

Ocean Power Technologies, Inc.

Form DEF 14A

August 28, 2008

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**SCHEDULE 14A**

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

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 Pursuant to §240.14a-12

Ocean Power Technologies, Inc.  
(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

No fee required.

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

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(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):

(4) Proposed maximum aggregate value of transaction:

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- (1) Amount Previously Paid:
  - (2) Form, Schedule or Registration Statement No.:
  - (3) Filing Party:
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-

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Ocean Power Technologies, Inc.  
1590 Reed Road  
Pennington, NJ 08534 USA  
609-730-0400, Fax: 609-730-0404

August 28, 2008

Dear Stockholder,

We cordially invite you to attend our 2008 Annual Meeting of Stockholders to be held at 10:00 a.m. Eastern Daylight Time on Thursday, October 2, 2008 at our offices at 1590 Reed Road, Pennington, New Jersey 08534. The attached notice of annual meeting and proxy statement describe the business we will conduct at the meeting and provide information about Ocean Power Technologies, Inc. that you should consider when you vote your shares.

Your vote is very important, regardless of the number of shares you hold. Whether or not you plan to attend the meeting, please carefully review the enclosed proxy statement and then cast your vote.

We hope that you will join us on October 2, 2008.

Sincerely,

Dr. George W. Taylor  
*Chief Executive Officer*

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**OCEAN POWER TECHNOLOGIES, INC.  
1590 Reed Road  
Pennington, New Jersey 08534**

**Notice of 2008 Annual Meeting of Stockholders**

**NOTICE IS HEREBY GIVEN that the 2008 Annual Meeting of Stockholders of Ocean Power Technologies, Inc., a Delaware corporation, will be held on:**

***Date:*** October 2, 2008

***Time:*** 10:00 a.m. Eastern Daylight Time

***Place:*** 1590 Reed Road  
Pennington, New Jersey 08534  
USA

***Purposes:***

1. To elect five persons to our Board of Directors;
2. To consider and take action on the ratification of the selection of KPMG LLP as our independent registered public accounting firm for fiscal year 2009; and
3. To transact such other business as may properly come before the meeting or any adjournments thereof.

***Record Date:*** The Board of Directors has fixed the close of business on August 19, 2008 as the record date for determining stockholders entitled to notice of, and to vote at, the meeting or any adjournment or postponement of the meeting.

FOR THE BOARD OF DIRECTORS

/s/ Charles F. Dunleavy  
Charles F. Dunleavy  
Senior Vice President, Chief Financial Officer,  
Secretary and Treasurer

Pennington, New Jersey  
August 28, 2008

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**OCEAN POWER TECHNOLOGIES, INC.  
1590 Reed Road  
Pennington, New Jersey 08534**

**PROXY STATEMENT  
Annual Meeting of Stockholders To Be Held October 2, 2008**

**GENERAL INFORMATION**

This Proxy Statement is furnished to stockholders of Ocean Power Technologies, Inc., a Delaware corporation, in connection with the solicitation by our Board of Directors of proxies for use at our Annual Meeting of Stockholders (the Meeting). The Meeting is scheduled to be held on Thursday, October 2, 2008, at 10:00 a.m., Eastern Daylight Time, at our offices located at 1590 Reed Road, Pennington, New Jersey. We anticipate that this Proxy Statement and the enclosed form of proxy will be mailed to stockholders on or about August 28, 2008.

At the Meeting, stockholders will be asked to vote upon: (1) the election of five directors; (2) the ratification of the selection of our independent registered public accounting firm for fiscal year 2009; and (3) such other business as may properly come before the Meeting and at any adjournments thereof.

**Voting Rights and Votes Required**

The close of business on August 19, 2008 has been fixed as the record date for the determination of stockholders entitled to receive notice of and to vote at the Meeting. As of the close of business on such date, we had outstanding and entitled to vote 10,210,354 shares of common stock, par value \$0.001 per share (the Common Stock). Because stockholders often cannot attend the meeting in person, a large number is usually represented by proxy. You may vote your shares by completing the proxy card and mailing it in the envelope provided. Stockholders who hold shares in street name should refer to their proxy card or the information forwarded by their bank, broker or other holder of record for instructions on the voting options available to them.

