

NETSCOUT SYSTEMS INC  
Form DEF 14A  
July 28, 2008

**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)

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Not Applicable

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(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):  
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(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

July 28, 2008

Dear Stockholder:

You are cordially invited to attend the Annual Meeting of Stockholders of NetScout Systems, Inc. on Wednesday, September 10, 2008 in Waltham, Massachusetts.

At the Annual Meeting, you will be asked to elect two directors nominated by our Board and to ratify the selection of PricewaterhouseCoopers LLP as auditors for the fiscal year ending March 31, 2009. The accompanying proxy statement describes these matters in more detail.

If you are a stockholder of record, please complete, sign, and date the enclosed proxy card and return it promptly in the enclosed postage prepaid envelope. 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 vote instruction form for instructions.

It is important that your shares be voted whether or not you attend the meeting. 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 appreciated.

Very truly yours,

ANIL K. SINGHAL

*Chairman, President, and Chief Executive Officer*

**NETSCOUT SYSTEMS, INC.**

**310 Littleton Road**

**Westford, MA 01886**

**NOTICE OF 2008 ANNUAL MEETING OF STOCKHOLDERS**

**To Be Held September 10, 2008**

To the Stockholders of NetScout Systems, Inc.:

The Annual Meeting of Stockholders of NetScout Systems, Inc. will be held on Wednesday, September 10, 2008, at 10:00 a.m. at The Westin, 70 Third Avenue, Waltham, Massachusetts, for the following purposes:

1. To elect two Class III directors nominated by our Board to serve for three year terms or until their respective successors are elected and qualified.
2. To ratify the selection of PricewaterhouseCoopers LLP, independent registered public accounting firm, as auditors for the fiscal year ending March 31, 2009.
3. To consider other business properly brought before the meeting or any adjournment.

Stockholders of record at the close of business on July 14, 2008 will be entitled to vote at the meeting and any adjournments.

All stockholders are cordially invited to attend the meeting in person. However, to assure your representation at the meeting you are urged to complete, sign, date, and return the enclosed proxy card as soon as possible so that your shares can be voted at the Annual Meeting in accordance with your instructions. No postage is necessary if the proxy card is mailed in the U.S. If your shares are held in a bank or brokerage account you may be eligible to vote electronically or by phone please refer to your enclosed vote instruction form for details. If you attend the meeting, you may vote in person even if you have previously returned your vote in accordance with the foregoing.

**Notice regarding the availability of proxy materials for the Annual Meeting of Stockholders to be held on September 10, 2008. This proxy statement, the proxy card, and NetScout's Annual Report for the fiscal year ended March 31, 2008 are all available free of charge as described in the attached materials.**

By Order of the Board of Directors,

ANIL K. SINGHAL

*Chairman, President, and Chief Executive Officer*

Westford, Massachusetts

July 28, 2008

**NETSCOUT SYSTEMS, INC.**

**310 Littleton Road**

**Westford, MA 01886**

**PROXY STATEMENT**

**July 28, 2008**

**Questions and Answers about the Annual Meeting and Voting**

**Why did I receive these proxy materials?**

The Board of Directors of NetScout Systems, Inc., a Delaware corporation, is providing these proxy materials to you in connection with the Board's solicitation of proxies to be voted at our 2008 Annual Meeting of Stockholders. The proxy materials include the proxy statement, form of proxy, and Annual Report to Stockholders, which contains financial statements for the fiscal year ended March 31, 2008.

You are invited to attend the Annual Meeting on Wednesday, September 10, 2008 at 10:00 a.m. at The Westin, 70 Third Avenue, Waltham, Massachusetts.

This Proxy Statement and the form of proxy were first made available to stockholders on or about July 28, 2008.

**What is the purpose of the Annual Meeting?**

The purpose of the Annual Meeting is to

elect two Class III directors nominated by our Board of Directors;

ratify the selection of PricewaterhouseCoopers LLP, independent registered public accounting firm, as auditors for the fiscal year ending March 31, 2009; and

conduct other business that properly comes before the Annual Meeting or any adjournment.

**How does the Board recommend that I vote?**

The Board recommends that you vote **FOR** each nominee to our Board and **FOR** the ratification of PricewaterhouseCoopers LLP as auditors for the fiscal year ending March 31, 2009.

**Who can vote?**

Stockholders of record as of July 14, 2008, or the Record Date, may vote. As of July 14, 2008, 39,416,000 shares of our common stock were issued and outstanding. Holders of common stock are entitled to one vote per share on proposals presented at the Annual Meeting.

