John W. Downing(5)	115,813	*
Victor A. DeMarines(6)	10,000	*
John R. Egan(7)	30,000	*
c/o Egan-Managed Capital		
30 Federal Street		
Boston, MA 02110		
Joseph G. Hadzima, Jr.(8)	169,372	*
c/o Main Street Partners, LLC		
One Broadway, Suite 1300		
Cambridge, MA 02142		
Kenneth T. Schiciano(9)	53,278	*
c/o TA Associates, Inc.		
125 High Street		
Boston, MA 02110		
Vincent J. Mullarkey(10)	50,000	*
TA Entities(11)	4,427,015	14.5%



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c/o TA Associates, Inc.

125 High Street

Boston, MA 02110

Brown Capital Management, Inc.(12)	4,458,200	14.6%
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1201 N. Calvert Street

Baltimore, MD 21202

Abha Singhal(13)	1,530,972	5.0%
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All executive officers and directors as a group (11 persons)(14)	7,095,546	22.6%
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\* Less than 1% of the outstanding common stock.

(1) Includes 37,236 shares issuable upon the exercise of options exercisable within 60 days of July 22, 2004. Includes an aggregate of 457,233 shares held in trust for the benefit of Mr. Singhal's children; Mr. Singhal

- is one of two trustees of each such trust. Includes 340,000 shares held by a family limited partnership, of which Mr. Singhal and his spouse are the general partners, and trusts for the benefit of their children are the limited partners. Does not include 1,190,972 shares held directly by Mr. Singhal's spouse and 1,000,000 shares held in a grantor retained annuity trust for the benefit of Mr. Singhal's spouse.
- (2) Includes 37,236 shares issuable upon the exercise of options exercisable within 60 days of July 22, 2004. Includes an aggregate of 333,717 shares held in trust for the benefit of Mr. Popat's children; Mr. Popat is one of two trustees of each such trust. Includes 340,000 shares held by a family limited partnership, of which Mr. Popat and his spouse are the general partners, and trusts for the benefit of their children are the limited partners. Includes 149,480 shares held by the Hope Foundation USA Investment Trust; Mr. Popat is a trustee of such trust. Does not include an aggregate of 136,056 shares held in trust for the benefit of Mr. Popat's children; Mr. Popat's spouse is one of two trustees of each such trust. Does not include 130,000 shares held by the Popat Family Trust. Does not include 381,943 shares held directly by Mr. Popat's spouse and 2,000,000 shares held in a grantor retained annuity trust for the benefit of Mr. Popat's spouse.
  - (3) Includes 206,771 shares issuable upon the exercise of options exercisable within 60 days of July 22, 2004.
  - (4) Includes 220,226 shares issuable upon the exercise of options exercisable within 60 days of July 22, 2004. Includes 1,900 shares owned by Mr. Szabados' daughters. Mr. Szabados disclaims beneficial ownership of the shares held by his daughters.
  - (5) Includes 102,813 shares issuable upon the exercise of options exercisable within 60 days of July 22, 2004.
  - (6) Entirely comprised of shares issuable upon the exercise of options exercisable within 60 days of July 22, 2004.
  - (7) Entirely comprised of shares issuable upon the exercise of options exercisable within 60 days of July 22, 2004.
  - (8) Includes 90,000 shares issuable upon the exercise of options exercisable within 60 days of July 22, 2004. The shares deemed to be beneficially owned by Mr. Hadzima do not include an aggregate of 41,328 shares held in trust for the benefit of Mr. Hadzima's children.
  - (9) Includes 14,311 shares of TA Investors LLC and 3,354 shares of High Street Partners L.P. beneficially owned by Mr. Schiciano. Includes 5,613 shares held directly by Mr. Schiciano and 30,000 shares issuable upon the exercise of options exercisable within 60 days of July 22, 2004. Mr. Schiciano is a Managing Director of TA Associates, Inc. Mr. Schiciano disclaims beneficial ownership of the shares held by the TA Entities as well as the shares issuable upon the exercise of options, except to the extent of his pecuniary interest therein.
  - (10) Includes 30,000 shares issuable upon the exercise of options exercisable within 60 days of July 22, 2004.
  - (11) Includes 3,343,002 shares held by TA/Advent VIII L.P.; 874,313 shares held by Advent Atlantic & Pacific III L.P.; 88,596 shares held by TA Executives Fund LLC; and 93,259 shares held by TA Investors LLC. TA/Advent VIII L.P., Advent Atlantic & Pacific III L.P., TA Executives Fund LLC and TA Investors LLC are part of an affiliated group of investment partnerships referred to, collectively, as the TA Entities. The general partner of TA/Advent VIII L.P. is TA Associates VIII LLC. The general partner of Advent Atlantic & Pacific III L.P. is TA Associates AAP III Partners L.P. TA Associates, Inc. is the general partner of TA Associates AAP III Partners L.P. and is the sole manager of TA Associates VIII LLC, TA Executives Fund LLC and TA Investors LLC. In such capacity, TA Associates, Inc., through an executive committee, exercises sole voting and investment power with respect to all shares held of record by the named investment partnerships; individually, no stockholder, director or officer of TA Associates, Inc. is deemed to have or share such voting or investment power. Also includes 1,008 shares held directly by TA Associates, Inc. and 26,837 shares held by High Street Partners L.P., a general partnership whose individual general partners have voting and investment power over the shares beneficially owned by such general partner.
  - (12) Based solely on a Schedule 13G/A filed with the SEC on February 11, 2004.
  - (13) Includes 340,000 shares held by a family limited partnership, of which Mrs. Singhal and her spouse are the general partners, and trusts for the benefit of their children are the limited partners. Does not include 1,000,000 shares held in a grantor retained annuity trust for the benefit of Mrs. Singhal. Does not include 2,535,546 shares held directly by Mrs. Singhal's spouse and 37,236 shares issuable to Mrs. Singhal's spouse upon the exercise of options exercisable within 60 days of July 22, 2004. Does not include an aggregate of 457,233 shares held in trust for the benefit of Mrs. Singhal's children; Mrs. Singhal's spouse is one of two trustees of each such trust.
  - (14) Includes an aggregate of 877,891 shares issuable upon exercise of options exercisable within 60 days of July 22, 2004.

## CORPORATE GOVERNANCE

### **Independence of Members of the Board of Directors**

The Board of Directors has determined that each of Messrs. DeMarines, Egan, Hadzima, Mullarkey and Schiciano is independent within the meaning of the Corporation's director independence standards and the director independence standards of The Nasdaq Stock Market, Inc. (Nasdaq). Furthermore, the Board of Directors has determined that each member of the Audit Committee, Compensation Committee and Nominating and Corporate Governance Committee, respectively, of the Board of Directors is independent within the meaning of the Corporation's, Nasdaq's and the SEC's independence standards, as applicable.

### **Executive Sessions of Independent Directors**

Executive sessions of the independent members of the Board of Directors are held following each regularly scheduled in-person meeting of the Board of Directors. Executive sessions do not include any directors who are not independent within the meaning of the Corporation's and Nasdaq's director independence standards, and the Lead Independent Director, currently Mr. Egan, is responsible for chairing the executive sessions.

### **Policies Governing Director Nominations**

#### *Director Qualifications*

The Nominating and Corporate Governance Committee is responsible for reviewing with the Board of Directors from time to time the appropriate qualities, skills and characteristics desired of Board members in the context of the needs of the business and current make-up of the Board of Directors. This assessment includes consideration of the following minimum qualifications that the Nominating and Corporate Governance Committee believes must be met by all directors:

Directors must be individuals of the highest ethical character and integrity and share the values of the Corporation as reflected in the Corporation's Code of Business Conduct;

Directors must have reputations, both personal and professional, consistent with the image and reputation of the Corporation;

Directors must be free of conflicts of interest that would interfere with the proper performance of the responsibilities of a director;

Directors must have the ability to exercise sound business judgment;

Directors must be willing and able to devote sufficient time to the affairs of the Corporation and be diligent in fulfilling the responsibilities of a director and/or committee member, as the case may be;

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Directors must have substantial business or professional experience and expertise and be able to offer meaningful and practical advice and guidance to the Corporation's management based on that experience and expertise; and

Directors must have a commitment to enhancing stockholder value.

The Nominating and Corporate Governance Committee also considers numerous other qualities, skills and characteristics when evaluating director nominees, such as:

An understanding of and experience in the network performance management solutions market, the market for networking solutions generally and related accounting, legal, finance, product, sales and/or marketing matters;

Experience on other public or private company boards, unless a director otherwise provides complementary capabilities or qualifies as an audit committee financial expert under the rules of the Securities and Exchange Commission; and

Leadership experience with public companies or other major organizations.

Board members are expected to prepare for, attend and participate in Board meetings and meetings of committees on which they serve. In addition, directors must stay abreast of the Corporation's business and markets.