A majority of the shares of Common Stock entitled to vote at the Meeting must be represented in person or by proxy at the Meeting in order to constitute a quorum for the transaction of business. The record holder of each share of Common Stock entitled to vote at the Meeting will have one vote for each share so held. Abstentions and broker nonvotes will count for quorum purposes.

Directors are elected by a plurality of the votes cast. Stockholders may not cumulate their votes. The five candidates receiving the highest number of votes will be elected. In tabulating the votes, votes withheld in connection with the election of one or more nominees and broker nonvotes will be disregarded and will have no effect on the outcome of the vote.

The affirmative vote of a majority of the votes cast at the Meeting by the holders of Common Stock represented at the Meeting in person or by proxy and entitled to vote will be required to ratify the selection of our independent registered public accounting firm. Abstentions and broker nonvotes will be disregarded and will have no effect on the outcome of the selection of our independent registered public accounting firm.

**Voting of Proxies**

If the accompanying proxy is properly executed and returned, the shares represented by the proxy will be voted at the Meeting as specified in the proxy. If no instructions are specified, the shares represented by any properly executed proxy will be voted **FOR** the election of the nominees listed below under Election of Directors, and **FOR** the

ratification of the selection of our independent registered public accounting firm.



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Any proxy given pursuant to this solicitation may be revoked by a stockholder at any time before it is exercised by: (i) providing written notice to our Secretary, (ii) delivery to us of a properly executed proxy bearing a later date, or (iii) voting in person at the Meeting.

**Solicitation of Proxies**

We will bear the cost of this solicitation, including amounts paid to banks, brokers, and other record owners to reimburse them for their expenses in forwarding solicitation materials regarding the Meeting to beneficial owners of Common Stock. The solicitation will be by mail, with the materials being forwarded to stockholders of record and certain other beneficial owners of Common Stock, and by our officers and other regular employees (at no additional compensation). Such officers and employees may also solicit proxies from stockholders by personal contact, by telephone, or by other means if necessary in order to assure sufficient representation at the Meeting.

Computershare Investor Services has been retained to receive and tabulate proxies.

**MATTERS SUBJECT TO STOCKHOLDER VOTE****1. ELECTION OF DIRECTORS**

Pursuant to our by-laws, our directors serve one-year terms and are elected for a new one-year term at each annual meeting of stockholders.

The five persons listed in the table below have been designated by the Board of Directors as nominees for election as directors with terms expiring at the 2009 annual meeting. One of our current Directors, Sir Eric A. Ash, is not standing for re-election at the Meeting. Unless a contrary direction is indicated, it is intended that proxies received will be voted for the election as directors of the five nominees, to serve for one-year terms, and in each case until their successors are elected and qualified. Each of the nominees has consented to being named in this Proxy Statement and to serve as a director if elected. In the event any nominee for director declines or is unable to serve, the proxies may be voted for a substitute nominee selected by the Board of Directors.

**THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR ALL NOMINEES.**

Our directors, their ages and positions as of August 19, 2008 and other biographical information are set forth below.

| <b>Name</b>            | <b>Age</b> | <b>Position(s) with Ocean Power Technologies, Inc.</b>                                  | <b>Served as Director From</b> |
|------------------------|------------|---|--------------------------------|
| Paul F. Lozier         | 61         | Director  | 2007                           |
| Thomas J. Meaney       | 73         | Director  | 2006                           |
| Seymour S. Preston III | 74         | Chairman  | 2003                           |
| Dr. George W. Taylor   | 74         | Chief Executive Officer and Director  | 1984                           |
| Charles F. Dunleavy    | 59         | Chief Financial Officer and Senior Vice President, Treasurer and Secretary and Director | 1990                           |

**Paul F. Lozier** has been a director since November 2007. Mr. Lozier was a director of Somerset Hills Bancorp (NASDAQ: SOMH) from 1998 to March 2008, and served on its audit committee from 1998 to 2008. He was also a director of Logical Design Solutions, Inc. and served on its audit committee from 2001 to 2004. From 1986 to 1996, Mr. Lozier was a Managing Director and senior investment banker specializing in energy finance with Merrill Lynch & Co. Mr. Lozier received his Master of Business Administration in Finance from Harvard Business School.