**What is a stockholder of record?**

A stockholder of record owns NetScout stock which is recorded on the books of our transfer agent, BNY Mellon Shareowner Services. If you hold our stock through a bank, broker, or other intermediary, you are not a stockholder of record but instead hold the stock in a street name. If your stock is held in a street name, the stockholder of record of your shares would be the bank, broker, or intermediary. If you are not a stockholder of record, we do not know that you are a stockholder or how many shares you own.



**How do I vote my shares?**

Whether or not you plan to attend the Annual Meeting, you should vote your shares by completing, signing, and dating the accompanying proxy card and returning it in the enclosed postage prepaid envelope. If your shares are held in a bank or brokerage account you may be eligible to vote electronically or by telephone. Please refer to the vote instruction form for instructions. If you attend the Annual Meeting, you may vote in person, even if you have already voted. If you plan to attend the Annual Meeting and vote, and your shares are held by a bank or broker, you should check with your bank or broker to get the appropriate forms.

Our Board of Directors named Anil K. Singhal and David P. Sommers as attorneys-in-fact in the proxies. If your proxy has been properly executed and returned in time to be counted at the Annual Meeting, the shares represented by your proxy will be voted in accordance with your voting instructions. If you have returned a signed proxy but have not indicated your vote, your proxy will be voted FOR the nominees to our Board of Directors and FOR the ratification of the selection of PricewaterhouseCoopers LLP, independent registered public accounting firm, as our auditors for the fiscal year ending March 31, 2009. Our Board of Directors knows of no other matters to be presented at the Annual Meeting. For other matters that may properly come before the Annual Meeting, the attorneys-in-fact will use their judgment in voting your shares.

**May I change or revoke my proxy?**

You may revoke your proxy before it is voted at the Annual Meeting by (1) filing a written notice of revocation (dated after the original proxy) with the Secretary of NetScout before the vote at the Annual Meeting, (2) completing a later dated proxy, including by internet or phone, and delivering it to the Secretary of NetScout before the vote at the Annual Meeting, or (3) attending the Annual Meeting and voting in person. You should send any written notice of revocation, to be delivered before the Annual Meeting, to NetScout Systems, Inc., 310 Littleton Road, Westford, MA 01886, Attention: Secretary.

**How is a quorum determined?**

A majority of the outstanding shares of our common stock entitled to vote at the Annual Meeting makes a quorum, which is required to transact business. To determine a quorum, we include votes withheld from any nominee, abstentions, and broker non-votes. A broker non-vote occurs when a nominee, such as a bank or broker, holding shares for a beneficial owner votes on one proposal but does not vote on another proposal because the nominee does not have discretionary voting power and has not received instructions from the beneficial owner.

**What votes are required for election and approval?**

The election of directors is determined by a plurality of the votes cast by stockholders entitled to vote at the Annual Meeting.

On all other proposals an affirmative vote of a majority of the shares present or represented and voting on each such proposal is required for approval. An automated system administered by the transfer agent tabulates the votes for each proposal. Abstentions are included in the number of shares present or represented and voting on each matter. Therefore, abstentions on votes on specific proposals will have the effect of no votes. Broker non-votes are not included in the vote tabulations for specific proposals.

**Notice Regarding the Availability of Proxy Materials**

Stockholders of record will receive printed proxy materials by mail. In accordance with Securities and Exchange Commission, or SEC, regulations, to each stockholder in street name, we may now furnish proxy materials electronically. Accordingly, all of our stockholders in street name will receive a Notice of Internet Availability, which will be mailed on or about July 28, 2008.



On the date of mailing of the Notice of Internet Availability, such stockholders will be able to access all of the proxy materials on the internet, free, at [www.netscout.com/investors](http://www.netscout.com/investors). The Notice of Internet Availability will instruct you how to access the proxy materials (including our Annual Report to Stockholders) over the internet. The website will have instructions on how to vote by internet or telephone. The Notice of Internet Availability will also instruct you how to request a paper copy of the proxy card. If you received a Notice of Internet Availability and would like to receive printed copies of the proxy materials, you should follow the instructions for requesting such materials set out in the Notice of Internet Availability.