*Process for Identifying and Evaluating Director Nominees*

The Board of Directors is responsible for nominating persons for election as directors of the Corporation. The Board of Directors delegates the selection and nomination process to the Nominating and Corporate Governance Committee, with the expectation that other members of the Board of Directors, and of management, will be requested to take part in the process as appropriate.

Generally, the Nominating and Corporate Governance Committee identifies candidates for director nominees in consultation with management, through the use of search firms or other advisers, through the recommendations submitted by stockholders or through such other methods as the Nominating and Corporate Governance Committee deems to be helpful to identify candidates. Once candidates have been identified, the Nominating and Corporate Governance Committee confirms that the candidates meet all of the minimum qualifications for director nominees established by the Nominating and Corporate Governance Committee. The Nominating and Corporate Governance Committee may gather information about the candidates through interviews, questionnaires, background checks or any other means that the Nominating and Corporate Governance Committee deems to be helpful in the evaluation process. The Nominating and Corporate Governance Committee then meets as a group to discuss and evaluate the qualities and skills of each candidate in light of the criteria set forth above or established by the Nominating and Corporate Governance Committee from time to time, both on an individual basis and taking into account the overall composition and needs of the Board of Directors. Based on the results of the evaluation process, the Nominating and Corporate Governance Committee recommends candidates for the Board's approval as director nominees for election to the Board of Directors. The Nominating and Corporate Governance Committee also recommends candidates for the Board's appointment to the committees of the Board of Directors.

*Procedures for Recommendation of Director Nominees by Stockholders*

The Nominating and Corporate Governance Committee will consider director candidates who are recommended by stockholders of the Corporation. Stockholders, in submitting recommendations for director candidates to the Nominating and Corporate Governance Committee, shall adhere to the following procedures:

The Nominating and Corporate Governance Committee must receive any such recommendation for nomination not later than the close of business on the 120th day nor earlier than the close of business on the 150th day prior to the first anniversary of the date of the proxy statement delivered to stockholders in connection with the preceding year's Annual Meeting of Stockholders.

Such recommendation for nomination must be in writing and include the following information:

Name and address of the stockholder making the recommendation, as they appear on the Corporation's books and records, and of such record holder's beneficial owner;

Number of shares of capital stock of the Corporation that are owned beneficially and held of record by such stockholder and such beneficial owner;

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Name of the individual recommended for consideration as a director nominee;

All other information relating to the recommended candidate that would be required to be disclosed in solicitations of proxies for the election of directors or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (including the recommended candidate's written consent to being named in the proxy statement as a nominee and to serving as a director if approved by the Board of Directors and elected); and

A written statement from the stockholder making the recommendation stating why such recommended candidate meets the Corporation's criteria and would be able to fulfill the duties of a director.

Nominations must be sent to the attention of the Director, Investor Relations of the Corporation by one of the three methods listed below:

(1) By U.S. mail (including courier or other expedited delivery service):

NetScout Systems, Inc.

310 Littleton Road

Westford, MA 01886

Attn: Director, Investor Relations

(2) By facsimile:

(978) 614-4004

Attn: Director, Investor Relations

(3) By email:

ir@netscout.com

The Director, Investor Relations of the Corporation will promptly forward any such nominations to the Nominating and Corporate Governance Committee. As a requirement to being considered as a director for nomination to the Corporation's Board of Directors, a candidate will need to satisfy the following minimum requirements:

A candidate must undergo a comprehensive private investigation background check from a qualified company of the Corporation's choosing; and

A candidate must complete a detailed questionnaire regarding their experience, background and independence.

Once the Nominating and Corporate Governance Committee receives the nomination of a candidate and the candidate has satisfied the minimum requirements above, such candidacy will be evaluated and a recommendation with respect to such candidate will be delivered to the Board of Directors.

**Policy Governing Security Holder Communications with the Board of Directors**

The Board of Directors provides to every stockholder the ability to communicate with the Board of Directors as a whole and with individual directors through an established process for security holder communication (as that term is defined by the rules of the SEC) as follows:

For communications directed to the Board of Directors as a whole, stockholders may send such communications to the attention of the Chairman of the Board via one of the three methods listed below:

(1) By U.S. mail (including courier or other expedited delivery service):

NetScout Systems, Inc.

310 Littleton Road

Westford, MA 01886

Attn: Chairman of the Board, c/o Director, Investor Relations

(2) By facsimile:

(978) 614-4004

Attn: Chairman of the Board, c/o Director, Investor Relations



(3) By email:

ir@netscout.com

For stockholder communications directed to an individual director in his or her capacity as a member of the Board of Directors, stockholders may send such communications to the attention of the individual director via one of the three methods listed below:

(1) By U.S. mail (including courier or other expedited delivery service):

NetScout Systems, Inc.

310 Littleton Road

Westford, MA 01886

Attn: [Individual Director], c/o Director, Investor Relations

(2) By facsimile:

(978) 614-4004

Attn: [Individual Director], c/o Director, Investor Relations

(3) By email:

ir@netscout.com

The Corporation will forward any such stockholder communications to the Chairman of the Board, as a representative of the Board of Directors, and/or to the director to whom the communication is addressed, on a periodic basis. The Corporation will forward such communications by certified U.S. mail to an address specified by each director and the Chairman of the Board for such purposes or by secure electronic transmission.

**Policy Governing Director Attendance at Annual Meetings of Stockholders**

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The Corporation's policy is that one of the regularly scheduled in-person meetings of the Board of Directors shall be scheduled on the same day as the Corporation's annual meeting of stockholders, and all directors are encouraged to attend the Corporation's annual meeting of stockholders. All members of the Board of Directors attended the Annual Meeting of Stockholders held on September 16, 2003.

### **Code of Ethics**

The Corporation has adopted a code of ethics as defined by regulations promulgated under the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended (the Exchange Act), which applies to all of the employees, officers and directors of the Corporation and its subsidiaries, including its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. A current copy of the Code of Business Conduct is available at the Corporate Governance section of the Corporation's website at <http://www.netscout.com/investors/>. The Corporation intends to disclose amendments to or waivers from provisions of the Code of Business Conduct that applies to its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, by posting such information on its website, available at <http://www.netscout.com/investors/>.

For more corporate governance information, you are invited to access the Corporate Governance section of the Corporation's website, available at <http://www.netscout.com/investors/>. Contents of the Corporation's website are not part of, or incorporated by reference into, this Proxy Statement.

## THE BOARD OF DIRECTORS AND ITS COMMITTEES

### Board of Directors

The Board of Directors met eight times during the fiscal year ended March 31, 2004. Each of the directors attended at least 75% of the total number of meetings of the Board of Directors and the committees on which they served during fiscal year 2004. The Board of Directors has standing Audit, Compensation, Nominating and Corporate Governance and Stock Option Committees.

### Audit Committee

The Audit Committee of the Board of Directors, of which Messrs. DeMarines, Egan, Hadzima and Mullarkey are currently the only members, is responsible for (1) reviewing and overseeing (i) the financial reports provided by the Corporation to the SEC, the Corporation's stockholders or to the general public and (ii) the Corporation's accounting policies, internal accounting controls, internal controls over financial reporting, auditing functions and financial reporting practices; (2) ensuring the independence of the independent auditor and thereby furthering the integrity of the Corporation's financial reporting; and (3) establishing procedures designed to facilitate (i) the receipt, retention and handling of complaints regarding disclosure controls and procedures, internal controls over financial reporting and accounting, internal accounting control or auditing matters and (ii) the receipt of confidential, anonymous submissions by employees of the Corporation of concerns regarding questionable accounting or auditing matters. A current copy of the Audit Committee Charter is attached to this Proxy Statement as Annex A. The Audit Committee met nine times during the fiscal year ended March 31, 2004. Mr. Mullarkey serves as the Chairman of the Audit Committee and qualifies as an audit committee financial expert under the rules of the SEC. The Board of Directors has determined that each member of the Audit Committee, including Mr. Mullarkey, is independent within the meaning of the Corporation's and Nasdaq's director independence standards and the SEC's heightened director independence standards for audit committee members.

### Compensation Committee

The Compensation Committee, of which Messrs. Egan and Hadzima are currently the only members, is responsible for discharging the responsibilities of the Board of Directors relating to the compensation of the Corporation's executives, administering the Corporation's incentive compensation and stock plans, reviewing and making recommendations with respect to the Corporation's benefit plans and human resource activities and producing an annual report on executive compensation for inclusion in the Corporation's proxy statement in accordance with applicable rules and regulations. A current copy of the Compensation Committee Charter is available at the Corporate Governance section of the Corporation's website at <http://www.netscout.com/investors/>. The Compensation Committee met four times during the fiscal year ended March 31, 2004. Mr. Hadzima serves as the Chairman of the Compensation Committee. The Board of Directors has determined that each member of the Compensation Committee is independent within the meaning of the Corporation's and Nasdaq's director independence standards.

