

NETZEE INC  
Form PREM14A  
December 10, 2002

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**SCHEDULE 14A  
(Rule 14a-101)**

**INFORMATION REQUIRED IN PROXY STATEMENT**

**SCHEDULE 14A INFORMATION**

**Proxy Statement Pursuant to Section 14(a) of the Securities  
Exchange Act of 1934 (Amendment No. )**

Filed by the Registrant  x

Filed by a Party other than the Registrant  o

Check the appropriate box:

- x Preliminary Proxy Statement  o Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- o Definitive Proxy Statement
- o Definitive Additional Materials
- o Soliciting Material Pursuant to Rule 14a-11(c) or Rule 14a-12

Netzee, Inc.

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(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):

- o No fee required.
- x 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: Common Stock and Series B 8% Convertible Preferred Stock

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(2) Aggregate number of securities to which transaction applies: Common Stock: 3,327,442; Series B 8% Convertible Preferred Stock: 500,000

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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): N/A

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(4) Proposed maximum aggregate value of transaction: \$10,400,000.00

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(5) Total fee paid: \$956.80

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o Fee paid previously with preliminary materials:

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o

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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:

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(2) Form, Schedule or Registration Statement No.:

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(3) Filing Party:

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(4) Date Filed:

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(NETZEE LOGO)  
**6190 POWERS FERRY ROAD, SUITE 400  
ATLANTA, GEORGIA 30339**

December , 2002

Dear Netzee, Inc. Shareholder:

You are cordially invited to attend a Special Meeting of Shareholders of Netzee, Inc. The Special Meeting will be held at 6190 Powers Ferry Road, Atlanta, Georgia 30339, on December , 2002 at 10:00 a.m. local time. At the Special Meeting, you will be asked to vote on the following proposals:

To approve an Asset Purchase Agreement between Netzee and Down Acquisition Corporation, a wholly-owned subsidiary of Certegy Inc., and the sale of substantially all of our assets to Down Acquisition Corporation pursuant to the terms of the Asset Purchase Agreement;

To approve and adopt a Plan of Liquidation and Dissolution pursuant to which we would liquidate and dissolve Netzee, and to approve the liquidation and dissolution of Netzee; and

Any other business that may properly come before the Special Meeting.

After careful consideration, the Board of Directors has determined that the sale of substantially all of Netzee's assets pursuant to the Asset Purchase Agreement and the liquidation and dissolution of Netzee pursuant to the Plan of Liquidation and Dissolution are in the best interests of shareholders and would maximize shareholder value. Therefore, the Board of Directors has unanimously approved these proposals and recommends that you vote FOR each of the proposals.

The affirmative vote of the holders of a majority of the shares of our outstanding common stock entitled to vote will be required to approve both the sale of assets pursuant to the Asset Purchase Agreement and to approve the Plan of Liquidation and Dissolution. The approval of the holder of our Series B 8% Convertible Preferred Stock is also required, although such holder has already consented to the transactions.

It is important that your shares are represented at the Special Meeting. Whether or not you plan to attend the Special Meeting, please provide your proxy or broker instruction card as instructed by these materials. Please note that, as described in more detail in the enclosed proxy statement, completing the provided proxy or instruction card will not prevent you from attending the Special Meeting and voting in person.

We urge you to carefully review the enclosed materials, which explain the reasons for the proposals to be voted on at the Special Meeting and contain other important information, including copies of the Asset Purchase Agreement and Plan of Liquidation and Dissolution, attached as appendices to the proxy statement. Your vote is very important, and we appreciate your cooperation in considering and acting on the matters presented.

Sincerely,

DONNY R. JACKSON  
*President and Chief Executive Officer*

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**NETZEE, INC.**

**6190 Powers Ferry Road, Suite 400  
Atlanta, Georgia 30339**

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**NOTICE OF SPECIAL MEETING OF SHAREHOLDERS  
To be Held on December , 2002**

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NOTICE IS HEREBY GIVEN that a Special Meeting of Shareholders of Netzee, Inc., a Georgia corporation (the Company), will be held at the Company's principal executive offices located at 6190 Powers Ferry Road, Suite 400, Atlanta, Georgia 30339 on December , 2002 at 10:00 a.m. local time, for the following purposes:

1. To consider and vote upon a proposal to approve the Asset Purchase Agreement between the Company and Down Acquisition Corporation, a wholly-owned subsidiary of Certegy Inc., and the sale of substantially all of our assets pursuant to the terms of the Asset Purchase Agreement, a copy of which is attached as Appendix A to the accompanying proxy statement;
2. To consider and vote upon a proposal to approve and adopt the Plan of Liquidation and Dissolution, and the liquidation and dissolution of the Company pursuant to the Plan of Liquidation and Dissolution, a copy of which is attached as Appendix B to the accompanying proxy statement; and
3. To act upon such other matters as may properly come before the meeting or any postponements or adjournments thereof.

**Holders of record of our common stock, no par value, at the close of business on November 29, 2002 shall be entitled to notice of, and to vote at, the special meeting or any postponements or adjournments thereof.**

Holders of record of our common stock are entitled to dissent from the asset sale and demand payment of the fair value of their shares if they follow the specific procedures contained in Article 13 of the Georgia Business Corporation Code. A copy of Article 13 is attached as Appendix C to the accompanying proxy statement.

You are cordially invited to attend the special meeting in person. If you are unable to attend the meeting, please vote as instructed by these materials as soon as possible.

By Order of the Board of Directors

JARETT J. JANIK  
*Vice President, Chief Financial Officer and Secretary*

Atlanta, Georgia  
December , 2002

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**NETZEE, INC.**

**6190 Powers Ferry Road, Suite 400  
Atlanta, Georgia 30339**

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**PROXY STATEMENT**

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**SPECIAL MEETING OF SHAREHOLDERS  
To be Held on December , 2002**

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**SUMMARY TERM SHEET**

These proxy materials are intended to be first sent or given to shareholders on or about December , 2002. The following summary highlights the material terms of the proposed asset sale and Plan of Liquidation and Dissolution. We have included page references to direct you to more complete information which appears elsewhere in this proxy statement. A copy of the Asset Purchase Agreement governing the asset sale is attached to this proxy statement as Appendix A. A copy of the Plan of Liquidation and Dissolution is attached to this proxy statement as Appendix B. You should read this proxy statement, the Asset Purchase Agreement, the Plan of Liquidation and Dissolution and the other documents attached to this proxy statement in their entirety to fully understand the proposals and their consequences to you.

**Time, Date and Place of Meeting**

A special meeting of shareholders will be held at our principal executive offices, located at 6190 Powers Ferry Road, Atlanta, Georgia 30339, on , December , 2002 at 10:00 a.m. local time. The Board of Directors of Netzee, Inc. is providing these proxy materials to you in connection with the special meeting.