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**Thomas J. Meaney** has been a director since June 2006. He has been the president, chief executive officer and a director of Mikros Systems Corp., an electronics equipment company, since 1986. From 1983 to 1986, Mr. Meaney served as a senior vice president and director at Robotic Vision Systems, Inc., an electronics company, and from 1977 to 1983 he served as the vice president of business development of the Norden Systems Division of United Technologies Corp., an electronics company. Mr. Meaney holds a Master of Science degree in Mechanical Engineering from Drexel University and a Bachelors degree in Mechanical Engineering from Villanova University.

**Seymour S. Preston III** has been a director since September 2003. Mr. Preston is also a director and serves on the audit committee of Independent Publications, Inc., a newspaper publisher. Mr. Preston was a director of Albemarle Corporation, a specialty chemicals company, from 1996 to 2008; Scott Specialty Gas Corporation, a provider of gases for calibration, testing and emission standards, from 1994 to 2007; and Tufco Technologies, Inc., a consumer products contract manufacturing company, from 1999 to 2008. From 1994 to 2003, he was the chairman and chief executive officer of AAC Engineered Systems, Inc., a privately-held manufacturing company. Over the period from 1961 to 1989, Mr. Preston held various positions at Pennwalt Corporation, including serving as president, chief operating officer and director from 1978 to 1989. Mr. Preston served as president and chief executive officer of Elf Atochem North America, Inc., a chemical and plastics company, from 1990 to 1993. Mr. Preston received his Masters of Business Administration from Harvard Business School and his B.A. degree from Williams College.

**Dr. George W. Taylor** has served as our chief executive officer since 1993 and as a director since 1984, when he co-founded our company. From 1990 to 2004, Dr. Taylor was our president, and from 1984 to 1990, he was our vice president. In 1979, he co-founded and served as president of Princeton Research Associates, Inc., a consulting engineering, technical marketing and product development company. In 1971, Dr. Taylor co-founded Princeton Materials Science, Inc., a manufacturer of liquid crystal displays and digital watches. Dr. Taylor received a Bachelor of Engineering degree with First Class Honours in Electrical Engineering and a Doctor of Engineering degree from the University of Western Australia and a Ph.D. in Electrical Engineering degree from the University of London. He is a Fellow of the Institute of Engineers, Australia and the Institute of Electrical Engineers, London.

**Charles F. Dunleavy** has served as our chief financial officer and our senior vice president since 2001 and as our treasurer, secretary and director since 1990. From 1993 to 2001, Mr. Dunleavy served as our vice president, finance. From 1990 to 1993, Mr. Dunleavy served as vice president and chief financial officer of Whole Systems International Corp., a privately held company specializing in multimedia instructional systems and information technology. From 1983 to 1990, Mr. Dunleavy was the corporate controller for Intermetrics, Inc., a publicly held software engineering company that is now a part of Titan Corporation. Mr. Dunleavy is a Certified Public Accountant and holds a Masters of Business Administration with honors from Rutgers Graduate School of Business Administration. He received his A.B. degree from Colgate University with honors.

**Executive Officers**

Our executive officers who are not also directors, their ages and positions as of August 19, 2008 and other biographical information are set forth below.

| <b>Name</b>    | <b>Age</b> | <b>Position</b>  |
|----------------|------------|--|
| Mark R. Draper | 45         | Chief Operating Officer; Chief Executive and Director of Ocean Power Technologies Ltd. |
| Herbert Nock   | 59         | Vice President, Business Development & Marketing                                       |

**Mark R. Draper** was appointed our chief operating officer on June 15, 2007, and has served as the chief executive and director of our wholly-owned European subsidiary based in the UK, Ocean Power Technologies Ltd., since September 2004. From 2001 to May 2004, Mr. Draper served as managing director, generation business of PowerGen plc, a UK power utility. In this capacity, he was responsible for over 9,000 megawatts (MW) of power generating assets, including a 60MW offshore wind power station. He is a fellow of both the

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Institutes of Mechanical and Electrical Engineers and serves as a non-executive director on the board of Slough Heat & Power, a utility company. He also serves as a director of Iberdrola Energias Marinas de Cantabria, S.A., the joint venture in which we participate with affiliates of Iberdrola and Total. Mr. Draper holds a Masters degree in Mechanical and Electrical Engineering from Cambridge University.