### Nominating and Corporate Governance Committee

The Nominating and Corporate Governance Committee of the Board of Directors, of which Messrs. Egan and Hadzima are currently the only members, was established by the Board of Directors on April 27, 2004. The Nominating and Corporate Governance Committee is responsible for identifying individuals qualified to become members of the Board of Directors and recommending to the Board of Directors the director nominees for election and monitoring compliance with and periodically reviewing the Corporation's Code of Business Conduct and Corporate Governance Guidelines. The Nominating and Corporate Governance Committee may also, in its discretion, consider nominees recommended by stockholders of the Corporation. A current copy of the Nominating and Corporate Governance Committee Charter is available at the Corporate

Governance section of

the Corporation's website at <http://www.netscout.com/investors/>. Mr. Egan serves as the Chairman of the Nominating and Corporate Governance Committee. The Board of Directors has determined that each member of the Nominating and Corporate Governance Committee is independent within the meaning of the Corporation's and Nasdaq's director independence standards.

### **Stock Option Committee**

The Stock Option Committee of the Board of Directors, of which Mr. Singhal is currently the only member, is responsible for granting stock options to employees and consultants of the Corporation who are not executive officers or directors of the Corporation and to generally exercise rights similar to those held by the Compensation Committee with respect to those grants. The Stock Option Committee operates under guidelines established by the Board of Directors and reports all options granted at each regularly scheduled meeting of the Board of Directors. The Stock Option Committee took action by written consent eleven times during the fiscal year ended March 31, 2004.

### **Report of Audit Committee of the Board of Directors**

This report is submitted by the Audit Committee of the Board of Directors, which reviews with the Corporation's independent auditors and management the annual financial statements and independent auditors' opinion, reviews the results of the audit of the Corporation's annual financial statements by the independent auditors, evaluates the effectiveness of the independent auditors, recommends the retention of the independent auditors to the Board of Directors and reviews the Corporation's accounting policies and internal accounting and financial controls. The Audit Committee of the Board of Directors is currently comprised of Messrs. DeMarines, Egan, Hadzima and Mullarkey, four non-employee directors of the Corporation, and each is independent within the meaning of the Corporation's and Nasdaq's director independence standards. Mr. DeMarines joined the Board of Directors and the Audit Committee in June 2004, after the filing of the Corporation's Annual Report on Form 10-K for the fiscal year ended March 31, 2004. The Audit Committee operates under a written charter adopted by the Board of Directors, a current copy of which is attached to this Proxy Statement as Annex A.

The Audit Committee oversees the Corporation's financial reporting process on behalf of the Board of Directors. Management has the primary responsibility for the financial statements and the reporting process, including the systems of internal controls. In fulfilling its oversight responsibilities, the Audit Committee reviewed the audited financial statements in the Corporation's Annual Report on Form 10-K with management, including a discussion of the quality, not just the acceptability, of the implementation of accounting principles, the reasonableness of significant judgments and the clarity of disclosures in the financial statements.

The Audit Committee reviewed with the independent auditors, who are responsible for expressing an opinion on the conformity of those audited financial statements with generally accepted accounting principles, their judgments as to the quality, not just the acceptability, of the Corporation's implementation of accounting principles and such other matters as are required to be discussed with the Audit Committee under generally accepted auditing standards. In addition, the Audit Committee has discussed with the independent auditors the auditors' independence from management and the Corporation, including the matters in the written disclosures required by the Independence Standards Board and considered the compatibility of any non-audit services with the auditors' independence.

The Audit Committee discussed with the Corporation's management and independent auditors the overall plans for their respective audits. The Audit Committee meets with the independent auditors, with and without management present, to discuss the results of their examinations, their evaluations of the Corporation's internal controls, and the overall quality of the Corporation's financial reporting. The Audit Committee held nine meetings during fiscal year 2004.



The Audit Committee has reviewed the audited financial statements of the Corporation at March 31, 2004 and for each of the two prior years ended March 31, and has discussed them with both management and PricewaterhouseCoopers LLP, the Corporation's independent registered public accounting firm. The Audit Committee has also discussed with the independent auditors the matters required to be discussed by Statement on Auditing Standards No. 61, as amended by Statement on Auditing Standards No. 90 (Communications with Audit Committees), as currently in effect. The Audit Committee has received the written disclosures and the letter from the independent auditors required by Independence Standards Board Standard No. 1 (Independence Discussions with Audit Committees), as currently in effect, and has discussed with PricewaterhouseCoopers LLP that firm's independence. Based on its review of the financial statements and these discussions, the Audit Committee concluded that it would be reasonable to recommend, and on that basis did recommend, to the Board of Directors that the audited financial statements be included in the Corporation's Annual Report on Form 10-K for the fiscal year ended March 31, 2004.

**Respectfully submitted by the Audit Committee**

Vincent J. Mullarkey, Chairman

Victor A. DeMarines

John R. Egan

Joseph G. Hadzima, Jr.

**COMPENSATION AND OTHER INFORMATION**  
**CONCERNING DIRECTORS AND EXECUTIVE OFFICERS**

**Executive Compensation Summary**

The following summary compensation table sets forth the total compensation paid or accrued for the fiscal years ended March 31, 2004, 2003 and 2002 to (i) the Chief Executive Officer of the Corporation during the fiscal year ended March 31, 2004 and (ii) each of the four other most highly compensated executive officers of the Corporation during the fiscal year ended March 31, 2004. The Chief Executive Officer and the four other most highly compensated executive officers of the Corporation listed below are collectively referred to below as the Named Executive Officers. The dollar amounts listed in the column entitled All Other Compensation are comprised of contributions to a defined contribution plan, tax consulting reimbursement and other miscellaneous taxable benefits.

**Summary Compensation Table**

<u>Name and Principal Position</u>	<u>Fiscal Year</u>	<u>Salary (\$)</u>	<u>Bonus (\$)</u>	<u>Long-Term Compensation Securities Underlying Options (#)</u>	<u>All Other Compensation (\$)</u>
Anil K. Singhal					
President, Chief Executive Officer, Director and Treasurer	2004	250,000			35,294
	2003	250,000			42,043
	2002	250,000	190,000		32,815
Narendra V. Popat					
Chairman of the Board and Secretary	2004	250,000			36,364
	2003	250,000			33,037
	2002	250,000	190,000		34,308
David P. Sommers Senior Vice President, General Operations and Chief Financial Officer	2004	210,000		275,000	6,000
	2003	205,769		25,000	6,000
	2002	200,000	91,000	50,000	5,100
Michael Szabados					
Senior Vice President, Product Operations	2004	210,000			1,696
	2003	205,769		50,000	6,000
	2002	200,000	91,000	11,250	5,100
John W. Downing Vice President, Worldwide	2004	293,968		145,000	5,959
	2003	290,675			6,055
	2002	279,124		40,000	7,419



Sales Operations

Pursuant to the option exchange program further described below, Mr. Sommers accepted the Corporation's offer to exchange all of his outstanding stock option grants with an exercise price of at least \$10.00 per share and tendered such options in exchange for new options granted under the Corporation's 1999 Stock Option and Incentive Plan, resulting in the cancellation of options granted in 2001.

Pursuant to the option exchange program further described below, Mr. Downing accepted the Corporation's offer to exchange all of his outstanding stock option grants with an exercise price of at least \$10.00 per share and tendered such options in exchange for new options granted under the Corporation's 1999 Stock Option and Incentive Plan, resulting in the cancellation of options granted in 2001.

All Other Compensation for Mr. Singhal was comprised of the following categories: contributions to a defined contribution plan of \$6,000, \$6,000 and \$5,100 for the years ended March 31, 2004, 2003 and 2002, respectively; tax consulting reimbursement of \$19,138, \$25,986 and \$19,950 for the years ended March 31, 2004, 2003 and 2002, respectively; and other miscellaneous taxable benefits of \$10,156, \$10,057 and \$7,765 for the years ended March 31, 2004, 2003 and 2002, respectively.

All Other Compensation for Mr. Papat was comprised of the following categories: contributions to a defined contribution plan of \$6,000, \$6,000 and \$5,437 for the years ended March 31, 2004, 2003 and 2002, respectively; tax consulting reimbursement of \$19,138, \$19,138 and \$18,875 for the years ended March 31, 2004, 2003 and 2002, respectively; and other miscellaneous taxable benefits of \$11,226, \$7,899 and \$9,996 for the years ended March 31, 2004, 2003 and 2002, respectively.

All Other Compensation for the other Named Executive Officers consisted solely of contributions to a defined contribution plan.