**The Sale of Substantially All of Our Assets**

***Parties to the Asset Sale (page )***

Netzee, Inc. is a Georgia corporation. We provide Internet and telephone banking solutions and services to community financial institutions in the United States. Netzee's stock is quoted on the OTC Bulletin Board under the symbol NETZ.

Certegy Inc. is a Georgia corporation. Certegy Inc. provides credit and debit card processing, check risk management services and check cashing services, as well as Internet and telephone banking solutions, to financial institutions and merchants throughout the world. Certegy Inc.'s stock is traded on the New York Stock Exchange under the symbol CEY.

Down Acquisition Corporation is a Georgia corporation and an indirect wholly-owned subsidiary of Certegy Inc. Down was incorporated by Certegy solely for the purpose of acquiring the assets of Netzee. We refer to Down Acquisition Corporation as Down or Certegy throughout this proxy statement. We refer to Down's ultimate parent as Certegy Inc. throughout this proxy statement.

***Assets Being Sold and Purchase Price (page )***

We intend to sell substantially all of our operating assets to Certegy for the purchase price of \$10.4 million in cash. We are not transferring our cash, cash equivalents or securities. Under the terms of

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the Asset Purchase Agreement, \$800,000 of the purchase price will be placed into escrow with an independent escrow agent to secure our indemnification obligations to Certegy, as described below.

***Liabilities (page )***

Certegy has agreed to assume only certain of our liabilities which are limited to liabilities under existing business contracts that arise after the closing and prepaid subscription balances as of the closing date. We will remain responsible for all of our other liabilities, including any liabilities relating to the operation of our business prior to the closing date, such as pre-existing indebtedness, tax liabilities, liabilities relating to certain employment matters and liabilities to our shareholders.

***Indemnification (page )***

We have agreed to indemnify Certegy for certain matters, including:

losses arising from any breaches of representations, warranties, covenants or agreements contained in the Asset Purchase Agreement or related agreements;

if our accounts receivable at the closing date is less than \$800,000;

losses related to our liabilities not assumed by Certegy;

any third party challenging the asset sale as being part of a fraudulent conveyance; and

claims arising from the operation of our business prior to the closing of the asset sale.

Certegy has agreed to indemnify us for certain matters, including:

losses arising from any breaches of representations, warranties, covenants or agreements contained in the Asset Purchase Agreement or related agreements;

losses related to the liabilities assumed by Certegy to the extent the losses arise out of actions that occur after the closing of the asset sale; and

the ownership or operation of the assets purchased after the closing of the asset sale.

In most cases, the total indemnification obligation of each party will be limited to the amount of the escrowed portion of the purchase price.

***Conditions to Closing (page )***

There are several conditions that, unless waived, the parties must satisfy in order to complete the asset sale. These include:

approval of the asset sale and the Plan of Liquidation and Dissolution by holders of our common stock and the holder of our Series B 8% Convertible Preferred Stock;

obtaining the release of all liens, except permitted liens, from our assets;

the accuracy of all representations and warranties made in the Asset Purchase Agreement by us and Certegy;

the performance of all covenants and agreements by us and Certegy;

the absence of a material adverse change to the assets to be purchased by Certegy or to our business;

obtaining all necessary third party consents;



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the execution of a marketing agreement between Certegy Inc. and InterCept, Inc., our largest shareholder; and  
other routine closing conditions.

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*Termination (page )*

Netzee and Certegy may mutually agree to terminate the Asset Purchase Agreement at any time. Additionally, either party may terminate the agreement if:

the asset sale has not closed on or before January 15, 2003;

a governmental authority prohibits the asset sale;

our shareholders do not approve the asset sale and Plan of Liquidation and Dissolution; or

the other party materially breaches its representations, warranties, covenants or agreements.

In the event of termination, neither party will be required to pay a termination fee.

*Voting Agreement and Related Matters (page )*

Each of our two largest common shareholders entered into a voting agreement with Certegy Inc. to vote its shares in favor of the asset sale and the Plan of Liquidation and Dissolution. The shares held by these shareholders represent approximately 44.9% of the shares of common stock outstanding and entitled to vote at the special meeting. In addition, our directors and executive officers individually control approximately 5.1% of our common stock entitled to vote at the special meeting. While these individuals are not parties to a voting agreement, they have indicated their present intention to vote in favor of both the asset sale and the Plan of Liquidation and Dissolution. Therefore, shareholder approval of the asset sale and Plan of Liquidation and Dissolution is very likely.

**Plan of Liquidation and Dissolution (pages )**

*Operations of Netzee Following the Asset Sale (pages )*

As soon as practicable after the completion of the asset sale, assuming shareholder approval of the Plan of Liquidation and Dissolution, we intend to begin the liquidation and dissolution process in accordance with the plan.

*Timing of the Plan of Liquidation and Dissolution (page )*

As soon as practicable following the approval of the Plan of Liquidation and Dissolution and the completion of the sale of substantially all of our assets to Certegy, we will file a Notice of Intent to Dissolve with the Georgia Secretary of State. We will then proceed to wind up our business. When all of our debts, liabilities and obligations have been paid, or adequate provision for the payment of them has been made, and we have distributed assets to shareholders in accordance with the Plan of Liquidation and Dissolution, we intend to file Articles of Dissolution with the Georgia Secretary of State. Once the Articles of Dissolution have been filed, we will cease to exist under Georgia law except for limited purposes.

*Distribution of the Proceeds of the Asset Sale (page )*

Under the Plan of Liquidation and Dissolution, we intend to take the following steps at or promptly following the closing of the asset sale in the following order:

Pay our lenders approximately \$3.3 million (approximately 25% of the total amount owed to these lenders), and pay the holder of our Series B preferred stock approximately \$2.1 million (approximately 25% of the liquidating preference to which these shares are entitled);

Pay or otherwise discharge all of our other known and undisputed liabilities as of the closing of the asset sale;

Set aside and reserve in amounts sufficient as determined by the Board of Directors, in its judgment, to satisfy disputed, contingent and unknown claims; and

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After taking each of the foregoing steps, intend to make a liquidating distribution of up to \$0.50 per share to the holders of our outstanding common stock, other than holders who have validly exercised and perfected their dissenters' rights; however, this amount may be reduced if claims are asserted against us prior to the making of such distribution.

Any amounts remaining after taking the foregoing steps and paying all of our expenses related to the asset sale and our liquidation and dissolution will be paid to our lenders and the holder of our Series B preferred stock in the manner specified by the Plan of Liquidation and Dissolution.

