

VERINT SYSTEMS INC
Form S-8
November 05, 2004

As filed with the Securities and Exchange Commission on November 5, 2004

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

Verint Systems Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

11-3200514
(I.R.S. Employer
Identification No.)

330 South Service Road

Melville, NY 11747

(631) 962-9600

(Address, including zip code, and telephone number,
including area code, of registrant's principal executive offices)

Verint Systems Inc. 2004 Stock Incentive Compensation Plan

(Full Title of Plans)

Mr. Dan Bodner

President and Chief Executive Officer

330 South Service Road

Melville, NY 11747

(631) 962-9600

(Name and address, including zip code,

and telephone number, including area code, of agent for service)

Copies to:

David E. Zeltner, Esq.
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

Peter Fante, Esq.
General Counsel
Verint Systems Inc.
330 South Service Road
Melville, NY 11747
(631) 962-9600

CALCULATION OF REGISTRATION FEE

| Title of Each Class of Securities to be Registered | Amount to be Registered⁽¹⁾ | Proposed | | Amount of Registration Fee⁽³⁾ |
|---|--|--------------------------------------|---|---|
| | | Offering Price | Proposed Maximum Aggregate Offering Price ⁽²⁾ | |
| Common Stock, par value \$0.001, per share | 3,000,000 | Per Share ⁽²⁾ \$ 38.75 | \$ 116,250,000 | \$ 14,728.88 |

(1) Plus such indeterminate number of shares of common stock of the registrant as may be issued to prevent dilution resulting from stock dividends, stock splits or similar transactions in accordance with Rule 416 under the Securities Act of 1933. In addition, pursuant to Rule 416(c) under the Securities Act of 1933, this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the Verint Systems Inc. 2004 Stock Incentive Compensation Plan.

(2)

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Pursuant to Rule 457(h)(1) under the Securities Act of 1933, as amended, for the purpose of calculating the maximum aggregate offering price and the registration fee, the proposed maximum offering price per share was determined based upon the average of the high and low prices of the registrant's common stock as reported by the Nasdaq National Market on November 2, 2004.

- (3) The registration fee was paid on November 5, 2004.
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PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed with the Commission by Verint Systems Inc. (the Company) (File No. 000-49790) are incorporated herein by reference and made a part hereof:

- (a) The Company's Annual Report on Form 10-K for the fiscal year ended January 31, 2004;
- (b) All other reports subsequently filed by the Company under Sections 13(a) or 15(d) of the Securities Exchange Act of 1934 (the Exchange Act); and
- (c) The description of the Company's common stock, par value \$0.001, per share, contained in the Registrant's Registration Statement on Form 8-A, filed with the Commission on May 1, 2002.

All documents subsequently filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities covered by this Registration Statement have been sold or which deregisters all of the securities then remaining unsold, will be deemed to be incorporated by reference in this Registration Statement and to be a part of this document from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference in this document will be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in this document or in any other subsequently filed document which also is or is deemed to be incorporated by reference in this document modifies or supersedes such statement. Any such statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

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Section 102 of the Delaware General Corporation Law, or DGCL, as amended, allows a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except where the director breached the duty of loyalty, failed

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to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of the DGCL or obtained an improper personal benefit.

Section 145 of the DGCL provides, among other things, that the Company may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding other than an action by or in the right of the Company, by reason of the fact that the person is or was a director, officer, agent or employee of the Company, or is or was serving at the Company's request as a director, officer, agent or employee of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding, if such person acting in good faith and in a manner he or she reasonably believed to be in the best interest, or not opposed to the best interest, of the Company, and with respect to any criminal action or proceeding had no reasonable cause to believe his or her conduct was unlawful. The power to indemnify applies to actions brought by or in the right of the Company as well, but only to the extent of defense expenses, including attorneys' fees but excluding amounts paid in settlement, actually and reasonably incurred and not to any satisfaction of judgment or settlement of the claim itself, and with the further limitation that in such actions no indemnification shall be made in the event of any adjudication of liability to the Company, unless the court believes that in light of all the circumstances indemnification should apply. Furthermore, under the DGCL, if such person is successful on the merits or otherwise in the defense of any action referred to above, or in the defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection herewith.

Section 174 of the DGCL provides, among other things, that a director, who willfully or negligently approves of an unlawful payment of dividends or an unlawful purchase or redemption of stock, may be held liable for such actions. A director who was either absent when the unlawful actions were approved or dissented at the time, may avoid liability by causing his or her dissent to such actions to be entered in the books containing minutes of the meetings of the board of directors at the time such action occurred or immediately after such absent director receives notice of the unlawful acts.

The above is a general summary of certain indemnity provisions of the DGCL and is subject, in all cases, to the specific and detailed provisions of the Sections referenced herein.

As permitted by the DGCL, our certificate of incorporation includes a provision to eliminate the personal liability of our directors for monetary damages for breach or alleged breach of their fiduciary duties as directors, subject to limited exceptions. Our certificate of incorporation also provides that every person who is or was our director, officer, employee or agent or is or was a director, officer, trustee, employee or agent of any other enterprise, serving as such at our request, shall be indemnified to the fullest extent permitted by law for all expenses and liabilities in connection with any proceeding involving such person in this capacity. The Company entered into an indemnification agreement with each of its directors and officers under which the Company agreed to provide indemnification and expense reimbursement as outlined above.