**Herbert T. Nock** was appointed as our vice president, business development and marketing on January 3, 2008. From 2002 to 2007, Mr. Nock served as Senior Vice President Marketing and Sales at Fuel Cell Energy, Inc. Prior to then, Mr. Nock held various positions in the Power Systems Division of General Electric Company over a 29 year period. At GE, Mr. Nock served as Product General Manager, Manager Power Plant Generation Programs, Manager Marketing and Sales, and in other positions. In these roles, he managed international, multi-channel marketing agreements for gas turbine systems.

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

**Director Compensation**

In June 2007, our Board of Directors approved a revised compensation program pursuant to which we pay each of our directors who is not our employee, to whom we refer as non-employee directors, fees for service on our Board of Directors and for attendance at Board and Board committee meetings. The revised compensation schedule became effective October 5, 2007. Annually, each non-employee director currently receives \$15,000 and a choice of either (a) an option to purchase 2,000 shares of our stock that is fully vested at the time of grant, or (b) common stock of the Company worth \$10,000, which vests 50% at the time of grant and 50% one year later. Each non-employee director also receives \$3,000 for each Board meeting he attends in person or by video or teleconference, \$2,500 for each Audit Committee meeting he attends in person or by video or teleconference, \$2,000 for each Compensation Committee he attends in person or by video or teleconference and \$1,500 for each Nominating and Corporate Governance Committee meeting that he attends in person or by video or teleconference.

We reimburse each non-employee director for out-of-pocket expenses incurred in connection with attending our Board and Board committee meetings. Compensation for our directors, including cash and equity compensation, is determined, and remains subject to adjustment, by our Board of Directors.

The following table summarizes compensation paid to our non-employee directors in fiscal 2008.

| Name                   | Fees Earned or<br>Paid in Cash<br>(\$) | Option Awards<br>(\$)<br>(1)(3)(4) | All Other<br>Compensation (\$) | Total<br>(\$) |
|------------------------|--|------------------------------------|--------------------------------|---------------|
| Sir Eric A. Ash        | 50,500                                 | 49,300                             |                                | 99,800        |
| Paul F. Lozier         | 11,000                                 | 12,707                             |                                | 23,707        |
| Thomas J. Meaney       | 43,500                                 | 49,300                             | 57,600(2)                      | 150,400       |
| Seymour S. Preston III | 48,000                                 | 49,300                             |                                | 97,300        |

- (1) Represents the amount recognized as stock-based compensation for fiscal 2008 financial statement reporting purposes in accordance with Statement of Financial Accounting Standards (SFAS) No. 123(R), *Share-Based Payments* (SFAS 123R). The amount includes option awards granted to our non-employee directors for service on the Board of Directors during fiscal 2008 and 2007, since the actual option grants for fiscal 2007 were made after April 30, 2007. For Mr. Lozier, the amount includes an award of 1,500 fully-vested options granted in

October 2007 for his service on the Company's Board of Advisors prior to his joining the Board of Directors. See Note 2(1) of the Notes to Consolidated Financial Statements in our Annual Report on Form 10-K for the fiscal year ended April 30, 2008 for a discussion of the relevant assumptions used to determine the value of our stock options for accounting purposes.

- (2) Mr. Meaney is a party to a consulting agreement with the Company for the provision of marketing services and receives fees from the Company of \$800 per day of services provided. The amount in this column reflects consulting fees paid in fiscal 2008.
- (3) At fiscal year-end, option awards outstanding to the directors are as follows: Mr. Ash-18,250; Mr. Lozier-9,000; Mr. Meaney-5,000; Mr. Preston-11,500.