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

The following table sets forth the current directors and the nominees to be elected at the Annual Meeting, as described more fully below:

<b>Nominee or Director's Name and Year First Became Director</b>	<b>Positions with NetScout</b>	<b>Year Term Will Expire</b>	<b>Class</b>
<b>Nominees:</b>			
Joseph G. Hadzima, Jr. (1998)	Director	2011	III
Stephen G. Pearse (2007)	Director	2011	III
<b>Continuing Directors:</b>			
Anil K. Singhal (1984)	Chairman, President, and Chief Executive Officer	2010	II
John R. Egan (2000)	Director	2010	II
Stuart M. McGuigan (2005)	Director	2010	II
Victor A. DeMarines (2004)	Director	2009	I
Vincent J. Mullarkey (2000)	Director	2009	I
<b>Directors Not Continuing:</b>			
Bryan Taylor (2007)	Director	2008	III
Kenneth Y. Hao (2007)	Director	2009	I

*The nominees for Class III directors are Messrs. Hadzima and Pearse.*

Messrs. Hadzima and Pearse are Class III directors whose terms expire at this Annual Meeting and who are nominees for re-election for a term that would expire upon the election and qualification of directors at the Annual Meeting to be held in 2011.

***Continuing Directors***

The Board of Directors is also composed of two Class I directors, Messrs. DeMarines and Mullarkey, whose terms expire in 2009, and three Class II directors, Messrs. Singhal, Egan, and McGuigan, whose terms expire in 2010.

***Directors Not Continuing***

In connection with NetScout's acquisition of Network General Central Corporation on November 1, 2007 and pursuant to the Stockholders Agreement dated as of September 19, 2007 by and among NetScout, Silver Lake Partners, L.P. ( "Silver Lake" ), and TPG Starburst IV, LLC ( "TPG" ), entered into in connection with the acquisition, NetScout elected, as the designee of Silver Lake, Kenneth Y. Hao as a Class I director whose term would expire at the Annual Meeting of Stockholders in 2009, and, as the designee of TPG, Bryan Taylor as a Class III director whose term would expire at the Annual Meeting of Stockholders in 2008.

On April 30, 2008, Mr. Taylor informed our Board of Directors that he would not stand for re-election at the Annual Meeting of Stockholders to be held in September 2008 and was therefore resigning from the Board effective immediately after such Annual Meeting, and Mr. Hao informed the Board that he also was resigning from the Board effective immediately after such Annual Meeting.

As of the Record Date, the size of the Board is fixed at nine members. However, effective immediately after the Annual Meeting the size of the Board will be reduced to seven members. NetScout's by-laws and certificate of incorporation divide the Board of Directors into three classes. The members of each class of directors serve for staggered three-year terms.

***Proposal and Recommendation***

Our Board of Directors has nominated and recommended that Messrs. Hadzima and Pearse be re-elected as Class III directors, to hold office until the Annual Meeting to be held in the year 2011 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 any of the nominees should 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 above.

**THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE FOR THE NOMINEES FOR DIRECTOR.**

**PROPOSAL 2**

**RATIFICATION OF SELECTION OF AUDITORS**

The Audit Committee of the Board of Directors has selected PricewaterhouseCoopers LLP, independent registered public accounting firm, to serve as our auditors for the fiscal year ending March 31, 2009. PricewaterhouseCoopers LLP has served as our auditors since 1993. We expect that a member of PricewaterhouseCoopers LLP will attend the Annual Meeting, will have an opportunity to make a statement if so desired, and will be available to respond to appropriate questions from our stockholders. We are incorporated in Delaware, and Delaware law does not require the ratification of the Audit Committee's selection, but the Audit Committee will consider the results of this vote when selecting auditors in the future.

**THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE FOR THE RATIFICATION OF THIS SELECTION OF AUDITORS.**

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**DIRECTORS AND EXECUTIVE OFFICERS**

<b>Name</b>	<b>Age</b>	<b>Positions</b>
Anil K. Singhal	54	Chairman, President, Chief Executive Officer, and Director
Michael Szabados	56	Chief Operating Officer
David P. Sommers	61	Senior Vice President, General Operations and Chief Financial Officer, Treasurer, and Secretary
John W. Downing	50	Senior Vice President, Worldwide Sales Operations
Jeffrey R. Wakely	44	Vice President, Finance and Chief Accounting Officer
Victor A. DeMarines	71	Director
John R. Egan	50	Director
Joseph G. Hadzima, Jr.	56	Director
Stuart M. McGuigan	49	Director
Vincent J. Mullarkey	60	Director
Stephen G. Pearse	50	Director
Kenneth Y. Hao	39	Director
Bryan M. Taylor	38	Director

*Anil Singhal* co-founded the Company in June 1984 and has served as our Chairman, President, Chief Executive Officer, and Director since January 2007. From January 2001 until January 2007, Mr. Singhal served as President, Chief Executive Officer, Treasurer, and Director. From July 1993 to December 2000, Mr. Singhal served as our Chairman, Chief Executive Officer, and Treasurer. Mr. Singhal has served as a director since our inception.