### Option Grants in Last Fiscal Year

The following table sets forth information regarding option grants made during the fiscal year ended March 31, 2004 pursuant to the Corporation's 1999 Stock Option and Incentive Plan to each of the Named Executive Officers. The 5% and 10% appreciation rates are set forth in the SEC rules, and no representation is made that the common stock will appreciate at these assumed rates or at all. Actual gains, if any, on stock option exercises and common stock holdings are dependent on the timing of such exercises and the future performance of the Corporation's common stock.

### Stock Option Grants in Fiscal Year 2004

Name	Number of Securities Underlying Options Granted	% of Total Options Granted to Employees in FY 2004	Exercise Of Base Price (\$/Sh)	Expiration Date	Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term	
					5% (\$)	10% (\$)
Anil K. Singhal						
Narendra V. Papat						
David P. Sommers	250,000	8.7%	\$ 4.22	4/25/10	663,484	1,681,398
	25,000	0.9%	\$ 4.22	7/17/12	66,348	168,140
Michael Szabados						
John W. Downing	100,000	3.5%	\$ 4.22	9/25/10	265,394	672,559
	25,000	0.9%	\$ 4.22	12/1/10	66,348	168,140
	20,000	0.7%	\$ 7.85	1/5/14	98,736	250,218

The Corporation granted options to purchase 275,000 of its shares to Mr. Sommers, and options to purchase 125,000 of its shares to Mr. Downing, on June 13, 2003, pursuant to the option exchange program further described below. The exercise price of these new options is \$4.22, which is equal to the fair market value of the Corporation's common stock on the date of grant. For Mr. Sommers, 93,750 of these new options were fully vested on the grant date, while the remaining options vest quarterly over three years. For Mr. Downing, 31,250 of these new options were fully vested on the grant date, while the remaining options vest quarterly over three years.

The Corporation granted options to purchase 20,000 of its shares to Mr. Downing on January 5, 2004. The exercise price of these new options is \$7.85, which is equal to the fair market value of the Corporation's common stock on the date of grant. These new options vest quarterly over four years.

**Year-End Option Table**

The following table sets forth information regarding exercisable and unexercisable stock options held as of March 31, 2004 by each of the Named Executive Officers. The value realized upon exercise of stock options is calculated by determining the difference between the exercise price per share and the fair market value on the

date of exercise. The value of unexercised in-the-money options has been calculated by multiplying the number of shares underlying the option by the difference between the exercise price per share payable upon exercise of such options and the fair market value at March 31, 2004 of \$7.71 per share.

#### Aggregated Option Exercises in Fiscal Year 2004 and Fiscal Year-End Option Values

Name	Shares		Number of Securities Underlying Unexercised Options at Fiscal Year-End (#)		Value of Unexercised In-the-Money Options at Fiscal Year-End (\$)	
	Acquired on Exercise (#)	Value Realized (\$)	Exercisable	Unexercisable	Exercisable	Unexercisable
Anil K. Singhal			37,236			
Narendra V. Popat			37,236			
David P. Sommers			173,438	151,562	\$ 569,549	\$ 512,701
Michael Szabados	10,000	\$ 59,335	208,585	39,453	\$ 497,602	\$ 115,177
John W. Downing			82,188	102,812	\$ 286,836	\$ 289,014

Pursuant to the option exchange program further described below, the Corporation granted options to purchase 275,000 of its shares to Mr. Sommers on June 13, 2003. The exercise price of these new options is \$4.22, which is equal to the fair market value of the Corporation's common stock on such date pursuant to the option exchange program.

Pursuant to the option exchange program further described below, the Corporation granted options to purchase 125,000 of its shares to Mr. Downing on June 13, 2003. The exercise price of these new options is \$4.22, which is equal to the fair market value of the Corporation's common stock on such date pursuant to the option exchange program.

#### Stock Plans

*1990 Stock Option Plan.* The 1990 Stock Option Plan was adopted by the Board of Directors and approved by the stockholders on October 4, 1990. In general, options granted pursuant to the 1990 Stock Option Plan are exercisable within ten years of the original grant date and become exercisable over a period of four years from a specific date; an additional 25% of unexercisable options shall become exercisable immediately prior to the closing of a merger, acquisition, business combination or similar transaction which results in the Corporation's existing stockholders owning less than 50% of the Corporation's equity securities or assets. Options are not assignable or transferable except by will or the laws of descent or distribution. The Corporation has a right of repurchase for shares issued upon the exercise of options under certain circumstances, including unauthorized transfers of shares and termination of the optionee's relationship with the Corporation in certain situations. As of July 22, 2004, options to purchase an aggregate of 359,520 shares of common stock at a weighted average exercise price of \$3.80 per share were outstanding under the 1990 Stock Option Plan. No additional option grants will be made under the 1990 Stock Option Plan.

*1999 Stock Option and Incentive Plan.* The Corporation's 1999 Stock Option and Incentive Plan, as amended (the "1999 Stock Option Plan"), was adopted by the Board of Directors in April 1999 and was approved by the Corporation's stockholders in June 1999. The 1999 Stock Option Plan provides for the grant of stock-based awards to the Corporation's employees, officers and directors, consultants or advisors. Under the 1999 Stock Option Plan, the Corporation may grant options that are intended to qualify as incentive stock options within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (the "Code"), options not intended to qualify as incentive stock options, restricted stock and

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other stock-based awards. Incentive stock options may be granted only to employees of the Corporation. A total of 4,500,000 shares of common stock were originally reserved for issuance under the 1999 Stock Option Plan. In September 2001, at the annual meeting of stockholders, an additional 5,000,000 shares were approved, for a total of 9,500,000 shares reserved for issuance

under the 1999 Stock Option Plan. The maximum number of shares with respect to which awards may be granted to any employee under the 1999 Stock Option Plan shall not exceed 1,000,000 shares of common stock during any calendar year.

The 1999 Stock Option Plan is administered by the Compensation Committee. Subject to the provisions of the 1999 Stock Option Plan, the Compensation Committee has the authority to select the persons to whom awards are granted and to determine the terms of each award, including the number of shares of common stock subject to the award. Payment of the exercise price of an award may be made in cash or, if approved by the Compensation Committee, shares of common stock, a combination of cash and stock, a promissory note or by any other method approved by the Compensation Committee. Unless otherwise permitted by the Compensation Committee, awards are not assignable or transferable except by will or the laws of descent and distribution and, during the participant's lifetime, may be exercised only by the participant.

The 1999 Stock Option Plan provides, subject to certain conditions, that upon an acquisition of the Corporation, 25% of each unvested portion of any awards will accelerate and become exercisable, with the remaining 75% of each unvested portion to continue vesting throughout the term of such awards.

The Compensation Committee may, in its sole discretion, amend, modify or terminate any award granted or made under the 1999 Stock Option Plan, so long as such amendment, modification or termination would not materially and adversely affect the participant. The Compensation Committee may also provide that any option shall become immediately exercisable, in full or in part, or that any restricted stock granted under the 1999 Stock Option Plan shall be free of some or all restrictions.

As of July 22, 2004, options to purchase an aggregate of 4,351,400 shares of common stock at an average exercise price of \$7.50 per share were outstanding under the 1999 Stock Option Plan.

*1999 Employee Stock Purchase Plan, as amended.* The 1999 Employee Stock Purchase Plan, as amended (the "1999 Purchase Plan") was adopted by the Board of Directors in April 1999 and was approved by our stockholders in June 1999. The plan was amended by the Board of Directors on January 17, 2001, July 18, 2001 and April 29, 2003. A total of 500,000 shares of common stock were originally reserved for issuance under the 1999 Purchase Plan. In September 2003, at the Annual Meeting of Stockholders, an additional 750,000 shares were approved, for a total of 1,250,000 shares reserved for issuance under the 1999 Purchase Plan.

The 1999 Purchase Plan is administered by the Compensation Committee. All employees of the Corporation whose customary employment is for more than 20 hours per week and for more than three months in any calendar year are eligible to participate in the 1999 Purchase Plan. Employees who would own 5% or more of the total combined voting power or value of the Corporation's stock immediately after the grant of an option may not participate in the 1999 Purchase Plan. To participate in the 1999 Purchase Plan, an employee must authorize the Corporation to deduct an amount not less than 1% nor more than 10% of a participant's total cash compensation from his or her pay during six-month payment periods. Payment periods consist of six-month periods commencing on May 1 and November 1 and ending on October 31 and April 30 of each calendar year, respectively. In no case shall an employee be entitled to purchase more than 1,000 shares in any one payment period. The exercise price for an option granted in each payment period is 85% of the lesser of the last reported sale price of the common stock on the first or last business day of the payment period, in either event rounded up to the nearest cent. If an employee is not a participant on the last day of the payment period, such employee is not entitled to exercise his or her option, and the amount of his or her accumulated payroll deductions will be refunded. Options granted under the 1999 Purchase Plan may not be transferred or assigned. An employee's rights under the 1999 Purchase Plan terminate upon his or her voluntary withdrawal from the plan at any time or upon termination of employment. As of July 22, 2004, an aggregate of 544,866 shares of common stock were issued to date under the 1999 Purchase Plan.