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- (4) The number of shares underlying stock options granted to our directors in fiscal 2008 and the grant date fair value of such stock options are:

| <b>Name</b>        | <b>Grant Date</b> | <b>All Other<br/>Option<br/>Awards:<br/>Number<br/>of Securities<br/>Underlying<br/>Options (#)</b> | <b>Exercise or<br/>Base<br/>Price of<br/>Option<br/>Awards (\$/Sh)<br/>(a)</b> | <b>Grant Date Fair<br/>Value of Stock<br/>and<br/>Option Awards<br/>(b)</b> |
|--------------------|-------------------|---|--|---|
| Sir Eric A. Ash    | 6/15/2007         | 2,500   | 16.11  | \$ 26,725   |
|                    | 1/11/2008         | 2,500   | 14.02  | \$ 22,575   |
| Paul F. Lozier     | 6/15/2007         | 2,500   | 16.11  | \$ 26,725   |
|                    | 1/11/2008         | 2,500   | 14.02  | \$ 22,575   |
| Thomas J. Meaney   | 6/15/2007         | 2,500   | 16.11  | \$ 26,725   |
|                    | 1/11/2008         | 2,500   | 14.02  | \$ 22,575   |
| Seymour S. Preston | 6/15/2007         | 2,500   | 16.11  | \$ 26,725   |
|                    | 1/11/2008         | 2,500   | 14.02  | \$ 22,575   |

**Corporate Governance**

Our Board of Directors believes that good corporate governance is important to ensure that Ocean Power Technologies, Inc. is managed for the long-term benefit of stockholders. This section describes key corporate governance guidelines and practices that our Board has adopted. Complete copies of our corporate governance guidelines, committee charters and code of business conduct and ethics are available on the corporate governance section of our website, [www.oceanpowertechnologies.com](http://www.oceanpowertechnologies.com). Alternatively, you can request a copy of any of these documents by writing to our Secretary at 1590 Reed Road, Pennington, New Jersey 08534.

***Corporate Governance Guidelines***

Our Board has adopted corporate governance guidelines to assist in the exercise of its duties and responsibilities and to serve the best interests of Ocean Power Technologies, Inc. and our stockholders. These guidelines, which provide a framework for the conduct of the Board's business, provide that:

the Board's principal responsibility is to oversee the management of Ocean Power Technologies, Inc.;

a majority of the members of the Board shall be independent directors;

the non-employee directors shall meet regularly in executive session;

directors have full and free access to management and, as necessary and appropriate, independent advisors;

new directors participate in an orientation program and all directors are expected to participate in continuing director education on an ongoing basis; and

at least annually, the Board and its committees will conduct a self-evaluation to determine whether they are functioning effectively.

***Board Determination of Independence***

Under applicable NASDAQ rules, a director will only qualify as an independent director if, in the opinion of our Board of Directors, that person does not have a relationship which would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

Our Board has determined neither Mr. Ash, Mr. Lozier, Mr. Meaney nor Mr. Preston have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director and that each of these directors is an independent director as defined under Rule 4200(a)(15) of the NASDAQ Stock Market, Inc. Marketplace Rules.

In determining the independence of the directors listed above, our Board considered each of the transactions discussed in Certain Relationships and Related Person Transactions and, in the case of



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Mr. Meaney, a consulting agreement for marketing services which was entered into prior to Mr. Meaney joining the Board. See Board Committees Audit Committee below for a discussion of this consulting agreement.

### ***Meetings of the Board of Directors***

The Board of Directors held seven meetings during fiscal 2008. During fiscal 2008, each director attended at least 75% of the aggregate of the total number of meetings of (a) the Board of Directors, and (b) the committees on which the director served.

Our corporate governance guidelines provide that directors are expected to attend the annual meeting of stockholders. All directors attended the 2007 annual meeting of stockholders.

### ***Board Committees***

Our Board of Directors has established three standing committees: an Audit Committee, a Compensation Committee and a Nominating and Corporate Governance Committee. Each committee operates under a charter that has been approved by the Board. The charters of all Board Committees are available on our website at [www.oceanpowertechnologies.com](http://www.oceanpowertechnologies.com).

Our Board has determined that all of the members of the Compensation Committee and the Nominating and Corporate Governance Committee are independent as defined under Rule 4200 of the NASDAQ Stock Market. Our Board has also determined that all Audit Committee members meet the independence requirements contemplated by Rule 4350(d) of the NASDAQ Stock Market and Rule 10A-3 under the Securities Exchange Act of 1934, as amended (the Exchange Act), with the exception of Mr. Meaney, as described below.