### **Vote Required for Approval**

The affirmative vote of a majority of the outstanding shares of common stock entitled to vote is necessary for approval of each of the proposals. Additionally, under the terms of our Series B preferred stock, the holder of a majority of the outstanding shares of such stock must consent to the transactions contemplated by the Plan of Liquidation and Dissolution. We have already received this consent.

Each of the two proposals are contingent upon the other. Therefore, if shareholders do not approve the asset sale, we will not proceed with our liquidation and dissolution, and if shareholders do not approve the Plan of Liquidation and Dissolution, we will not complete the asset sale.

### **Reasons for the Asset Sale and Liquidation (page )**

After considering a wide variety of strategic alternatives, and alternative transactions, and conducting an extensive auction process with the assistance of an independent financial consultant, our Board of Directors has determined that the asset sale followed by the liquidation and dissolution of Netzee in accordance with the Plan of Liquidation and Dissolution is the best method of maximizing shareholder value.

### **Interests of Officers, Directors and Principal Shareholders (page )**

Certain of our directors and executive officers may have interests in the asset sale and Plan of Liquidation and Dissolution that differ from, or are in addition to, their interests as holders of our common stock. For example, some of our executive officers are entitled to severance payments in connection with the asset sale, and some of our directors hold unvested options which will vest upon the closing of the asset sale. In addition, we have entered into a credit facility with our two largest shareholders.

### **Recommendation of the Board (page )**

Our Board of Directors has unanimously approved, and unanimously recommends that our shareholders approve, the sale of assets to Certegy, the Asset Purchase Agreement, the liquidation and dissolution of Netzee and the Plan of Liquidation and Dissolution.

### **No Fairness Opinion (page )**

The Board of Directors has not sought or obtained an opinion as to the fairness, from a financial point of view, of the consideration to be received by shareholders in the asset sale and the liquidation and dissolution of Netzee.

### **Material U.S. Federal Income Tax Consequences (page )**

It is expected that any gain recognized by Netzee from the asset sale for federal income tax purposes will be offset by our current and prior year net operating losses. The asset sale will not be a taxable event to you as a holder of our common stock. Any cash distributions to you in the liquidation and dissolution of Netzee will be a taxable event to a shareholder for United States federal income tax purposes, and you will generally recognize gain or loss based on the difference between the amount of cash you receive and your tax basis in your shares of Netzee common stock. Because determining your specific tax

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consequences can be complicated, you should consult your own tax advisor in order to fully understand how the transactions described in this proxy statement will affect you.

### **Dissenters' Rights (page )**

If you wish to object to the asset sale, Georgia law permits you to dissent from and demand payment in cash for the fair value of your shares.

If you wish to dissent and demand such payment of fair value for your shares, you must deliver to us before the vote is taken at the special meeting written notice of your intent to demand such payment. Additionally, you must **not** sign and return a proxy in favor of the asset sale or vote your shares in favor of the asset sale at the special meeting.

No later than 10 days after the completion of the asset sale, we will send written notice to all shareholders who satisfied all of the requirements under Georgia law. This notice will provide instructions on where payment demands must be sent, the date by which we must receive a payment demand, and a copy of the dissenters' rights provisions of Georgia law.

The relevant provisions of Georgia law with respect to dissenters' rights, a copy of which are attached as Appendix C to this proxy statement, are technical and complex. If you wish to exercise your dissenters' rights, you are advised to consult, at your expense, with your legal counsel, since the failure to comply strictly with these provisions may result in the forfeiture of your dissenters' rights.

If you sign and return a proxy, you will have voted in favor of the asset sale and thus you will forfeit your dissenters' rights. Please see pages [ ], as well as Appendix C, for more information on dissenters' rights under Georgia law.

You are not entitled to dissenters' rights in connection with the Plan of Liquidation and Dissolution.

## **PROXY AND VOTING INFORMATION**

### **Who May Vote**

Holders of record of Netzee common stock on November 29, 2002 may vote at the Special Meeting or any adjournment or postponement of the meeting. On November 29, 2002, we had 3,327,442 shares of common stock issued and outstanding held of record by approximately 257 persons. Each shareholder is entitled to one vote per share.

### **Record Ownership Versus Beneficial Ownership Through a Nominee**

Many of our shareholders hold their shares through a broker, bank or other nominee rather than directly in their own name. As summarized below, there are some distinctions between shares held of record and those owned beneficially through a broker, bank or other nominee.

*Shares Owned as a Shareholder of Record.* If your shares are registered directly in your name with our transfer agent, SunTrust Bank of Atlanta, you are considered, with respect to those shares, to be the shareholder of record, and we are sending these proxy materials directly to you as such. As the shareholder of record, you may give representatives of Netzee a proxy to vote your shares as you direct, or you may vote in person at the Special Meeting. We have enclosed a proxy card for you to use.

*Shares Owned Beneficially Through a Broker, Bank or Other Nominee.* Shares that are registered in the name of a brokerage account or by a bank or other nominee are commonly referred to as being held in street name. If you hold your shares in street name, these proxy materials were forwarded to you by your broker or nominee, which is considered, with respect to those shares, to be the shareholder of record. As the beneficial owner of shares held in street name, you have the right to direct the nominee how to vote your shares. You also have the right to attend the Special Meeting. However, since you are not the shareholder of record, you may not vote these shares in person at the Special Meeting unless you first

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obtain a signed proxy from the shareholder of record giving you the right to vote the shares. Your broker or nominee has enclosed or provided a voting instruction card for you to use in directing the broker or nominee how to vote your shares or obtain a proxy from the nominee.

### **How to Vote in Person at the Special Meeting**

Shares held directly in your name as the shareholder of record may be voted in person at the Special Meeting. If you choose to do so, please bring the enclosed proxy card and proof of identification. If you hold your shares in street name, you must have a signed proxy from the broker, bank or other nominee in order to vote your shares in person at the Special Meeting.

Even if you currently plan to attend the Special Meeting, we recommend that you also submit your proxy as described below so that your vote will be counted if you later decide not to attend the meeting.

### **How to Vote Without Attending the Special Meeting**

Whether you hold shares directly as the shareholder of record or in street name, you may direct your vote without attending the meeting. You may vote by granting a proxy or, for shares held in street name, by submitting voting instructions to your broker, bank or nominee. In most instances, you will be able to do this by mail. Please refer to the instructions included on your proxy card or, for shares held in street name, the voting instruction card included by your broker, bank or nominee.

### **How to Change Your Vote**

You may change your proxy or voting instruction at any time prior to the vote at the Special Meeting. For shares held directly in your name, you may accomplish this by granting a new proxy bearing a later date (which automatically revokes the earlier proxy) or by attending the special meeting and voting in person. Attendance at the meeting will not cause your previously granted proxy to be revoked unless you specifically so request. For shares held by you in street name, you may accomplish this by submitting new voting instructions to your broker or nominee, or you may vote your shares at the special meeting if you have first obtained a proxy from your broker or nominee.