*NextPoint Networks, Inc. Stock Incentive Plans.* Upon the consummation of the Corporation's acquisition of NextPoint Networks, Inc. (NextPoint), the Corporation assumed NextPoint's 1997 Stock Incentive Plan and 2000 Stock Incentive Plan (collectively, the NextPoint Plans) and all outstanding options which had been issued pursuant to each plan. Options to purchase shares of NextPoint common stock were converted into options to purchase shares of the Corporation's common stock. In general, options granted pursuant to the 1997 Stock Incentive Plan or the 2000 Stock Incentive Plan are not transferable or assignable except by will or the laws of descent and distribution. The 1997 Stock Incentive Plan provided that all outstanding options become immediately exercisable upon the consummation of the NextPoint acquisition. However, certain NextPoint option holders executed an agreement providing that (i) only 50% of such option holder's options would become exercisable immediately following the acquisition and (ii) the remainder of the unexercisable options would become exercisable in equal quarterly amounts over the two years following the acquisition. Under the 2000 Stock Incentive Plan, options generally become exercisable over a four-year period from a specific date. As of July 22, 2004, options to purchase an aggregate of 68,189 shares of the Corporation's common stock at a weighted average exercise price of \$3.19 were outstanding under the 1997 Stock Incentive Plan and options to purchase an aggregate of 8,125 shares of the Corporation's common stock at a weighted average exercise price of \$8.83 were outstanding under the 2000 Stock Incentive Plan. No additional option grants will be made under the 1997 Stock Incentive Plan or the 2000 Stock Incentive Plan.

#### **401(k) Plan**

The Corporation maintains a 401(k) plan qualified under Section 401 of the Code. All of the Corporation's employees who are at least 21 years of age are eligible to participate in the 401(k) plan. Under the 401(k) plan, a participant may contribute a maximum of 15% of his or her pre-tax salary, commissions and bonuses through payroll deductions, up to the statutorily prescribed annual limit, which was \$12,000 (or \$14,000 for individuals at least 50 years of age) in calendar year 2003, to the 401(k) plan. The percentage elected by more highly compensated participants may be required to be lower. At the discretion of the Board of Directors, the Corporation may make matching contributions to the 401(k) plan. During the plan year ended December 31, 2003, the Corporation matched \$0.50 for each \$1.00 of employee contributions up to 6% of compensation. In addition, at the discretion of the Board of Directors, the Corporation may make profit-sharing contributions to the 401(k) plan for all eligible employees. During the plan year ended December 31, 2003, the Corporation made no profit-sharing contributions to the 401(k) plan.

#### **Employment Agreements**

Anil K. Singhal and Narendra V. Popat entered into employment agreements with the Corporation on June 1, 1994, which were amended on January 14, 1999 and August 5, 2004. Under the terms of these employment agreements as amended in 2004, each of Messrs. Singhal and Popat receives an annual base salary of at least \$250,000, and is eligible to receive a year-end discretionary bonus. For the fiscal years ended March 31, 2003 and 2004, under the employment agreements prior to the 2004 amendments, Messrs. Singhal and Popat received a base salary of \$250,000 and were eligible to receive a year-end non-discretionary bonus of \$250,000. However, no year-end bonus was paid to either Messrs. Singhal or Popat in fiscal years 2003 and 2004 as both individuals agreed to waive their bonus rights. In the event that either Messrs. Singhal or Popat is terminated without cause, or either decides to terminate his own employment for good reason, each is entitled to receive severance benefits for three years as follows:

for the first twelve months following termination, the greater of \$175,000 or base salary as of the date of termination; and

for each of the next two twelve-month periods, an amount equal to 120% of the amount received in the immediately preceding twelve months.

Good reason includes a change in executive responsibilities or a reduction in salary or benefits. Severance benefits will be discontinued if the executive secures alternative employment that is comparable as to position and pay. During any period in which Messrs. Singhal or Popat is entitled to receive severance benefits, he shall





also continue to receive all other benefits under the employment agreements, including life insurance, medical insurance and reimbursement for company car expenses. Each of Messrs. Singhal and Popat are also entitled to reimbursement of job placement expenses of up to \$25,000 plus related travel expenses. If either Messrs. Singhal or Popat is terminated with cause, he will not be entitled to any severance payments or other benefits except as required by law. Each employment agreement provides for a five-year term commencing June 1, 1994, with automatic one-year renewals.

### Option Exchange Program

The following table sets forth information regarding options held by all executive officers of the Corporation that were exchanged pursuant to an option exchange program. The option exchange program was made available to all employees and officers of the Corporation who held options with an exercise price of at least \$10.00 per share, other than the President and Chief Executive Officer and the Chairman of the Board of Directors. Participants in the program were also required to tender any options granted during the six months immediately prior to the commencement date of the offer to exchange. The Board of Directors implemented the option exchange program in order to restore the incentive value of such options.

#### 10-Year Option Repricings

Name	Date	Number of Securities Underlying Options Repriced (#)	Market Price of Stock at Time of Repricing (\$)		New Exercise Price (\$)	Length of Original Option Term Remaining at Date of Repricing
			at Time of Repricing (\$)	at Time of Repricing (\$)		
John W. Downing Vice President, Worldwide Sales Operations	6/13/03	100,000	\$ 4.22	\$ 23.13	\$ 4.22	7 years, 3 months
	6/13/03	25,000	4.22	16.75	4.22	7 years, 6 months
Lisa Fiorentino Chief Accounting Officer and Vice President, Finance and Administration	6/13/03	5,000	\$ 4.22	\$ 18.90	\$ 4.22	5 years, 10 months
	6/13/03	15,000	4.22	28.94	4.22	6 years, 7 months
	6/13/03	40,000	4.22	28.94	4.22	6 years, 7 months
Michelle Flaherty Vice President, Human Resources	6/13/03	40,000	\$ 4.22	\$ 23.13	\$ 4.22	7 years, 3 months
	6/13/03	10,000	4.22	16.75	4.22	7 years, 6 months
Bruce Kelley, Jr. Vice President, Chief	6/13/03	80,000	\$ 4.22	\$ 17.00	\$ 4.22	7 years, 1 month

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Technology Officer

David P. Sommers	6/13/03	250,000	\$ 4.22	\$ 13.44	\$ 4.22	6 years, 10 months
	6/13/03	25,000	4.22	4.30	4.22	9 years, 1 month
Chief Financial Officer and Senior Vice President, General Operations						

**Report of the Board of Directors on the Option Exchange Program**

On November 8, 2002, the Corporation offered to exchange (the Exchange Offer ) outstanding option grants to purchase shares of its common stock with an exercise price of at least \$10.00 per share (the Eligible Option Grants ) granted under the 1999 Stock Option Plan or the NextPoint Networks, Inc. 2000 Stock Incentive Plan assumed by the Corporation in connection with the acquisition of NextPoint (the 2000 Plan ), for new options to be granted under the 1999 Stock Option Plan. Other than the President and Chief Executive Officer and the Chairman of the Board of Directors of the Corporation, all employees of the Corporation and its subsidiaries holding Eligible Option Grants were eligible to participate in the Exchange Offer. Directors and consultants of the Corporation were not eligible to participate in the Exchange Offer. On December 9, 2002, the Exchange Offer expired. Outstanding options to purchase 2,142,723 shares of common stock were accepted for exchange and cancelled.

The exercise price of all new options granted under the Exchange Offer was equal to the per share market price of the Corporation's common stock as reported by Nasdaq at the close of trading on the date of grant. On June 13, 2003, the Corporation granted options to purchase 2,048,599 shares of common stock at an exercise price of \$4.22 per share in accordance with the Exchange Offer.

The Corporation's Board of Directors approved the offer to exchange for compensatory purposes and because it believes that stock options motivate high levels of performance and provide an effective means of recognizing and incentivizing employee contributions to its success. Many of the Corporation's outstanding options as of the time of the Exchange Offer had exercise prices significantly higher than the then-current price of its common stock. The Board of Directors believed that, at their original exercise prices, the disparity between the original exercise price of these options and recent market prices for the Corporation's common stock did not provide meaningful incentives to employees holding these options. The Board of Directors approved the Exchange Offer to provide the Corporation's employees with the benefit of holding options that over time may have a greater potential to increase in value, which it believes creates better performance and retention incentives for employees and thereby increases stockholder value, and is therefore deemed by the Board of Directors to be in the best interest of the Corporation and its stockholders. Mr. DeMarines joined the Board of Directors in June 2004, after the approval of the offer to exchange.