*Audit Committee.* The current members of our Audit Committee are Eric Ash, Paul Lozier and Seymour Preston. Seymour Preston is the chair of the committee. Eric Ash, Paul Lozier and Seymour Preston are our Audit Committee financial experts. Eric Ash is not standing for re-election as a director at the Meeting and therefore will be stepping down from the Audit Committee as of the Meeting date. Thomas Meaney served as a member of the Audit Committee until April 2008, when he stepped down from his position on the Audit Committee, because he does not meet the independence requirements of Rule 10A-3, due to a consulting agreement between Mr. Meaney and the Company for marketing services which has been in effect since August 1999. We had previously relied on Exchange Act Rule 10A-3 (b)(I)(IV)(A) to allow Mr. Meaney to serve on the Audit Committee for one year following our U.S. initial public offering. The Audit Committee met four times in fiscal 2008.

Our Audit Committee assists our Board of Directors in its oversight of the integrity of our consolidated financial statements, our independent registered public accounting firm's qualifications and independence and the performance of our independent registered public accounting firm.

Our Audit Committee's responsibilities include: appointing, approving the compensation of, and assessing the independence of, our independent registered public accounting firm; overseeing the work of our independent registered public accounting firm, including through the receipt and consideration of reports from our independent registered public accounting firm; reviewing and discussing with management and our independent registered public accounting firm our annual and quarterly consolidated financial statements and related disclosures; monitoring our internal control over financial reporting, disclosure controls and procedures and code of business conduct and ethics; establishing procedures for the receipt and retention of accounting related complaints and concerns; meeting independently with our independent registered public accounting firm and management; and preparing the Audit Committee report required by Securities and Exchange Commission (the SEC) rules.

*Compensation Committee.* The current members of our Compensation Committee are Eric Ash and Seymour Preston. Eric Ash is the chair of the committee. Eric Ash is not standing for re-election as a director at the Meeting and therefore will be stepping down from the Compensation Committee as of the Meeting date. The Board will appoint an independent director to the Compensation Committee in the near future. Our

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Compensation Committee assists our Board of Directors in the discharge of its responsibilities relating to the compensation of our executive officers.

Our Compensation Committee's responsibilities include: reviewing and approving, or making recommendations to the Board of Directors with respect to, our chief executive officer's compensation; evaluating the performance of our executive officers and reviewing and approving, or making recommendations to the Board of Directors with respect to, the compensation of our executive officers; overseeing and administering, and making recommendations to the Board of Directors with respect to, our cash and equity incentive plans; reviewing and making recommendations to the Board of Directors with respect to director compensation; reviewing and recommending inclusion of our Compensation Discussion and Analysis in our annual report or proxy statement; and preparing the Compensation Committee report required by SEC rules. The Compensation Committee met five times in fiscal 2008.

The Compensation Committee has the authority to retain compensation consultants and other outside advisors to assist in the evaluation of executive officer compensation.

The processes and procedures followed by our Compensation Committee in considering and determining executive compensation are described below in the Compensation Discussion and Analysis section of this Proxy Statement.

**Additional information regarding compensation of executive officers is provided on pages 12 through 23 of this Proxy Statement.**

*Nominating and Corporate Governance Committee.* The members of our Nominating and Corporate Governance Committee are Eric Ash and Thomas Meaney. Thomas Meaney is the chair of the committee. Eric Ash is not standing for re-election as a director at the Company's Meeting and therefore will be stepping down from the Nominating and Corporate Governance Committee as of the Meeting date.

Our Nominating and Corporate Governance Committee's responsibilities include: recommending to the Board of Directors the persons to be nominated for election as directors or to fill vacancies on the Board of Directors, and to be appointed to each of the Board's committees; overseeing an annual review by the Board of Directors with respect to management succession planning; developing and recommending to the Board of Directors corporate governance principles and guidelines; and overseeing periodic evaluations of the Board of Directors. The Nominating and Corporate Governance Committee met two times in fiscal 2008.