*Michael Szabados* has served as our Chief Operating Officer since April 2007. Before that, he served as Senior Vice President, Product Operations for over five years.

*David P. Sommers* has served as our Senior Vice President, General Operations, Chief Financial Officer, Treasurer, and Secretary since April 2007. Before that, he served as Senior Vice President, General Operations and Chief Financial Officer for over five years.

*John W. Downing* has served as our Senior Vice President, Worldwide Sales Operations since April 2007. Before that, he served as Vice President, Worldwide Sales Operations for over five years.

*Jeffrey R. Wakely* has served as our Vice President, Finance and Chief Accounting Officer since October 2005. From February 2002 to October 2005, he was Chief Financial Officer at SiteScape, Inc., a privately held provider of collaboration software solutions. Prior to February 2002, he was the Vice President of Finance at Enermetrix, Inc., a privately held provider of energy technology services.

*Victor A. DeMarines* has been a NetScout director 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 is currently a member of the Stock Option Committee and Audit Committee and the Chairman of the Governance Committee of Verint Systems Inc., a publicly-held provider of systems for security applications and enterprise business intelligence.

*John R. Egan* has been a NetScout director since October 2000. Mr. Egan is a founding managing partner of Egan-Managed Capital, a Boston-based venture capital fund specializing in New England-based, information technology, and early-stage investments. 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. Mr. Egan has also been a director of VMware, Inc., a publicly-held provider of virtualization solutions, and a member of its Mergers and Acquisitions Committee since April 2007.

*Joseph G. Hadzima, Jr.* has been a NetScout director 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. Mr. Hadzima is also a Senior Lecturer at MIT Sloan School of Management.

*Stuart M. McGuigan* has been a NetScout director since August 2005. Since 2004, Mr. McGuigan has served as Senior Vice President and Chief Information Officer for Liberty Mutual Insurance Group. Prior to this, Mr. McGuigan served as Senior Vice President, Information Services for Medco Health/Merck Medco Managed Care L.L.C., from 2002 to 2004, and as Senior Vice President, Information Strategy and Development from 1999 to 2002.

*Vincent J. Mullarkey* has been a NetScout director since November 2000. From May 2005 to June 2007, he was a member of the Board of Directors and the Chairman of the Audit Committee of webMethods, a publicly-held business process integration software company that was acquired by Software AG in June 2007. 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 and marine industries.

*Stephen G. Pearse* has been a NetScout director since May 2007. He is a principal with investment firms Yucatan Rock, Inc. since 2001 and Common Angels since 2004, and sits on the boards of Emerson Hospital, Mobiwatc, and C4RJ.

*Kenneth Y. Hao* has been a NetScout director since November 2007. Mr. Hao is a Managing Director at Silver Lake, a private equity firm focused on investing in leading technology companies, where he has worked since 2000. Mr. Hao also serves as a director of Avago Technologies Limited, the successor company to the Semiconductor Products Group of Agilent Technologies. Previously, he was a director of UGS Corp., Network General Corporation, and Certance Holdings.

*Bryan M. Taylor* has been a NetScout director since November 2007. Since March 2004, Mr. Taylor has been a Partner in the Technology Group at TPG and is responsible for the firm's investments in software, data/analytics, and technology services. Prior to that, Mr. Taylor was a Managing Director at Symphony Technology Group, a private equity firm focused exclusively on technology investing, from 2000 to 2004.

There are no family relationships among any of our executive officers and directors.

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

The following table sets forth information regarding beneficial ownership of our common stock as of the Record Date by each beneficial owner of more than 5% of our common stock, each executive officer named in the Summary Compensation Table, each director, and 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 otherwise noted below.

Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission, or the SEC. Shares of common stock issuable by the Company to a person or entity named below pursuant to options which may be exercised within 60 days of the Record Date or restricted stock units which may vest 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 Beneficially Owned	Percentage of Class Beneficially Owned
Anil K. Singhal(1)	2,932,779	7.5%
David P. Sommers(2)	339,902	*
Michael Szabados(3)	191,740	*
John W. Downing(4)	177,358	*
Victor A. DeMarines(5)	32,918	*
John R. Egan(6)	62,918	*
Joseph G. Hadzima, Jr.(7)	179,200	*
Vincent J. Mullarkey(8)	82,918	*
Stuart M. McGuigan(9)	14,268	*
Stephen G. Pearse(10)	4,621	*
Jeffrey R. Wakely	1,375	*
Bryan M. Taylor(11)	2,720	*
Kenneth Y. Hao(12)	2,720	*
Abha Singhal(13)	2,197,884	5.6%
Jyoti Papat(14)	3,263,224	8.3%
c/o Atlantic Trust Company 100 Federal Street Boston, MA 02110		
TPG Entities(15)	2,965,823	7.6%
301 Commerce Street, Suite 3300 Fort Worth, TX 76102		
SLP Entities(16)	2,817,531	7.2%
2775 Sand Hill Road, Suite 100 Menlo Park, CA 94025		
All executive officers and directors as a group (13 persons)(17)	4,025,437	10.1%

(1) Includes an aggregate of 539,703 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. Includes 50,000 shares held by a charitable foundation of which Mr. Singhal and his spouse are trustees. Does not include 1,807,884 shares held by a trust of which Mr. Singhal's spouse is deemed to be the beneficial owner and 383,088 shares held in a grantor retained annuity trust for the benefit of Mr. Singhal's spouse.
- (2) Includes 325,000 shares issuable upon the exercise of options exercisable within 60 days of the Record Date.
  - (3) Includes 158,438 shares issuable upon the exercise of options exercisable within 60 days of the Record Date.
  - (4) 153,750 shares issuable upon the exercise of options exercisable within 60 days of the Record Date.
  - (5) Includes 20,000 shares issuable upon the exercise of options exercisable within 60 days of the Record Date and 3,246 shares issuable upon the vesting of restricted stock units within 60 days of the Record Date.
  - (6) Includes 50,000 shares issuable upon the exercise of options exercisable within 60 days of the Record Date and 3,246 shares issuable upon the vesting of restricted stock units within 60 days of the Record Date.
  - (7) Includes 50,000 shares issuable upon the exercise of options exercisable within 60 days of the Record Date and 3,246 shares issuable upon the vesting of restricted stock units within 60 days of the Record Date. 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.
  - (8) Includes 50,000 shares issuable upon the exercise of options exercisable within 60 days of the Record Date and 3,246 shares issuable upon the vesting of restricted stock units within 60 days of the Record Date.
  - (9) Includes 1,350 shares issuable upon the exercise of options exercisable within 60 days of the Record Date and 3,246 shares issuable upon the vesting of restricted stock units within 60 days of the Record Date.
  - (10) Includes 3,246 shares issuable upon the vesting of restricted stock units within 60 days of the Record Date.
  - (11) Includes 2,720 shares issuable upon the vesting of restricted stock units within 60 days of the Record Date. Does not include the 2,965,823 shares held by the TPG Entities reported in footnote 16 below which may be attributable to Mr. Taylor due to his positions with such entities.
  - (12) Includes 2,720 shares issuable upon the vesting of restricted stock units within 60 days of the Record Date. Does not include the 2,817,531 shares held by the SLP Entities reported in footnote 17 below which may be attributable to Mr. Hao due to his positions with such entities.
  - (13) Does not include 2,003,076 shares held by a trust of which Mrs. Singhal's spouse is deemed to be the beneficial owner and 383,088 shares held in a grantor retained annuity trust for the benefit of Mrs. Singhal's spouse. 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. Includes 50,000 shares held by a charitable foundation of which Mrs. Singhal and her spouse are trustees. Does not include an aggregate of 539,703 shares held in trust for the benefit of Mrs. Singhal's children; Mrs. Singhal is not a trustee of such trusts.
  - (14) The information listed herein is based on a Schedule 13D filed with the SEC on August 7, 2007, and the amendments thereto, and additional information provided by such stockholder. Includes 340,000 shares held by a family limited partnership, of which Mrs. Popat and her spouse, Narendra Popat, a Co-Founder and former Chairman of the Company, are the general partners, and trusts for the benefit of their children are the limited partners. Includes 136,056 shares held in trusts for the benefit of Mrs. Popat's children; Mrs. Popat is a trustee of each such trust. Includes 112,980 shares held by the Hope Foundation USA Investment Trust; Mrs. Popat and her spouse are trustees of such trust. Includes 692,787 shares held by the Narendra Popat 2008 Dynasty Trust; Mrs. Popat is a trustee of such trust. Does not include 130,000 shares held by the Popat Family Trust of which neither Mrs. Popat nor her spouse are trustees. Does not include 576,408 shares held by a trust of which Mrs. Popat's spouse is deemed the beneficial owner. Does not include an aggregate of 586,299 shares held in trust for the benefit of Mrs. Popat's children; Mrs. Popat's spouse a trustee of each such trust.
  - (15) Based solely on a Schedule 13D filed with the SEC on November 13, 2007. Includes 758,975 shares held by TPG Advisors III, Inc.; 1,218,240 shares held by TPG Advisors IV, Inc.; and 988,608 shares held by T3 Advisors II, Inc. TPG Advisors III, Inc., TPG Advisors IV, Inc. and T3 Advisors II, Inc. are part of an affiliated group of investment partnerships referred to, collectively, as the TPG Entities. TPG Advisors III, Inc. is the general partner of TPG GenPar III, L.P., which is the general partner of TPG Partners III, L.P.,