### **How Proxies Work**

Giving your proxy means that you authorize us to vote your shares at the Special Meeting in the manner you direct. If you sign, date and return the enclosed proxy or instruction card but do not specify how to vote, we will vote your shares for approval of the asset sale pursuant to the terms of the Asset Purchase Agreement, and for approval and adoption of the Plan of Liquidation and Dissolution. We do not know of any other matters that will be brought before the Special Meeting. If, however, other matters are properly brought before the Special Meeting, we will vote your proxy on those matters as determined by a majority of our Board of Directors.

### **How to Revoke a Proxy**

You may revoke your proxy before it is voted by submitting prior to the Special Meeting a new proxy with a later date, or by written notice to: Secretary, Netzee, Inc., 6190 Powers Ferry Road, Suite 400, Atlanta, Georgia 30339.

### **What is a Quorum?**

In order to carry on the business of the meeting, we must have a quorum. A quorum requires the presence, in person or by proxy, of the holders of a majority of the votes of each class of stock entitled to be cast at the meeting. We count abstentions and broker non-votes as present and entitled to vote for purposes of determining a quorum. A broker non-vote occurs when you fail to provide voting instructions to your broker or nominee for shares that the broker or nominee holds in street name. Under those circumstances, the broker or nominee may be authorized to vote for you on some routine items but

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prohibited from voting on other items. Those items for which your broker cannot vote result in broker non-votes.

### **How Many Votes are Required to Approve Each Proposal?**

The affirmative vote of a majority of the outstanding shares of common stock entitled to vote is necessary for approval of each of the proposals. For this purpose, if you vote to abstain on these proposals, your shares will have the same effect as if you voted against the proposals. A broker non-vote also will have the same effect. Additionally, under the provisions of our Articles of Incorporation, we must obtain the consent of a majority of the outstanding shares of Series B preferred stock with respect to the transactions contemplated by the Plan of Liquidation and Dissolution, which consent has been obtained.

For all other matters that the shareholders are entitled to vote upon at the meeting, the matter will be approved if a greater number of votes are cast in favor of the action than votes cast against the action. Accordingly, an abstention from voting or a broker non-vote on the proposal by a shareholder will be disregarded for those purposes.

### **Voting Agreements and Related Matters**

Holders of approximately 44.9% of our common stock have entered into an agreement to vote their shares in favor of the asset sale and Plan of Liquidation and Dissolution. In addition, directors and officers who individually control 5.1% of our common stock have indicated that they presently intend to vote in favor of each of the proposals. Therefore, the approval of our shareholders as to these matters is very likely.

### **Who Will Pay for this Proxy Solicitation?**

Netzee is making this solicitation and will pay the entire cost of preparing, assembling, printing, mailing and distributing these proxy materials. In addition to the mailing of these proxy materials, the solicitation of proxies or votes may be made in person, by telephone or by electronic communication by our directors, officers and employees, who will not receive any additional compensation for such solicitation activities. We will reimburse brokerage houses and other custodians, nominees and fiduciaries for their reasonable out-of-pocket expenses for forwarding proxy and solicitation materials to shareholders.

### **How Can You Submit a Shareholder Proposal for the Next Annual Meeting?**

If our shareholders do not approve the sale of assets and Plan of Liquidation and Dissolution, the asset sale is not completed, the remaining assets of Netzee are not liquidated and Netzee is not dissolved, we will continue to hold annual shareholder meetings. You may submit proposals for consideration at future shareholder meetings, including director nominations. Shareholders who intend to submit proposals to Netzee for inclusion in our proxy statement for the 2003 Annual Meeting of Shareholders must submit such proposals so that they are received by Netzee no later than December 30, 2002. Such proposals must comply with Rule 14a-8 promulgated under the Securities Exchange Act of 1934, as amended, and all other applicable proxy rules and requirements contained in Netzee's bylaws relating to shareholder proposals in order to be included in Netzee's proxy materials.

Shareholders who wish to submit a proposal for consideration (other than nominations for election of directors) at Netzee's 2003 Annual Meeting of Shareholders, but who do not wish to submit the proposal for inclusion in Netzee's proxy statement pursuant to Rule 14a-8, must submit their proposal to Netzee in accordance with the procedures set forth in Netzee's bylaws no earlier than January 13, 2003 and no later than February 12, 2003. Shareholders who intend to nominate persons for election to the Board of Directors at the 2003 Annual Meeting of Shareholders must submit such nominations to Netzee, and in accordance with the procedures set forth in Netzee's bylaws, no earlier than February 12, 2003 and no later than March 14, 2003.

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Shareholder nominations for election of directors and other proposals should be submitted to: Secretary, Netzee, Inc., 6190 Powers Ferry Road, Suite 400, Atlanta, Georgia 30339. You may also contact our corporate secretary at the above address for a copy of the relevant bylaw provisions regarding the requirements for making shareholder proposals and nominating director candidates.

## **Where Can You Find More Information About Us**

We are subject to the informational requirements of the Exchange Act and are required to file reports, proxy statements and other information with the Securities and Exchange Commission. You may inspect and copy our reports, proxy statements and other information at the Public Reference Section of the Commission at Room 1024, 450 Fifth Street, N.W., Washington, D.C. 20549. Please call the Commission at 1-800-SEC-0330 for further information about the public reference rooms. You may also obtain copies of the reports, proxy statements and other information from the Public Reference Section of the Commission, Washington, D.C. 20549, at prescribed rates. The Commission maintains a world-wide web site on the internet at <http://www.sec.gov> that contains reports, proxies, information statements, and registration statements and other information filed with the Commission through the EDGAR system.

## **Forward-Looking Statements**

This proxy statement contains forward-looking statements regarding our plans and objectives following the sale of assets, our plans and objectives with regard to the plan of liquidation, statements regarding the potential value of our assets, the amount and nature of the liabilities that may be asserted against us, the timing and amount of any distributions to shareholders, and other matters regarding our business, prospects, the asset sale and our liquidation and dissolution. When used in this proxy statement, the words *expects*, *believes*, *intends*, *anticipates*, *plans*, similar expressions are intended to identify forward-looking statements. Such forward-looking statements are not a guarantee of future results and involve risks and uncertainties. Actual results may differ materially from those contemplated by these forward-looking statements as a result of risks and uncertainties described in this proxy statement, including that we may not be able to complete proposed transactions as described in the proxy statement; that we may have significant liabilities or obligations that are currently contingent or are unknown to us; that our known, disputed or contingent liabilities or obligations may be more significant than we currently anticipate; changes in financial markets; and general economic and industry conditions.