The Company has agreed to indemnify Comverse Technology, Inc. (Comverse) and its directors, officers, employees and agents against any liabilities arising out of any claim that any provision of the business opportunities agreement, entered into by the Company and Comverse, breaches any duty that may be owed to the Company by or any such person.

Under a Corporate Services Agreement entered into by the Company and Comverse, Comverse obtained directors and officers liability insurance which also provides coverage for the Company s officers and directors.

Each of the Company s directors who is also a director and/or officer of Comverse has an indemnification agreement with Comverse. Under this agreement Comverse has agreed to indemnify such person against losses and expenses, to the extent permitted by law, incurred by such person in connection with his service as director and/or officer of Comverse or any of its subsidiaries, including the Company.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

| <u>Exhibit Number</u> | <u>Description</u> |
|---------------------------|---|
| 4.1 | Amended and Restated Certificate of Incorporation of the Company (incorporated by reference to Exhibit 3.1 of Amendment No. 2 to the Registrant's Registration Statement on Form S-1 (File No. 333-82300), which became effective on May 16, 2002). |
| 4.2 | Amended and Restated Bylaws of the Company (incorporated by reference to Exhibit 3.2 of Amendment No. 3 to the Registrant's Registration Statement on Form S-1 (File No. 333-82300), which became effective on May 16, 2002). |
| 4.3 | Specimen Stock Certificate (incorporated by reference to Exhibit 4.1 of Amendment No. 2 to the Registrant's Registration Statement on Form S-1 (File No. 333-82300), which became effective on May 16, 2002). |
| 4.4* | Verint Systems Inc. 2004 Stock Incentive Compensation Plan. |
| 5.1* | Opinion of Weil, Gotshal & Manges LLP. |
| 23.1* | Consent of Deloitte & Touche LLP. |
| 23.2* | Consent of Somekh Chaikin Certified Public Accountants (Isr.) (A member firm of KPMG International). |
| 23.3* | Consent of Weil, Gotshal & Manges LLP (contained in exhibit 5.1). |
| 24.1* | Powers of Attorney (included in the signature pages of this Registration Statement). |

* filed herewith

Item 9. Undertakings.

- (a) The undersigned registrant hereby undertakes:
- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
- (i) to include any prospectus required by Section 10(a)(3) of the Securities Act;
- (ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement;
- (iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that the undertakings in paragraph (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed, with or furnished to the Commission by the Company pursuant to Section 13 or Section 15(d) of the Exchange Act, that are incorporated by reference in the registration statement.

- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bonafide offering thereof.

- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bonafide offering thereof.
- (c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURE

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, duly authorized, as of this 5th day of November, 2004.

Verint Systems Inc.

By: /s/ Dan Bodner

Dan Bodner
President and Chief Executive Officer

POWER OF ATTORNEY

We, the undersigned directors and officers of Verint Systems Inc. (the Company) and each of us, do hereby constitute and appoint Dan Bodner and Igal Nissim, or either of them, our true and lawful attorneys-in-fact and agents, each with full power of substitution and resubstitution, to do any and all acts and things in our names and on our behalf in our capacities as directors and officers and to execute any and all instruments for us and in our names in the capacities indicated above, which said attorneys or agents, or either of them, may deem necessary or advisable to enable the Company to comply with the Securities Act of 1933, as amended, and any rules, regulations and requirements of the Securities and Exchange Commission, and any and all amendments (including post-effective amendments) to this Registration Statement, in connection with the public offering of the common stock of the Company, including specifically but without limitation, power and authority to sign for us or any of us in our names in the capacities indicated below, any and all amendments (including post-effective amendments) to such Registration Statement; and we do hereby ratify and confirm all that the said attorneys and agents, or their substitute or substitutes, or either of them, shall do or cause to be done by virtue hereof.

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Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated:

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---|--|------------------|
| <u>/s/ Kobi Alexander</u> Kobi Alexander | Chairman of the Board of Directors and Director | November 5, 2004 |
| <u>/s/ Dan Bodner</u> Dan Bodner | President and Chief Executive Officer and Director (Principal Executive Officer) | November 5, 2004 |
| <u>/s/ Igal Nissim</u> Igal Nissim | Vice President and Chief Financial Officer and Director (Principal Financial Officer) | November 5, 2004 |
| <u>/s/ William F. Sorin</u> William F. Sorin | Secretary and Director | November 5, 2004 |
| <u>/s/ Paul D. Baker</u> Paul D. Baker | Director | November 5, 2004 |
| <u>/s/ Victor De Marines</u> Victor De Marines | Director | November 5, 2004 |
| <u>/s/ David Kreinberg</u> David Kreinberg | Director | November 5, 2004 |
| <u>/s/ David T. Ledwell</u> David T. Ledwell | Director | November 5, 2004 |
| <u>/s/ Kenneth A. Minihan</u> Kenneth A. Minihan | Director | November 5, 2004 |
| <u>/s/ Larry Myers</u> Larry Myers | Director | November 5, 2004 |
| <u>/s/ Paul L. Robinson</u> Paul L. Robinson | Director | November 5, 2004 |
| <u>/s/ Howard Safir</u> Howard Safir | Director | November 5, 2004 |

Exhibits Index

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