which is the managing member of TPG Starburst III, LLC. TPG Advisors IV, Inc. is the general partner of TPG GenPar IV, L.P., which is the general partner of TPG Partners IV, L.P., which is the managing member of TPG Starburst IV, LLC. T3 Advisors II, Inc. is the general partner of T3 GenPar II, L.P., which is the general partner of T3 Partners II, L.P., which is the managing member of T3 Starburst II, LLC. TPG Starburst III, LLC directly owns 758,975 shares. TPG Advisors III, Inc. is the indirect general partner of the entity that is the managing member of TPG Starburst III. Therefore, TPG Advisors III, Inc. may be considered to be the beneficial owner of the shares directly owned by TPG Starburst III, LLC. TPG Starburst IV, LLC directly owns 1,218,240 shares. TPG Advisors IV, Inc. is the indirect general partner of the entity that is the managing member of TPG Starburst IV, LLC. Therefore, TPG Advisors IV, Inc. may be considered to be the beneficial owner of shares directly owned by TPG Starburst IV, LLC.

T3 Starburst II, LLC directly owns 988,608 shares. T3 Advisors II, Inc. is the indirect general partner of the entity that is the managing member of T3 Starburst II, LLC. Therefore, T3 Advisors II, Inc. may be considered to be the beneficial owner of the shares directly owned by T3 Starburst II, LLC. David Bonderman and James G. Coulter are directors, officers and shareholders of TPG Advisors III, Inc., TPG Advisors IV, Inc. and T3 Advisors II, Inc. Therefore, Messrs. Bonderman and Coulter may be deemed to be the beneficial owners of the 2,965,823 shares directly owned in the aggregate by TPG Advisors III, Inc., TPG Advisors IV, Inc. and T3 Advisors II, Inc. No individual holder has reported sole voting or dispositive power with respect to shares listed above.

(16) Based solely on a Schedule 13D filed with the SEC on November 13, 2007. Includes 2,730,660 shares held by Silver Lake Partners, L.P.; 76,838 shares held by Silver Lake Investors, L.P.; and 10,033 shares held by Silver Lake Technology Investors, L.L.C. Silver Lake Partners, L.P., Silver Lake Investors, L.P. and Silver Lake Technology Investors, L.L.C. are part of an affiliated group of investment partnerships referred to, collectively, as the SLP Entities. Silver Lake Technology Associates, L.L.C., as the general partner of Silver Lake Partners, L.P. and Silver Lake Investors, L.P., may be deemed to beneficially own the shares that are directly owned by Silver Lake Partners, L.P. and Silver Lake Investors, L.P.

Silver Lake Group, L.L.C., as the managing member of Silver Lake Technology Associates, L.L.C., may be deemed to beneficially own the shares that are directly owned by Silver Lake Partners, L.P. and Silver Lake Investors, L.P. Silver Lake Group, L.L.C. has the sole power to direct the vote and direct the disposition of the shares that are directly owned by Silver Lake Partners, L.P. and Silver Lake Investors, L.P. Silver Lake Technology Management, L.L.C., as the manager of Silver Lake Technology Investors, L.L.C., may be deemed to beneficially own the shares that are directly owned by Silver Lake Technology Investors, L.L.C. Silver Lake Technology Management, L.L.C. has the sole power to direct the vote and direct the disposition of the shares that are directly owned by Silver Lake Technology Investors, L.L.C.

(17) Includes an aggregate of 808,538 shares issuable upon exercise of options exercisable within 60 days of the Record Date and an aggregate of 24,916 shares issuable upon the vesting of restricted stock units within 60 days of the Record Date.