### ***Director Nomination Process***

The current nominees for election to the Board were nominated by the full Board of Directors. At the Meeting, stockholders will be asked to consider the election of Paul F. Lozier, Thomas J. Meaney, Seymour S. Preston III, Dr. George W. Taylor and Charles F. Dunleavy. Paul F. Lozier has been nominated for election as a director for the first time because he was appointed by our Board as a new director in November 2007. Mr. Lozier was originally proposed to the Board by our chief executive officer and the Board determined to include him among its nominees.

The process followed by our Nominating and Corporate Governance Committee to identify and evaluate director candidates includes requests to Board members and others for recommendations, meetings from time to time to evaluate biographical information and background material relating to potential candidates and interviews of selected candidates by members of the Nominating and Corporate Governance Committee and the Board.

In considering whether to recommend any particular candidate for inclusion in the Board's slate of recommended director nominees, our Nominating and Corporate Governance Committee applies the criteria set forth in our corporate governance guidelines. These criteria include the candidate's integrity, business acumen, knowledge of our

business and industry, experience, diligence, potential conflicts of interest and the ability to act in the interests of all stockholders. The Nominating and Corporate Governance Committee does not assign specific weights to particular criteria and no particular criterion is a prerequisite for each prospective nominee. Our Board believes that the backgrounds and qualifications of its directors, considered as a group, should provide a composite mix of experience, knowledge and abilities that will allow it to fulfill its responsibilities.

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Stockholders may recommend individuals to our Nominating and Corporate Governance Committee for consideration as potential director candidates. The Nominating and Corporate Governance Committee will evaluate stockholder-recommended candidates by following substantially the same process, and applying substantially the same criteria, as it follows for candidates submitted by others.

Stockholders may directly nominate a person for election to our Board by complying with the procedures set forth in Article I, Section 1.10 of our bylaws, and with the rules and regulations of the SEC. Under our bylaws, only persons nominated in accordance with the procedures set forth in the bylaws will be eligible to serve as directors. In order to nominate a candidate for service as a director, you must be a stockholder at the time you give the Board notice of your nomination, and you must be entitled to vote for the election of directors at the meeting at which your nominee will be considered. In accordance with our bylaws, director nominations generally must be made pursuant to notice to our Corporate Secretary delivered to or mailed and received at our principal executive offices at 1590 Reed Road, Pennington, NJ 08534, not later than the 90th day, nor earlier than the 120th day, prior to the first anniversary of the prior year's annual meeting of stockholders. Your notice must set forth (i) the name, age, business address and residence address of the nominee, (ii) the principal occupation or employment of the nominee, (iii) the class and number of shares of capital stock of Ocean Power Technologies, Inc. owned beneficially or of record by the nominee and (iv) all other information relating to the nominee that is required to be disclosed in solicitations of proxies for the election of directors in an election contest, or is otherwise required, in each case pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. The stockholder making the nomination must include his or her name and address, a statement as to the class and amount of shares beneficially owned by the stockholder, a description of any arrangements or understandings between the stockholder and the nominee, and a representation that the stockholder intends to appear in person or by proxy at the annual meeting.

### ***Communicating with the Independent Directors***

Our Board will give appropriate attention to written communications that are submitted by stockholders, and will respond if and as appropriate. The Chairman of the Board (if an independent director), or the Lead Director (if one is appointed), or otherwise the Chairman of the Nominating and Corporate Governance Committee is primarily responsible for monitoring communications from stockholders and for providing copies or summaries to the other directors as he or she considers appropriate.

Communications are forwarded to all directors if they relate to important substantive matters and include suggestions or comments considered to be important for the directors to know. In general, communications relating to corporate governance and corporate strategy are more likely to be forwarded than communications relating to ordinary business affairs, personal grievances and matters as to which we receive repetitive or duplicative communications.

Stockholders who wish to send communications on any topic to our Board should address such communications to Board of Directors c/o Secretary, Ocean Power Technologies, Inc., 1590 Reed Road, Pennington, NJ 08534.