## **PROPOSAL ONE SALE OF SUBSTANTIALLY ALL OF OUR ASSETS**

Under this proposal, shareholders are being asked to approve the Asset Purchase Agreement and to authorize the sale of substantially all of our assets pursuant thereto. On December 5, 2002, we entered into the Asset Purchase Agreement with Down Acquisition Corporation, a wholly owned subsidiary of Certegy Inc., to sell substantially all of our assets. We recommend that you carefully read the Asset Purchase Agreement attached hereto as Appendix A which sets forth the terms and conditions of the asset sale. We use the terms *Down* or *Certegy* in this proxy statement to refer to Down Acquisition Corporation, and the term *Certegy Inc.* to refer to Down's ultimate parent.

## **Our Business**

Our business operations consist primarily of providing Internet and telephone banking solutions and services to community financial institutions in the United States. Currently, this represents our entire business and is our only significant source of revenue. We will cease operations and liquidate and dissolve our business if the asset sale and the liquidation and dissolution are ultimately approved and consummated.

Our principal executive offices are located at 6190 Powers Ferry Road, Suite 400, Atlanta, Georgia 30339 and our telephone number is (770) 850-4000.

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### **Certegy Inc. s Business**

Certegy Inc. is a Georgia corporation traded on the New York Stock Exchange under the symbol CEY. Certegy Inc. provides credit and debit card processing, check risk management services and check cashing services, as well as Internet and telephone banking solutions, to financial institutions and merchants throughout the world. Certegy Inc. s principal executive offices are located at 11720 Amber Park Drive, Alpharetta, Georgia 30004, and its telephone number is (678) 867-8000.

### **Down Acquisition Corporation**

Down Acquisition Corporation is an indirect wholly-owned subsidiary of Certegy Inc. Down was incorporated by Certegy Inc. solely for the purpose of acquiring the assets of Netzee. Down s principal executive offices are located at 11720 Amber Park Drive, Alpharetta, Georgia 30004, and its telephone number is (678) 867-8000.

### **Background of the Asset Sale**

During late 2000, it became clear that Netzee was not achieving the growth for which it had planned, and that access to additional capital would be difficult. As a result, during late 2000 and in 2001, we took steps to reduce expenses and sell our non-core businesses. As a result of these efforts, we reduced the number of our employees by approximately 50%.

In the summer of 2001, Netzee formed a Special Committee of independent directors and engaged Robertson Stephens Inc. to explore strategic alternatives. Robertson Stephens contacted 34 companies identified by Robertson Stephens as candidates for a strategic transaction with, or acquisition of, Netzee. Confidentiality agreements were signed with 13 of these companies and two informal expressions of interest to acquire Netzee were ultimately received. However, neither party chose to pursue an acquisition of Netzee at that time and conversations with these parties ended in early 2002.

In early 2002, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Department of Banking and Finance for the State of Georgia, working together, expressed concerns about our condition and operations and requested that Netzee sign a Memorandum of Understanding in which Netzee agreed to take certain actions, make periodic reports to the regulators and refrain from paying dividends, among other things. In March 2002, Netzee signed a Memorandum of Understanding with these regulators.

In August 2002, the Board reviewed a comprehensive management presentation on the current state of Netzee. This presentation included an analysis of current and anticipated attrition of the customer base, lack of a significant amount of new customers, the current concerns of the regulators and our obligations to repay our debt and redeem our shares of Series B preferred stock. The Board considered the impact on Netzee of alternatives to a sale of the company, including continuing operations as before, substantially reducing current operations, and restructuring our debt and Series B preferred stock. The Board concluded that pursuing a strategic sale of substantially all of our assets followed by a liquidation and dissolution would be likely to produce the greatest value for Netzee s shareholders.

As a result, the Board determined to re-examine strategic alternatives, particularly the sale of the company. We engaged an independent financial consultant familiar with the industry segment and potential purchasers to assist in this process. This consultant contacted 17 prospective purchasers and received four expressions of interest.

One of the indications of interest proposed to acquire only certain of our operating assets for a significantly lower price than Certegy s proposal, and would leave us with assets that, in the Board s determination, would be difficult to dispose of independently of our other assets for a reasonable price, if at all. The second indication of interest offered consideration primarily consisting of stock in the acquiror, an illiquid, privately-held company. Upon inquiry by the Board, this company was unwilling to acquire Netzee in a cash or primarily cash transaction. The third indication of interest was comprised primarily of deferred and contingent consideration. The Board determined that the Certegy proposal was superior to the other



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proposals because it provided for a substantial cash payment at closing, which would allow us to make a liquidating distribution to our shareholders as well as to pay our lenders and our preferred shareholder a reduced amount in satisfaction of these obligations.

On November 5, 2002, the Board authorized Netzee to negotiate a transaction with Certegy based upon Certegy's proposal which included a purchase price of \$10.0 million. We notified Certegy that we were interested in pursuing its proposal. Shortly thereafter, we began to negotiate the terms of an Asset Purchase Agreement, and Certegy began to conduct due diligence. On November 21, 2002, a first draft of the Asset Purchase Agreement was distributed to us and our counsel. On December 4, 2002, after the parties and their counsel had engaged in extensive negotiations, the Board met by telephone conference call to consider the terms of the proposed agreement with Certegy, which included a purchase price of \$10.4 million, of which \$800,000 was to be placed in escrow for indemnification purposes. After thoroughly reviewing and discussing the terms of the agreement and the Plan of Liquidation and Dissolution, the Board unanimously approved the sale of substantially all of our assets to Certegy and the subsequent liquidation and dissolution of Netzee as set forth in the plan, and approved submitting the Asset Purchase Agreement and the Plan of Liquidation and Dissolution to the shareholders of Netzee for approval. On December 5, 2002, the Asset Purchase Agreement was executed by the parties thereto.