#### **Respectfully submitted by the Board of Directors**

Narendra V. Popat, Chairman

Anil K. Singhal

Victor A. DeMarines

John R. Egan

Joseph G. Hadzima, Jr.

Vincent J. Mullarkey

Kenneth T. Schiciano

#### **Transactions with Management and Others**

NetScout Systems India Pvt. Ltd. and Frontier Software Development (India) Pvt. Ltd. entered into a Lease and License Agreement on March 15, 2001, pursuant to which NetScout Systems India Pvt. Ltd. leased office space owned by Frontier Software Development (India) Pvt. Ltd. That agreement was terminated on October 15, 2003, when NetScout Systems India Pvt. Ltd. moved into a new location. NetScout Systems India Pvt. Ltd. made monthly payments of approximately \$1,500 per month to Frontier Software Development (India) Pvt. Ltd. through July 2003. Anil K. Singhal, the Corporation's President and Chief Executive Officer and a member of the Corporation's Board of Directors, and Narendra V. Popat, the Corporation's Chairman of the Board, each own 33 1/3% of Frontier Software Development (India) Pvt. Ltd.

The Corporation believes that the transaction described above was made on terms no less favorable to it than would have been obtained from unaffiliated third parties. All future transactions, if any, with our executive officers, directors and affiliates will be on terms no less favorable to us than could be obtained from unrelated third parties and will be approved by a majority of the Board of Directors and by a majority of the disinterested members of the Board of Directors.

**Report of Compensation Committee of the Board of Directors**

This report is submitted by the Compensation Committee of the Board of Directors, which administered the Corporation's executive compensation program during the fiscal year ended March 31, 2004. The Compensation Committee of the Board of Directors is currently comprised of Messrs. Egan and Hadzima. The Board of Directors has determined that each member of the Compensation Committee is independent within the meaning of the Corporation's and Nasdaq's director independence standards. The Compensation Committee met four times during the fiscal year ended March 31, 2004.

*Compensation Committee Charter.* The Board of Directors adopted amendments to the Compensation Committee Charter in August 2004. A current copy of the Compensation Committee Charter is available at the Corporate Governance section of the Corporation's website at <http://www.netscout.com/investors/>. Under the charter, the Compensation Committee's duties include discharging the Board's responsibilities relating to the compensation of the Corporation's executives, administering the Corporation's incentive compensation and stock plans, reviewing and making recommendations with respect to the Corporation's benefit plans and human resource activities and producing an annual report on executive compensation for inclusion in the Corporation's proxy statement in accordance with applicable rules and regulations. The Compensation Committee has established a regular schedule of review of each of its major areas of responsibility as set forth in the charter.

*Overview and Philosophy.* The Corporation uses its compensation program to achieve the following objectives:

To provide compensation that attracts, motivates and retains the best talent and highest caliber people to serve the Corporation's customers and achieve its strategic objectives.

To align management's interest with the success of the Corporation.

To align management's interest with stockholders by including long-term equity incentives.

To increase profitability of the Corporation and, accordingly, increase stockholder value.

Compensation under the executive compensation program is comprised of cash compensation in the form of base salary and, in the case of certain executive officers, annual incentive bonuses and long-term incentive awards in the form of stock option grants. In addition, the compensation program is comprised of various benefits, including medical and insurance plans, the Corporation's 401(k) Plan, and the 1999 Stock Option Plan and the 1999 Purchase Plan, which plans are generally available to all employees of the Corporation.

*Base Salary.* Compensation levels for each of the Corporation's executive officers, including the Chief Executive Officer, are generally set within the range of salaries that the Compensation Committee believes are paid to executive officers with comparable qualifications, experience and responsibilities at similar companies. In setting compensation levels, the Compensation Committee takes into account such factors as (i) the Corporation's past financial performance and future expectations, (ii) individual performance and experience and (iii) past salary levels. The Compensation Committee does not assign relative weights or rankings to these factors, but instead makes a determination based upon the consideration of all of these factors as well as the progress made with respect to the Corporation's long-term goals and strategies. Generally, salary decisions for the Corporation's executive officers are made near the beginning of each fiscal year.

Fiscal year 2004 base salaries were determined by the Compensation Committee after considering the base salary level of the executive officers in prior years and taking into account for each executive officer the amount of base salary as a component of total compensation. Base salary, while reviewed annually, is only adjusted as deemed necessary by the Compensation Committee in determining total compensation to each executive officer. Base salary levels for each of the Corporation's executive officers, other than the Chief Executive Officer and Chairman of the Board, were also based upon evaluations and recommendations made by the Chief Executive Officer. Pursuant to their respective employment agreements with the Corporation, Anil K. Singhal, the Corporation's Chief Executive Officer, and Narendra V. Popat, the Corporation's Chairman of the Board, each receive an annual base salary of at least \$250,000.

*Incentive Compensation.* The Compensation Committee determined the amount of incentive compensation paid to each of the executive officers in fiscal year 2004 based upon a consideration of a number of factors which it deemed relevant to the executive officer's performance. These factors in fiscal year 2004 included the (i) Corporation's financial performance in light of the tight spending controls by the Corporation's customers and the Corporation's strategy of continued investment in new product and sales infrastructure and (ii) certain non-financial performance factors deemed relevant to the job function of each of the executive officers.



*Stock Options.* The Compensation Committee periodically reviews the Corporation's guidelines for stock option grants in comparison to option grant practices of other companies in the same industry. The Compensation Committee believes that long-term incentive compensation in the form of stock options helps to align the interests of management and stockholders and enables executives to develop long-term stock ownership in the Corporation. In addition to an executive's past performance, the Corporation's desire to retain an individual is of paramount importance in the determination of stock option grants.

The Compensation Committee believes that the Corporation's stock option program should be broad based. Accordingly, during the past three fiscal years, approximately 82% of the total number of all stock options granted by the Corporation were granted to employees below the Vice President level, and approximately 18% were granted to employees at the level of Vice President and above (a group including an average of 13 individuals). One hundred percent of current employees hold one or more stock option grants. The Corporation's stock option program is a key element of the Corporation's compensation program and its goal of attracting and retaining highly qualified individuals essential for the Corporation's success. The Compensation Committee believes that these stock awards will help drive superior performance by these individuals, will contribute significantly to the Corporation's future and will align the interests of employees and stockholders.

*Options for Non-Executive Employees and Consultants.* For administrative convenience the Board of Directors has established a Stock Option Committee, the sole member of which is currently Anil K. Singhal. The Stock Option Committee is responsible for granting stock options to employees and consultants of the Corporation who are not executive officers or directors of the Corporation. The Stock Option Committee operates under guidelines established by the Board of Directors based upon recommendations of the Compensation Committee and reports all options granted at each regularly scheduled meeting of the Board of Directors.

*Executive Officer Options.* When establishing stock option grant levels for executive officers, the Compensation Committee considers the existing levels of stock ownership, previous grants of stock options, vesting schedules of previously granted options and the current stock price. Options granted in fiscal year 2004 were granted at an exercise price per share equal to or greater than the fair market value of the common stock, as determined by the Compensation Committee. The Compensation Committee reviews option grants to executive officers on an annual basis and considers the level of outstanding options as a factor in its determinations with respect to overall compensation for each of the executive officers. For additional information regarding the grant of options, see the table under the section heading "Option Grants in Last Fiscal Year" above.

*Other Benefits.* The Corporation also has various broad-based employee benefit plans. Executive officers participate in these plans on the same terms as eligible, non-executive employees, subject to any legal limits on the amounts that may be contributed or paid to executive officers under these plans. The Corporation offers a stock purchase plan, under which employees may purchase common stock at a discount, and a 401(k) plan, which allows employees to invest in a wide array of funds on a pre-tax basis. The Corporation also maintains insurance and other benefit plans for its employees.

*Chief Executive Officer's Compensation.* In fiscal year 2004, the Corporation's Chief Executive Officer, Anil K. Singhal, received salary compensation of \$250,000. Although Mr. Singhal was entitled to a bonus of at least \$250,000 under the terms of his employment agreement with the Corporation for the fiscal year ended March 31, 2004, no year-end bonus was paid to Mr. Singhal as he agreed to waive any right or entitlement to such year-end bonus.

*Tax Deductibility of Executive Compensation.* In general, under Section 162(m) of the Code, the Corporation cannot deduct, for federal income tax purposes, compensation in excess of \$1,000,000 paid to certain executive officers. This deduction limitation does not apply, however, to compensation that constitutes "qualified performance-based compensation" within the meaning of Section 162(m) of the Code and the

regulations promulgated thereunder. The Compensation Committee has considered the limitations on deductions imposed by Section 162(m) of the Code, and it is the Compensation Committee's present intention, for so long as it is consistent with its overall compensation objective, to structure executive compensation to minimize application of the deduction limitations of Section 162(m) of the Code.