### ***Code of Ethics***

We have adopted a Code of Business Conduct and Ethics that applies to our employees, officers (including our principal executive officer and principal financial officer) and directors. The Code of Business Conduct and Ethics is posted on our website at [www.oceanpowertechologies.com](http://www.oceanpowertechologies.com) and can also be obtained free of charge by sending a request to our Secretary at 1590 Reed Road, Pennington, New Jersey 08534. Any changes to or waivers under the Code of Business Conduct and Ethics as it relates to our chief executive officer, chief financial officer, controller or persons performing similar functions must be approved by our Board of Directors and will be disclosed in a Current Report on Form 8-K within four business days of the change or waiver.

***Section 16(a) Beneficial Ownership Reporting Compliance***

Pursuant to Section 16(a) of the Exchange Act and the rules issued thereunder, our executive officers and directors are required to file with the SEC reports of ownership and changes in ownership of Common Stock. Copies of such reports are required to be furnished to us. Based solely on a review of the copies of such

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reports furnished to us, or written representations that no other reports were required, we believe that during fiscal 2008, all of our executive officers and directors complied with the requirements of Section 16(a).

## **2. RATIFICATION OF THE SELECTION OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Directors, in accordance with the recommendation of the Audit Committee, has selected KPMG LLP, to audit our consolidated financial statements for fiscal 2009. KPMG LLP has audited our consolidated financial statements since fiscal 2005.

Although stockholder approval of the selection of KPMG LLP is not required by law, our Board of Directors believes it is advisable to give stockholders an opportunity to ratify this selection. If this proposal is not approved at the Meeting, the Board will reconsider its selection of KPMG LLP.

We expect representatives of KPMG LLP to attend the Meeting, to be available to respond to appropriate questions from stockholders, and to have the opportunity to make a statement if so desired.

### **Fees of Independent Registered Public Accounting Firm**

The following table summarizes the fees of KPMG LLP, our independent registered public accounting firm, billed to us for each of the last two fiscal years.

| <b>Fee Category</b>   | <b>Fiscal 2008</b> | <b>Fiscal 2007</b> |
|-----------------------|--------------------|--------------------|
| Audit Fees(1)         | \$ 377,570         | \$ 574,645         |
| Audit-Related Fees(2) | 8,530              | 75,000             |
| Tax Fees(3)           | 26,775             | 10,262             |
| All Other Fees(4)     |                    |                    |
| <b>Total Fees</b>     | <b>\$ 412,875</b>  | <b>\$ 659,907</b>  |

- (1) Audit fees consist of fees for the audit and quarterly reviews of our consolidated financial statements and other professional services provided in connection with statutory and regulatory filings or engagements, and included fees in fiscal 2007 of approximately \$389,000 for services related to our initial public offering in the United States.
- (2) Audit-related fees consist of fees for assurance and related services that are reasonably related to the performance of the audit and the review of our consolidated financial statements and which are not reported under Audit Fees. Audit-related fees in fiscal 2008 consist of fees for the review of grant milestones in the UK. Audit-related fees for fiscal 2007 consist of fees for accounting advisory services provided by our independent registered public accounting firm prior to our initial public offering in the United States. Provision of these services was not approved in advance by the Audit Committee.
- (3) Tax fees for fiscal 2008 and fiscal 2007 consist of fees for tax return preparation assistance and review.
- (4) We were not billed any Other Fees in fiscal 2008 or fiscal 2007.

**Pre-Approval Policies and Procedures**

Our policy is that all audit services and all non-audit services to be provided to us by our independent registered public accounting firm must be approved in advance by our Audit Committee. However, in 2008, less than 1% of the total fees billed related to tax services that were provided under the de minimus exception to the Audit Committee pre-approval requirement.

**THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE PROPOSAL TO RATIFY THE SELECTION OF KPMG LLP AS OUR INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM FOR FISCAL YEAR 2009.**



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**ADDITIONAL INFORMATION**

**Security Ownership of Certain Beneficial Owners and Management**

The following table sets forth certain information regarding the beneficial ownership of Common Stock as of July 31, 2008 by (a) each person known by us to be the beneficial owner of more than 5% of the outstanding shares of Common Stock, (b) each executive officer identified in the Summary Compensation Table below, (c) each director and nominee for director, and (d) all executive officers and directors as a group.