Prior to negotiating the asset sale with Certegy, the Board negotiated with Netzee's lenders and the holder of the Series B preferred stock to ensure that the holders of our common stock would receive a distribution upon the liquidation of Netzee. As a result of these negotiations, our lenders agreed to receive less than the amount of the outstanding amounts owed to them and the holder of the Series B preferred stock agreed to receive less than the full liquidation preference for such shares. **In the absence of such an agreement, the holders of our common and preferred stock would receive nothing in any liquidation of Netzee.**

### **Reasons for the Asset Sale and the Plan of Liquidation and Dissolution and Recommendation of the Board**

Our Board of Directors unanimously determined that the asset sale and the Plan of Liquidation and Dissolution in the best interests of our shareholders and unanimously recommended that shareholders approve the asset sale pursuant to the terms of the Asset Purchase Agreement and the Plan of Liquidation and Dissolution pursuant to the terms thereof. The Board considered the following positive and negative factors in reaching this conclusion:

Our business, financial condition, earnings and prospects, including losses of significant customers and the maturity in April 2003 of our existing credit facility, which has historically been used to fund operations;

The continuing nature of our operating losses and the likelihood that such losses would continue in the future;

The difficulties of operating under increased regulatory scrutiny of our business pursuant to the Memorandum of Understanding;

The fact that the due date for much of our debt was approaching, and that given our current cash flow and liquidity we would likely be unable to pay the debt when due;

That the Board conducted an extensive review of strategic alternatives and concluded that a sale of assets followed by the liquidation and dissolution of Netzee provided the best method of maximizing shareholder value;

That the Board conducted an extensive auction process and, after completion of this process, believed that the alternatives to the Certegy transaction followed by our liquidation were either not feasible or not reasonably likely to provide equal or greater value to our shareholders;

That the expected per share distribution to holders of our common stock under the Plan of Liquidation and Dissolution represents a premium over the recent market prices of our common

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stock, as well as a premium over any amounts that they could expect to receive in a liquidation under the United States Bankruptcy Code;

That pursuant to the Certegy transaction and the Plan of Liquidation and Dissolution, Netzee's lenders have agreed to receive substantially less than the full amount of the outstanding obligations under the credit facility; and

That such lenders and the holder of our Series B preferred stock have agreed to reduce the amounts owed to them which will result in the distribution of cash to Netzee's shareholders which they would not otherwise be entitled to receive absent such agreement;

The risk that the asset sale might not be consummated;

The lack of an opinion as to the fairness, from a financial point of view, of the asset sale and liquidation to our shareholders from an independent financial advisor; and

The fact that under Georgia law, shareholders may, in limited circumstances and for a limited time, have ongoing liability for claims that we are unable to pay up to the amount of any liquidating distributions they have received.

The factors described above were not the only factors considered by the Board. The Board did not find it practicable to quantify or otherwise assign relative weights to any of these factors. However, after taking into account all of these factors, the Board unanimously concluded that the asset sale was in the best interests of our shareholders. For these reasons, the Board of Directors has unanimously approved the asset sale and the Asset Purchase Agreement, and unanimously recommends that the shareholders approve the asset sale and the Asset Purchase Agreement.

### **No Fairness Opinion**

We have not sought nor obtained an opinion of a financial advisor relating to the fairness of the proposed asset sale. Our Board of Directors concluded that the expense of a fairness opinion was not justified in light of the total consideration contemplated by the Asset Purchase Agreement. Moreover, the Board concluded that in light of the extensive auction process and its consideration of the applicable alternatives to an asset sale, a fairness opinion was not necessary for the protection of shareholders.

### **Interests of Certain Persons in the Asset Sale and Plan of Liquidation and Dissolution**

In considering the proposals, holders of our common stock should be aware that some of our executive officers, directors, and significant shareholders have interests in the transactions that differ from, or are in addition to, their interests as holders of common stock. In particular:

InterCept and John H. Harland Company are owners of approximately 28% and 15%, respectively, of our common stock and lent us in the aggregate approximately \$13 million under a credit facility. These shareholders will be paid a total of \$3.3 million at the closing of the asset sale in full satisfaction of all indebtedness under the credit facility. Our lenders will also be entitled to receive the remainder, if any, of our assets following the complete liquidation and dissolution of Netzee and the application of appropriate contingency reserves pay claims that are unknown, contingent or disputed.

Donny R. Jackson, our President, Chief Executive Officer and a director, is entitled under his employment agreement to receive severance payments. Mr. Jackson has agreed to forego a portion of his severance payment so that Kevin R. Lee, our Senior Vice President, Operations, and Jarett J. Janik, our Vice President, Chief Financial Officer and Secretary, may receive appropriate severance compensation from Netzee. As a result, Netzee will pay approximately \$425,000 to Mr. Jackson, \$232,000 to Mr. Lee, and \$193,000 to Mr. Janik, as severance compensation as a result of the asset sale.

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The Asset Purchase Agreement contemplates that Certegy will offer employment to substantially all of our employees, including to our executive officers. Any employment offered by Certegy will be on terms reasonably comparable to the terms of these individuals' present employment with us.

Brad Putnam and Kurt Collins, two of our directors, each currently own an option to purchase 25,000 shares of common stock at an exercise price of \$0.35 per share. One-fourth of each of these options are currently vested; the remainder will vest upon the completion of the asset sale. The Plan of Liquidation and Dissolution contemplates that when we make a distribution to holders of our common stock, Messrs. Putnam and Collins would receive the amount by which the per share distribution exceeds the exercise price of their options, in addition to a distribution on shares of common stock otherwise owned by them.

InterCept, Inc., the holder of approximately 28% of our common stock, will be required as a condition to the Asset Purchase Agreement to enter into an agreement with Certegy Inc. to market, promote and otherwise distribute the electronic banking and related services offered by Certegy and its affiliates.

### **Federal Income Tax Consequences of the Asset Sale**

It is expected that any gain recognized by Netzee from the asset sale for federal income tax purposes will be offset by our current and prior year net operating losses. The sale of assets will not be a taxable event to holders of our common stock. However, any distributions we make to common shareholders during our liquidation will be taxable events under the federal tax laws. See *Federal Income Tax Consequences of the Plan of Liquidation and Dissolution* below for a description of the tax consequences of our liquidation and dissolution.

### **Operation of Netzee after the Asset Sale**

As soon as practicable after the completion of the asset sale, assuming shareholder approval of the Plan of Liquidation and Dissolution, we intend to begin the liquidation and dissolution process by filing a Notice of Intent to Dissolve with the Georgia Secretary of State. After this notice is filed, we must limit our activities to activities related to our winding down and liquidation, as described in Proposal Two below.

### **Summary of the Asset Purchase Agreement and Related Agreements**

The following section summarizes the material terms of the Asset Purchase Agreement. We recommend that you carefully read the agreement in its entirety for a complete description of the terms and conditions of the asset sale. The Asset Purchase Agreement is attached to this proxy statement as Appendix A.

#### ***Assets to be Sold***

We have agreed to sell to Certegy substantially all of our assets relating to our business, including:

All of our rights in, to and under our customer contracts;

All rights under leases of real property, including any leasehold improvements;

All tangible assets including machinery, equipment, computers, and furniture;

All intellectual property rights;

All accounts, accounts receivable and notes receivable as of the closing date;

Certain prepaid expenses and charges;

All rights, claims, causes of action or rights of set-off relating to the purchased assets;

All accepted bids, work in progress or outstanding proposals;

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All goodwill associated with our business and the purchased assets; and

All software used to operate our business.