*Conclusion.* The Compensation Committee intends to continue the policy of linking executive compensation to corporate performance, both financial and strategic, with the goal of increasing stockholder value over time.

**Respectfully submitted by the Compensation Committee**

Joseph G. Hadzima, Jr., Chairman

John R. Egan

**Compensation Committee Interlocks and Insider Participation**

Neither Mr. Egan nor Mr. Hadzima was, during the past fiscal year, an officer or employee of the Corporation or any of its subsidiaries, was formerly an officer of the Corporation or any of its subsidiaries or had any relationship with the Corporation requiring disclosure herein. During the past fiscal year, none of the Corporation's executive officers served as:

a member of the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of another entity, of whose executive officers served on the Compensation Committee of the Corporation;

a director of another entity, one of whose executive officers served on the Compensation Committee of the Corporation; or

a member of the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of another entity, one of whose executive officers served as a director of the Corporation.

**Compensation of Directors**

Non-employee directors are compensated \$12,500 annually for their services and also receive compensation of \$1,500 for each regular Board of Directors meeting attended and \$2,000 annually for serving on a committee of the Board of Directors. They are also reimbursed for their reasonable out-of-pocket expenses incurred in attending meetings of the Board of Directors or of any committee thereof. In addition, in fiscal year 2001, non-employee directors were granted options to purchase 30,000 shares of common stock of the Corporation, which vest annually over a three-year term. Beginning in fiscal year 2004 and annually thereafter, non-employee directors are granted options to purchase 10,000 shares of common stock of the Corporation, which vest in one year, provided that during such year, such director attends at least 75% of the meetings of the Board and at least 75% of the meetings of any committee of the Board of which such director is a member. In the event that the foregoing attendance requirements are not met, the options will not become exercisable until the third anniversary of the date of grant. Beginning in fiscal year 2005, each new non-employee director is granted options to purchase 10,000 shares of common stock of the Corporation upon his or her initial election to the Board of Directors. Such options vest on the date of the next annual meeting of stockholders of the Corporation following the date of grant, provided that during the period between the date of grant and the date of such annual meeting of



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stockholders, such director attends at least 75% of the meetings of the Board and at least 75% of the meetings of any committee of the Board of which such director is a member. In the event that the foregoing attendance requirements are not met, the options will not become exercisable until the third anniversary of the date of grant. No director who is an employee of the Corporation will receive separate compensation for services rendered as a director.

**Stock Performance Graph**

The Stock Performance Graph set forth below compares the yearly change in the cumulative total stockholder return on the Corporation's common stock during the period from the Corporation's initial public offering on August 12, 1999 through March 31, 2004, with the cumulative total return of the Nasdaq Stock Market National Market Index ( Nasdaq National Market Index ) and the S&P Communications Equipment Index. The comparison assumes \$100 was invested on August 12, 1999 in the Corporation's common stock or on July 31, 1999 in the Nasdaq National Market Index and the S&P Communications Equipment Index and assumes reinvestment of dividends, if any. Prior to August 12, 1999, the Corporation's common stock was not publicly traded. Comparative data is provided only for the period since that date.

The stock price performance shown on the graph below is not necessarily indicative of future price performance. Information used in the graph was obtained from Research Data Group, Inc., a source believed to be reliable, but the Corporation is not responsible for any errors or omissions in such information.

**COMPARISON OF 55 MONTH CUMULATIVE TOTAL RETURN\***

**AMONG NETSCOUT SYSTEMS, INC., THE NASDAQ STOCK MARKET (U.S.) INDEX**

**AND THE S&P COMMUNICATIONS EQUIPMENT INDEX**

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\* \$100 invested on 8/12/99 in stock or on 7/31/99 in index including reinvestment of dividends. Fiscal year ending March 31.

**SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE**

Section 16(a) of the Exchange Act requires the Corporation's directors, executive officers and holders of more than 10% of the Corporation's common stock (collectively, "Reporting Persons") to file with the SEC initial reports of ownership and reports of changes in ownership of common stock of the Corporation. Such persons are required by regulations of the SEC to furnish the Corporation with copies of all such filings. Based on its review of the copies of such filings received by it with respect to the fiscal year ended March 31, 2004 and written representations from certain Reporting Persons, the Corporation believes that all Section 16(a) filing requirements were complied with on a timely basis during the fiscal year ended March 31, 2004.

**STOCKHOLDER PROPOSALS**

Proposals of stockholders intended for inclusion in the proxy statement to be furnished to all stockholders entitled to vote at the 2005 Annual Meeting of Stockholders of the Corporation must be received at the Corporation's principal executive office no later than the close of business on April 15, 2005. In order to curtail controversy as to the date on which a proposal was received by the Corporation, it is suggested that proponents submit their proposals by Certified Mail, Return Receipt Requested to NetScout Systems, Inc., 310 Littleton Road, Westford, MA 01886, Attention: Secretary.

Under the Corporation's by-laws, stockholders who wish to make a proposal at the 2005 Annual Meeting of Stockholders of the Corporation, other than one that will be included in the Corporation's proxy materials, must notify the Corporation no earlier than the close of business on March 16, 2005 and no later than the close of business on April 15, 2005. If a stockholder who wishes to present a proposal fails to notify the Corporation by the close of business on April 15, 2005, the stockholder would not be entitled to present the proposal at the meeting. If, however, notwithstanding the requirements of the Corporation's by-laws, the proposal is brought before the annual meeting of stockholders, then under the proxy rules of the SEC, the proxies solicited by management with respect to the next annual meeting of stockholders will confer discretionary voting authority with respect to the stockholder's proposal on the persons selected by management to vote the proxies. If a stockholder makes a timely notification, the persons appointed as proxies may still exercise discretionary voting authority under circumstances consistent with the SEC's proxy rules.

**AUDITORS FEES AND SERVICES**

The following sets forth the aggregate fees billed to the Corporation by the Corporation's independent registered public accounting firm during the fiscal years ended March 31, 2004 and 2003:

**Audit Fees**

Fees for audit services were approximately \$301,000 and \$265,000 for the fiscal years ended March 31, 2004 and 2003, respectively, including fees associated with the annual audit, the reviews of the Corporation's quarterly reports on Form 10-Q, statutory audits required internationally, fees related to filings with the SEC and accounting consultations.

**Audit-Related Fees**

There were no fees for audit-related services for the fiscal years ended March 31, 2004 and 2003.

**Tax Fees**

Total fees for tax services were approximately \$65,000 and \$142,000 for the fiscal years ended March 31, 2004 and 2003, respectively, consisting of tax compliance and preparation fees, transfer price study fees and other tax advisory services.

#### **All Other Fees**

There were no other fees for the fiscal years ended March 31, 2004 and 2003.

The Corporation's Audit Committee has implemented procedures under the Corporation's Audit Committee Pre-Approval Policy for Audit and Non-Audit Services (the Pre-Approval Policy) to ensure that all audit and permitted non-audit services provided to the Corporation are pre-approved by the Audit Committee. Specifically, the Audit Committee pre-approves the use of the Corporation's independent registered public accounting firm for specific audit and non-audit services within approved monetary limits. If a proposed service has not been pre-approved pursuant to the Pre-Approval Policy, then it must be specifically pre-approved by the Audit Committee before it may be provided by the Corporation's independent registered public accounting firm. Any pre-approved services exceeding the pre-approved monetary limits require specific approval by the Audit Committee. All of the audit-related, tax and all other services provided by the Corporation's independent registered public accounting firm to the Corporation in fiscal year 2004 were approved by the Audit Committee by means of specific pre-approvals or pursuant to the procedures contained in the Pre-Approval Policy. All non-audit services provided in fiscal year 2004 were reviewed with the Audit Committee, which concluded that the provision of such services by the Corporation's independent registered public accounting firm was compatible with the maintenance of that firm's independence in the conduct of its auditing functions.

#### **EXPENSES AND SOLICITATION**

The cost of solicitation of proxies will be borne by the Corporation and, in addition to soliciting stockholders by mail through its regular employees, the Corporation may request banks, brokers and other custodians, nominees and fiduciaries to solicit their customers who have stock of the Corporation registered in the names of a nominee and, if so, will reimburse such banks, brokers and other custodians, nominees and fiduciaries for their reasonable out-of-pocket costs. Solicitation by officers and employees of the Corporation may also be made of some stockholders in person or by mail, telephone or telegraph following the original solicitation. The Corporation may retain a proxy solicitation firm to assist in the solicitation of proxies. The Corporation will bear all reasonable solicitation fees and expenses if such a proxy solicitation firm is retained.