## CORPORATE GOVERNANCE

### Director Independence

Our Board of Directors has determined that each of Messrs. DeMarines, Egan, Hadzima, McGuigan, Mullarkey, and Pearse is independent within the meaning of our director independence standards and the director independence standards of The NASDAQ Stock Market, Inc., or NASDAQ, and the SEC. Furthermore, our Board of Directors has determined that each member of our Audit Committee, Compensation Committee, and Nominating and Corporate Governance Committee of our Board of Directors is independent within the meaning of the Company's, NASDAQ's, and the SEC's independence standards, as applicable.

### Executive Sessions of Independent Directors

Our Board of Directors holds executive sessions of the independent members of our Board following each regularly scheduled in-person meeting of our Board of Directors. Executive sessions do not include any directors who are not independent within the meaning of the Company's, NASDAQ's or SEC'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*

Our Nominating and Corporate Governance Committee is responsible for reviewing with our 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 our Board of Directors. This assessment includes consideration of the following minimum qualifications that our 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 our values as reflected in our Code of Business Conduct;

Directors must have reputations, both personal and professional, consistent with our image and reputation;

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 Company and be diligent in fulfilling the responsibilities of a director and/or committee member, as the case may be;

Directors must have substantial business or professional experience and expertise and be able to offer meaningful and practical advice and guidance to our 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:

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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 SEC; 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 our 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 Company. Our Board of Directors delegates the selection and nomination process to our Nominating and Corporate Governance Committee, with the expectation that other members of our 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 our Nominating and Corporate Governance Committee deems to be helpful to identify candidates. Once candidates have been identified, our 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 our Board of Directors. Based on the results of the evaluation process, the Nominating and Corporate Governance Committee recommends candidates for our 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 our 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 our stockholders. 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. With respect to the Annual Meeting of Stockholders to be held in 2009, for any recommendation for nomination to be considered by the Nominating and Corporate Governance Committee, such recommendation must be received not earlier than February 28, 2009 nor later than March 30, 2009. If, however, notwithstanding the requirements of our by-laws, the nomination is brought before our Annual Meeting, then under the proxy rules of the SEC, the proxies solicited by management with respect to such Annual Meeting will confer discretionary voting authority with respect to the stockholder's nomination 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. To curtail controversy as to the date on which we received a proposal, we suggest that proponents submit their proposals by certified mail, return receipt requested to the address provided below.

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 our books and records, and the name and address of such record holder's beneficial owner;

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

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, or the Exchange Act (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 our Board of Directors and elected); and

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

Nominations must be sent to the attention of NetScout's Director, Investor Relations by mail, fax, or email:

*By U.S. mail* (including courier or other expedited delivery service): NetScout Systems, Inc., 310 Littleton Road, Westford, MA 01886 Attn: Director, Investor Relations

*By facsimile*: (978) 614-4004, Attn: Director, Investor Relations

*By email*: ir@netscout.com

Our Director, Investor Relations 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 our 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 our choosing; and

A candidate must complete a detailed questionnaire regarding his or her 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 our Board of Directors.

#### **Policy Governing Any Other Matters to be Proposed by Stockholders**

With respect to any other matters which may be recommended by stockholders for inclusion in our proxy statements with respect to our Annual Meetings or to be considered at an Annual Meeting, the Nominating and Corporate Governance Committee must receive any such proposal 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. With respect to the Annual Meeting of Stockholders to be held in 2009, for any such proposal to be considered by the Nominating and Corporate Governance Committee for inclusion in our proxy statement with respect to such Annual Meeting, such proposal but be received not earlier than February 28, 2009 nor later than March 30, 2009. If, however, notwithstanding the requirements of our by-laws, the proposal is brought before our Annual Meeting, then under the proxy rules of the SEC, the proxies solicited by management with respect to such Annual Meeting 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. To curtail controversy as to the date on which we received a proposal, we suggest that proponents submit their proposals by certified mail, return receipt requested to NetScout Systems, Inc., 310 Littleton Road, Westford, MA 01886, Attention: Secretary.

Such proposal must be in writing and include the following information:

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

A written description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and

Number of shares of our capital stock that are owned beneficially and held of record by such stockholder and such beneficial owner.

#### **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 by one of the three methods listed below:

*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

*By facsimile*: (978) 614-4004, Attn: Chairman of the Board, c/o Director, Investor Relations

*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:

*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

*By facsimile*: (978) 614-4004, Attn: [Individual Director], c/o Director, Investor Relations

*By email*: ir@netscout.com

We will forward any such stockholder communications to the Chairman of our Board, as a representative of our Board of Directors, and/or to the director to whom the communication is addressed, on a periodic basis. We 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**

Our policy is that one of the regularly scheduled in-person meetings of our Board of Directors will be scheduled on the same day as our annual meeting of stockholders, and all directors are encouraged to attend our annual meeting of stockholders. All of the members of our Board of Directors attended the Annual Meeting of Stockholders held on September 12, 2007.