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### ***Assets to be Retained***

We are not selling the following assets to Certegy:

All cash, restricted cash, cash equivalents or securities;

All bank and depository accounts (excluding bill payment client trust accounts);

All books and records related to our business, including our corporate and stock records;

All tax refunds or tax loss carryforwards;

All insurance policies relating to our business, any refunds paid or payable pursuant thereto, and any claims made under our insurance policies;

All rights in assets in any of our employee benefit plans;

Our right to use the name *Netzee* and its derivatives for 180 days following the closing of the asset sale in connection with our liquidation and dissolution;

All rights, claims, causes of action or rights of set-off that do not relate to the assets purchased by Certegy; and

Specified assets that are necessary for our liquidation and dissolution.

### ***Liabilities to be Assumed***

Certegy will assume only certain of our liabilities, which are limited to liabilities under existing business contracts that arise after the closing of the asset sale, prepaid subscription balances as of the closing date and liabilities under specified contracts entered into after the effective date of the Asset Purchase Agreement. Except for such assumed liabilities, Certegy will not assume any other obligations of *Netzee*.

### ***Liabilities to be Retained***

We will retain all liabilities not specifically assumed by Certegy, including any liabilities relating to the operation of our business prior to the closing of the asset sale, such as:

liabilities relating to assets retained by us;

tax liabilities (except for transfer taxes arising out of the asset sale);

liabilities relating to certain employment matters;

liabilities to our shareholders;

liabilities for noncompliance with laws and regulations prior to the closing date; and

liabilities for our indebtedness.

### ***Purchase Price***

Certegy has agreed to purchase substantially all of our assets for \$10.4 million in cash. Under the terms of the Asset Purchase Agreement, \$800,000 of this amount will be placed into escrow with an independent escrow agent to secure our indemnification obligations to Certegy, as described under *Indemnification and Escrow*. The purchase price would be reduced to the extent that our actual accounts receivable are less

than \$800,000 on the date of closing.

***Closing***

The closing of the asset sale will take place as soon as practicable after the special meeting is held and all conditions to closing are satisfied or waived.

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***Representations and Warranties***

The Asset Purchase Agreement contains various representations and warranties by us, including, among other things, representations relating to:

our corporate organization;

our authority to enter into the Asset Purchase Agreement and consummate the asset sale;

our ability to obtain any required consents;

our ownership of and the condition of the assets to be sold to Certegy;

the adequacy of our intellectual property rights, the absence of undisclosed infringements upon the intellectual rights of others, and the absence of undisclosed litigation or proceedings relating to our intellectual property rights;

our material contracts relating to our business and the assets to be sold to Certegy;

the adequacy of any licenses needed to conduct our business;

our employees, labor matters, and employee benefit plans;

the accuracy of our financial statements, books and records;

our interests under leases of real property;

the absence of undisclosed pending or threatened litigation or governmental orders;

our compliance with applicable laws and regulations, including environmental laws;

our insurance policies;

our transactions with affiliates;

our payment of applicable taxes;

the absence of any material adverse changes to our business and the assets to be sold to Certegy;

the sufficiency of the assets to be sold to Certegy for the conduct of our business and the absence of undisclosed liabilities relating to those assets;

the use of brokers or financial advisors in connection with the asset sale;

our accounts receivable and prepaid subscription balances; and

the number of our customers and amount of revenues relating to our business.

The Asset Purchase Agreement also contains various representations and warranties by Certegy, including representations relating to:

Certegy's corporate organization;

Certegy's authority to enter into the Asset Purchase Agreement and consummate the asset sale;

Certegy's ability to obtain any required consents;

Certegy's use of brokers or financial advisors in connection with the asset sale;

the absence of undisclosed pending or threatened litigation or governmental orders; and

Certegy's financial ability to pay the purchase price.



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***Covenants and Agreements***

We have agreed that until the closing, we will continue to operate our business in the ordinary course of business and will use commercially reasonable efforts to, among other things:

maintain our existence;

protect the assets to be sold to Certegy;

preserve any licenses pertaining to the operation of our business;

preserve customer and supplier relationships;

maintain our intellectual property rights;

maintain our books and records;

pay taxes when due; comply with our material business contracts;

comply with applicable laws and regulations;

pay trade payables when due; and

notify Certegy of any material change to the operation of our business and of any governmental or third party complaints or investigations.

We have also agreed to refrain from certain actions without the written consent of Certegy, including the following:

Increasing the compensation, benefits or severance payments due to our employees, except in the ordinary course of business;

Selling or otherwise disposing of material assets except in the ordinary course of business and consistent with past practice;

Entering into, amending, or terminating any material contracts except in the ordinary course of business;

Accepting prepaid subscriptions or advance payments except in the ordinary course of business;

Making capital expenditures outside the ordinary course of business;

Incurring any additional indebtedness, with certain exceptions, outside the ordinary course of business;

Acquiring any equity securities or interests;

Disclosing proprietary information to anyone other than Certegy in connection with the sale of all or substantially all of our assets;

Selling or pledging any of our intellectual property;

Paying or declaring any dividends or distributions on our capital stock; or

Taking any other action which would materially and adversely affect or detract from the value of the purchased assets or our business or would reasonably be expected to delay the closing.

***Termination***

The Asset Purchase Agreement may be terminated in the following ways:

By mutual written consent of us and Certegy;

By either us or Certegy if the asset sale has not closed by 5:00 p.m., Eastern Standard Time, on January 15, 2003 for any reason other than a willful and material breach by the party seeking to terminate the Asset Purchase Agreement;

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By either us or Certegy if a governmental authority issues a final and non-appealable order prohibiting the asset sale;

By either us or Certegy if the other party materially breaches any representation, warranty, covenant, or other agreement and the breach is not cured within 10 days after written notice;

By either us or Certegy if our shareholders do not approve the asset sale and Plan of Liquidation and Dissolution at the Special Meeting;

By either us or Certegy if it becomes impossible for the terminating party to satisfy its conditions to closing.

The Asset Purchase Agreement does not provide for the payment of any termination fee.

***Indemnification and Escrow***

We have agreed, subject to limitations, to indemnify Certegy for any loss arising from:

Breaches of our representations, warranties, covenants or agreements contained in the Asset Purchase Agreement or related agreements;

Liabilities not assumed by Certegy;

The ownership or operation of the assets to be sold to Certegy prior to the closing of the asset sale;

Any bankruptcy proceeding of which Netzee is the subject;

Any third party challenges to the asset sale or related transactions as being part of a fraudulent conveyance; and

The accounts receivable sold to Certegy being less than \$800,000.

Certegy has agreed to indemnify us for any loss arising from:

Breaches of Certegy's representations, warranties, covenants or agreements contained in the Asset Purchase Agreement or related agreements;

Liabilities assumed by Certegy to the extent the claim arises after the closing of the asset sale; and

The ownership or operation of the assets to be sold to Certegy after the closing of the asset sale.