**NETSCOUT SYSTEMS, INC.****Audit Committee Charter****A. PURPOSE AND SCOPE**

The primary function of the Audit Committee (the "Committee") is to assist the Board of Directors (the "Board") in fulfilling its oversight responsibilities by (1) reviewing and overseeing: (i) the financial reports provided by the Corporation to the Securities and Exchange Commission ("SEC"), the Corporation's shareholders or to the general public, and (ii) the Corporation's accounting policies, internal accounting controls, internal controls over financial reporting, auditing functions and financial reporting practices, (2) ensuring the independence of the independent auditor and thereby furthering the integrity of the Corporation's financial reporting; and (3) establishing procedures designed to facilitate: (i) the receipt, retention and handling of complaints regarding disclosure controls and procedures, internal controls over financial reporting and accounting, internal accounting control or auditing matters and (ii) the receipt of confidential, anonymous submissions by employees of the Corporation of concerns regarding questionable accounting or auditing matters.

**B. COMMITTEE STRUCTURE AND MEMBERSHIP**

The Committee shall be comprised of a minimum of three directors as appointed by the Board, who shall meet the independence and audit committee composition requirements under the rules and regulations of The Nasdaq National Market and the rules and regulations promulgated by the SEC, as in effect from time to time, and each such director shall be free from any relationship that, in the opinion of the Board, would interfere with the exercise of his or her independent judgment as a member of the Committee.

All members of the Committee shall be able to read and understand fundamental financial statements, including a balance sheet, cash flow statement and income statement at the time of appointment to the Committee. At least one member of the Committee shall have had past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities. At least one member of the Committee shall be an "audit committee financial expert" as defined by the SEC (who may be the same person with the qualifications described in the preceding sentence.)

The members of the Committee shall be elected by the Board at the Board meeting following each annual meeting of stockholders and shall serve until their successors shall be duly elected and qualified or until their earlier resignation or removal. Unless a Chair is elected by the full Board, the members of the Committee may designate a Chair by majority vote of the full Committee membership.

**C. RESPONSIBILITIES AND DUTIES**

To fulfill its responsibilities and duties the Committee shall:

*Document Review*

1. Review and assess the adequacy of this Charter periodically as conditions dictate, but at least annually (and update this Charter if and when appropriate).

2. Review with representatives of management and representatives of the independent accounting firm the Corporation's audited annual financial statements prior to their filing as part of the Annual Report on Form 10-K. After such review and discussion, the Committee shall recommend to the Board whether such audited financial statements should be published in the Corporation's annual report on Form 10-K. The Committee shall also review the Corporation's quarterly financial statements prior to their inclusion in the Corporation's quarterly

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SEC filings on Form 10-Q. The Committee shall also review the disclosure relating to financial statement, accounting and auditing matters contained in the Corporation's Annual Report on Form 10-K and Quarterly Reports on Form 10-Q. The Committee shall also instruct the Corporation's management to disclose in its Form 10-K and annual proxy statement for each annual meeting of stockholders the approval by the Committee of any non-audit services performed by its independent accounting firm and to review the substance of such disclosure and the considerations relating to the compatibility of the performance of such services with the independence of the accounting firm.

3. Review with representatives of management and representatives of the independent accounting firm the financial information included in the quarterly earnings press release prior to its public release.

4. Take steps designed to insure that the independent accounting firm performs timely reviews of the Corporation's interim financial statements prior to their inclusion in the Corporation's quarterly reports on Form 10-Q.

#### *Independent Accounting Firm*

5. The Committee shall be directly responsible for the appointment, compensation, retention and oversight of the work of any independent accounting firm engaged (including resolution of disagreements between management and the independent accounting firm regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the Corporation, and indicate to such independent accounting firm that it must report directly to the Committee. Notwithstanding the foregoing, the Committee acknowledges that the independent accounting firm is ultimately accountable to the Board and the Committee, as representatives of the Corporation's shareholders.

6. Approve, in advance or through an established pre-approval policy and procedure, all audit services and permissible non-audit services to be performed by the Corporation's independent accounting firm, and the fees and other compensation to be paid to the independent accounting firm for such services.

7. On an annual basis, receive from the independent accounting firm a formal written statement on its independence identifying all relationships between the independent accounting firm and the Corporation consistent with Independence Standards Board (ISB) Standard 1, as it may be modified or supplemented. The Committee shall actively engage in a dialogue with the independent accounting firm as to any disclosed relationships or services that may impact its independence and objectivity. The Committee shall determine if appropriate action needs to be taken to ensure independence of the independent accounting firm.

8. On a quarterly and annual basis, discuss with representatives of the independent accounting firm the matters required to be discussed by Statement on Auditing Standards (SAS) 61, as it may be modified or supplemented.

9. Meet with the independent accounting firm prior to the audit to review the scope and to approve the annual audit and attestation plans.

10. Evaluate the performance of the independent accounting firm against the annual audit and attestation plans.



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11. In discussions with the independent accounting firm and management, review quarterly the quality and acceptability of the consistency and completeness of applying Corporate accounting principles, the evaluation of management's judgments, accounting estimates and treatment of unusual items and the timing of recorded transactions.

12. Instruct the independent accounting firm that the Committee should be advised if there are any areas known to them that require special attention of the Committee.

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*Compliance*

13. The Committee will review and discuss with management and the independent accounting firm the Corporation's legal and ethical compliance, including any material fraud, in financial reporting.

14. The Committee will establish procedures for (i) the receipt, retention and handling of complaints regarding disclosure controls and procedures, internal controls over financial reporting, and accounting, internal accounting control or auditing matters, and (ii) confidential, anonymous submission by employees of the Corporation of concerns regarding questionable accounting or auditing matters.

15. To the extent deemed necessary by the Committee, it shall have the authority to engage independent legal counsel and other advisors to carry out its duties. To the extent deemed necessary by the Committee, it shall have the authority to investigate any matter brought to its attention with full access to all books, records, facilities and personnel of the Corporation, including the investigation of any allegations that any officer or director of the Corporation, or any other person acting under the direction of such person, took any action to fraudulently influence, coerce, manipulate or mislead any independent public or certified accountant engaged in the performance of an audit of the financial statements of the Corporation for the purpose of rendering such financial statements misleading and, if such allegations prove to be correct, take or recommend to the Board appropriate disciplinary action.

*Reporting*

16. Prepare, in accordance with the rules of the SEC as modified or supplemented from time to time, a written report of the Committee to be included in the Corporation's annual proxy statement for each annual meeting of stockholders.

*Meetings*

17. The Committee will meet on a regular basis and special meetings will be called as circumstances require. The Corporation's Chief Financial Officer, Chief Accounting Officer and representatives of the independent accounting firm will normally be present at each meeting. On a regular basis, the Committee will also hold private sessions with the representatives of the independent accounting firm. Minutes of the meetings will be taken including notations as to what private sessions occur.

*General*

18. The Committee shall have the authority to direct the Corporation to provide appropriate funding, as determined by the Committee, for payment of compensation (i) to the independent accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the Corporation and (ii) to any advisors engaged by the Committee and (iii) ordinary administrative expenses of the Audit Committee that are necessary or appropriate to carry out its duties.

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19. The Committee will self assess whether it has complied with its membership requirements under the rules and regulations of The Nasdaq National Market and the SEC and whether this Audit Committee Charter requires updating or other modification.

20. The Committee will review and approve all related party transactions.

While the Committee has the responsibilities and powers set forth in this Charter, it is not the duty of the Committee to plan or conduct audits or to determine that the Corporation's financial statements are complete and accurate and are in accordance with generally accepted accounting principles.

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**NETSCOUT SYSTEMS, INC.**

**Proxy for Annual Meeting of Stockholders**

**September 15, 2004**

**THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS**

The undersigned hereby appoints Anil K. Singhal, Narendra V. Popat and David P. Sommers, and each of them, proxies, with full power of substitution, to vote all shares of common stock of NetScout Systems, Inc. (the Company) which the undersigned is entitled to vote at the Annual Meeting of Stockholders of the Company to be held on Wednesday, September 15, 2004, at 9:00 a.m., local time, at Testa, Hurwitz & Thibault, LLP, High Street Tower, 12 High Street, Boston, Massachusetts, and at any adjournments thereof, upon matters set forth in the Notice of Annual Meeting of Stockholders and Proxy Statement dated August 13, 2004, a copy of which has been received by the undersigned.

**(Continued and to be marked, dated and signed on the other side.)**

**SEE REVERSE SIDE**

**Address Change/Comments (Mark the corresponding box on the reverse side)**

**SEE REVERSE SIDE**

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**é FOLD AND DETACH HERE é**

***You can now access your NetScout Systems, Inc. account online.***

Access your NetScout Systems, Inc. stockholder account online via Investor ServiceDirect® (ISD).

Mellon Investor Services LLC, Transfer Agent for NetScout Systems, Inc., now makes it easy and convenient to get current information on your shareholder account.

View account status  
View certificate history

View payment history for dividends  
Make address changes

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*For Technical Assistance Call 1-877-978-7778 between 9am-7pm*

*Monday-Friday Eastern Time*