**Code of Ethics**

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

For more corporate governance information, you are invited to visit the Corporate Governance section of our website, available at <http://www.netscout.com/investors/>. Contents of our website are not part of or incorporated by reference into this proxy statement.



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## THE BOARD OF DIRECTORS AND ITS COMMITTEES

### Board of Directors

The Board of Directors met 17 times and took action by written consent two times during the fiscal year ended March 31, 2008. Each of the directors attended at least 75% of the total number of meetings of our Board of Directors and the committees on which they served during fiscal year 2008. The Board of Directors has standing Audit, Compensation, Nominating and Corporate Governance, Finance, and Equity Compensation Committees.

### Audit Committee

The Audit Committee, of which Messrs. DeMarines, Egan, Hadzima, and Mullarkey are the only members, is responsible for (1) reviewing and overseeing the financial reports provided by us to the SEC, our stockholders, or to the general public, and our accounting policies, internal accounting controls, internal control over financial reporting, auditing functions, and financial reporting practices; (2) ensuring the independence of the independent auditor and thereby furthering the integrity of our financial reporting; and (3) establishing procedures designed to facilitate the receipt, retention, and handling of complaints regarding disclosure controls and procedures, internal control over financial reporting and accounting, internal accounting control or auditing matters; and the receipt of confidential, anonymous submissions by our employees of concerns regarding questionable accounting or auditing matters. Additionally, the Audit Committee reviews and monitors the company's compliance with its related party transaction approval policy. A copy of the Audit Committee Charter is available at the Corporate Governance section of our website at <http://www.netscout.com/investors/>. The Audit Committee met eight times during the fiscal year ended March 31, 2008. Mr. Mullarkey serves as the Chairman of the Audit Committee and qualifies as an audit committee financial expert under the rules of the SEC. Our Board of Directors has determined that each member of our Audit Committee 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. Hadzima, McGuigan, and Pearse are the only members, is responsible for discharging the responsibilities of the Board of Directors relating to the compensation of our executives, administering our incentive compensation and stock plans, reviewing and making recommendations with respect to our benefit plans and human resource activities, and reviewing with our management and recommending for inclusion in our proxy statements and incorporation by reference in our Annual Reports on Form 10-K the Compensation Disclosure and Analysis. A copy of the Compensation Committee Charter is available at the Corporate Governance section of our website at <http://www.netscout.com/investors/>. Our Compensation Committee met five times during the fiscal year ended March 31, 2008. Mr. Hadzima serves as the Chairman of the Compensation Committee. The Board of Directors has determined that each member of our Compensation Committee is independent within the meaning of the Corporation's and NASDAQ's director independence standards and is a non-employee director as defined by applicable SEC rules and regulations.

### Nominating and Corporate Governance Committee

The Nominating and Corporate Governance Committee, of which Messrs. DeMarines, Egan, McGuigan, and Pearse are the only members, is responsible for identifying individuals qualified to become members of our Board of Directors, recommending to our Board of Directors the director nominees for election, and monitoring compliance with and periodically reviewing our Code of Business Conduct and Corporate Governance Guidelines. The Nominating and Corporate Governance Committee may also, in its discretion, consider nominees recommended by our stockholders. A copy of the Nominating and Corporate Governance Committee Charter is available at the Corporate Governance section of our website at <http://www.netscout.com/investors/>.

Our Nominating and Corporate Governance Committee met three times during the fiscal year ended March 31, 2008. 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 Company's and NASDAQ's director independence standards.

#### **Finance Committee**

The Finance Committee, of which Messrs. Mullarkey, DeMarines, Hadzima and Egan are currently the only members, considers strategic growth initiatives and other opportunities that may become available to the Company from time to time. During the fiscal year ended March 31, 2008, the Finance Committee met two times.

#### **Equity Compensation Committee**

The Equity Compensation Committee, of which Mr. Singhal is currently the only member, is responsible for granting equity-based awards under our equity incentive plans to employees and consultants who are not Named Executive Officers (as defined below) or directors of the Company and to generally exercise rights similar to those held by our Compensation Committee with respect to those grants. The Equity Compensation Committee operates under guidelines established by the Board of Directors and reports all options granted at each regularly scheduled meeting of our Board of Directors. The Equity Compensation Committee took action by written consent 12 times during the fiscal year ended March 31, 2008.

#### **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 management