With specified exceptions, the representations and warranties of the parties will survive for a period of 180 days following the closing of the asset sale. In the absence of fraud, and except for non-monetary equitable relief, if the closing occurs, indemnification pursuant to the Asset Purchase Agreement shall be the sole and exclusive remedy of the parties for any breach of any representation or warranty. With certain exceptions, the cumulative indemnification of either party shall be limited to the amount of the purchase price placed into escrow.

Of the \$10.4 million purchase price, \$800,000 will be deposited in escrow to cover any breaches of our representations and warranties to Certegy. If there has been no claim made to the escrowed funds, \$400,000 shall be released to us 90 days after the closing and the remainder will be released to us 180 days after the closing. If a claim is asserted against the escrow, the amount of the claim shall be deducted from the withdrawals described above. The escrow will terminate upon the delivery of all amounts from the escrow.

***Conditions to Closing***

The obligations of both us and Certegy to complete the asset sale are subject to the satisfaction of the following conditions on or before the closing of the asset sale, unless waived by the appropriate party:

The representations and warranties of the other party in the Asset Purchase Agreement and related agreements are true and correct in all material respects as of the closing of the asset sale;



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The other party has performed and complied with all required covenants and agreements in the Asset Purchase Agreement and related agreements as of the closing of the asset sale;

The absence of any law or injunction prohibiting the completion of the asset sale and related transactions;

Each party has delivered the required closing documents to the other party, including an indemnification and escrow agreement; and

We have obtained shareholder approval of the asset sale and the Plan of Liquidation and Dissolution.

In addition to the conditions described above, Certegy's obligation to complete the asset sale is subject to the satisfaction of the following conditions on or before the closing of the asset sale, unless waived by Certegy:

There shall have been no material adverse change to the assets to be sold to Certegy or to our business;

Certegy shall have received releases from our lenders and the holder of our Series B preferred stock;

We shall have obtained appropriate releases of all liens from our assets, except for permitted liens;

InterCept and Certegy shall have entered into a marketing agreement to market, promote and otherwise distribute the electronic banking and related services offered by Certegy and its affiliates;

Netzee shall have made reasonable efforts to obtain certain changes to its insurance policies; and

We shall have delivered to Certegy all required consents.

***Employee Matters***

Prior to the closing of the asset sale, Certegy has agreed to offer employment to certain of our employees on terms that are reasonably comparable to the economic terms of those employees' current employment with us.

***Expenses***

Each party has agreed to pay its own expenses and costs incurred in connection with the asset sale.

***Dissenters' Rights***

Set forth below is a summary of the procedures relating to the exercise of dissenters' rights under the Georgia Business Corporation Code (the "GBCC"). The following summary does not purport to be a complete statement of the provisions of Article 13 of the GBCC and is qualified in its entirety by reference to Appendix C hereto and to any amendment to such provisions as may be adopted after the date of this proxy statement. The provisions for exercising dissenters' rights are complex and must be complied with precisely. Any Netzee shareholder intending to dissent from the proposed asset sale should consult carefully the text of Appendix C and is also advised to consult legal counsel.

The GBCC provides dissenters' rights for record shareholders of Netzee who object to the asset sale and meet the requisite statutory requirements contained in Article 13. Under these provisions, if you wish to exercise your dissenters' rights, you must:

Deliver to Netzee before the vote on the asset sale is taken written notice of your intent to demand payment for your shares if the asset sale is completed; and

**NOT** sign and return a proxy in favor of the asset sale or vote your shares in favor of the asset sale in person at the special meeting.

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No later than 10 days after the asset sale is completed, we will send to all record shareholders who satisfy the above requirements a written notice that will (i) supply a form for demanding payment, (ii) state where the payment demand must be sent and where and when certificates for such shareholder's shares must be deposited, (iii) set a date by which Netzee must receive the payment demand, which date may not be fewer than 30 nor more than 60 days after the dissenters' notice is mailed, and (iv) be accompanied by a copy of Article 13.

A record shareholder who was sent a dissenters' notice and who wishes to assert dissenters' rights must demand payment and deposit certificates for such shares in accordance with the terms of the notice. If any such record shareholder shall have failed to perfect or shall have effectively withdrawn or lost his or her dissenters' rights, such shareholder shall not be entitled to payment for his or her shares. Dissenting shareholders will retain the rights of a shareholder pending the completion of the Plan of Liquidation and Dissolution.

Within 10 days of the later of the date the asset sale is consummated or receipt of a payment demand, Netzee must offer to pay each dissenting shareholder who complied with the requirements of Article 13 the amount Netzee estimates to be the fair value of such shareholder's shares of Netzee stock, plus interest accrued from the effective time of the asset sale to the date of payment. The offer for payment must be accompanied by certain financial information relating to Netzee, a statement of Netzee's estimate of the fair value of the shares, an explanation of how the interest was calculated, a statement of the dissenting shareholder's right to demand payment under Article 13 and a copy of Article 13. Netzee must pay the amount stated in the offer of payment to each dissenting shareholder who, within 30 days after Netzee's offer, agrees in writing to accept such payment in full satisfaction of his or her demand. A shareholder who does not respond to Netzee's offer within such 30-day period will be deemed to have accepted the offer. If the dissenting shareholder accepts Netzee's offer as described above or is deemed to have accepted such offer by failure to respond within such 30-day period, payment for his or her shares shall be made within 60 days after the making of the offer or the consummation of the asset sale, whichever is later. If the asset sale is not effected within 60 days after the date set for demanding payment and depositing certificates, Netzee will return the deposited certificates and, if the asset sale is subsequently effected, Netzee will deliver a new dissenters' notice and repeat the payment demand procedure.

A dissenting shareholder may notify Netzee in writing of his or her own estimate of the fair value of such shares and the amount of interest due, and demand payment of such estimate, if the dissenting shareholder believes that the amount offered by Netzee is less than the fair value of his or her shares or that the interest due is incorrectly calculated. A dissenting shareholder waives his or her right to demand payment as described in the preceding sentence and is deemed to have accepted Netzee's offer unless he or she notifies Netzee of his demand in writing within 30 days after Netzee offered payment for his shares.

If Netzee fails to make a payment offer within the required period, a dissenting shareholder may demand the financial information required to be included in a payment offer, which must be supplied by Netzee within 10 days of its receipt of written request therefor, and such shareholder may at any time, subject to the applicable statute of limitations, notify Netzee of such shareholder's estimate of the fair value of his or her shares and interest due and make demand for payment thereof.

If a demand for payment remains unsettled, Netzee shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If Netzee does not commence the proceeding within the 60-day period, it shall pay each dissenting shareholder whose dem