

VIISAGE TECHNOLOGY INC

Form DEFM14A

December 30, 2003

Table of Contents

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

Schedule 14A/A-4

Proxy Statement Pursuant to Section 14(a) of

the Securities Exchange Act of 1934

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to Section 240.14a-12

VIISAGE TECHNOLOGY, INC.

Edgar Filing: VIISAGE TECHNOLOGY INC - Form DEFM14A

(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:
- 5) Total fee paid:

Fee paid previously with preliminary materials.

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

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

Table of Contents

December 30, 2003

Dear Stockholders of Viisage Technology, Inc.:

I am writing to you regarding the proposed acquisition by Viisage Technology, Inc. of ZN Vision Technologies AG, a leading German provider of facial recognition and computer vision products and services. The acquisition will be accomplished through the exchange of shares of our common stock and cash for all of the outstanding equity interests of ZN. Following the acquisition, ZN will become a wholly-owned subsidiary of Viisage and will serve as the base of our European operations.

We entered into a securities purchase agreement with ZN and each of its shareholders on March 28, 2003. Under the terms of the securities purchase agreement, the ZN shareholders agreed to sell all of the outstanding share capital of ZN, other than the share capital held under the ZN option plan, for an aggregate of 5,221,454 shares of our common stock and \$493 in cash. In addition, we agreed to assume ZN's employee share option plan, and accordingly we will pay to ZN MABG, the current trustee and administrator of the ZN option plan, 10,741 in cash (which, based on the December 24, 2003 Euro to U.S. dollar exchange rate of 1.23940 equals approximately \$13,312) and we will reserve 1,138,546 shares of our common stock for issuance to the plan participants. The total number of shares of our common stock to be issued to the ZN shareholders and reserved for issuance under the ZN option plan is 6,360,000, and the total amount of cash to be paid to the ZN shareholders and ZN MABG is approximately \$13,805. Based on the \$3.45 closing price of a share of our common stock on December 24, 2003 on the Nasdaq National Market, the aggregate purchase price (shares and cash) for the acquisition was approximately \$21,955,805. This amount does not represent the value of the acquisition for financial accounting purposes. The purchase price payable to the ZN shareholders and the number of shares reserved for issuance under the ZN option plan will be reduced if ZN's net book value on the closing date is less than an amount specified in the securities purchase agreement.

Our common stock is listed on the Nasdaq National Market under the ticker symbol **VISG**. In compliance with Nasdaq rules, we will hold a special meeting of our stockholders on January 23, 2004 at the offices of Choate, Hall & Stewart, Exchange Place, 53 State Street, Boston, Massachusetts at 10:00 a.m., local time, to seek stockholder approval of the issuance of our common stock in connection with the acquisition.

Our Board of Directors has unanimously approved the acquisition and recommends that you vote in favor of the issuance of shares of Viisage common stock in connection with the acquisition of ZN.

You are not entitled to dissenter's or appraisal rights in connection with the acquisition of ZN. Lau Technologies, the holder of approximately 26% of our common stock outstanding prior to the acquisition, has agreed to vote in favor of the proposal, provided that the securities purchase agreement is not amended or terminated prior to the closing. Following the acquisition, the ZN shareholders will own approximately 21% of our outstanding common stock.

We urge you to consider carefully all of the information provided in this proxy statement and its attachments, including a copy of the securities purchase agreement attached as Annex A-1 and the amendments to the securities purchase agreement attached as Annex A-2 and Annex A-3. **In particular, you should consider carefully the Risk Factors beginning on page 19 of this proxy statement.**

Edgar Filing: VIISAGE TECHNOLOGY INC - Form DEFM14A

Your vote is important, regardless of the number of shares you own. If you are a stockholder of record, you may vote by mailing the enclosed proxy card in the envelope provided or by attending the special meeting in person. To approve the proposal submitted to you, vote **FOR** the proposal by following the instructions in the proxy statement and on the enclosed proxy card. If your shares are held in street name (that is, held for your account by a broker or other nominee), you will receive instructions from the holder of record that you must follow for your shares to be voted.

Sincerely,

/s/ Denis K. Berube

Chairman of the Board of Directors

Neither the Securities and Exchange Commission nor any state securities regulator has approved or disapproved of this transaction or the securities to be issued or passed upon the adequacy or accuracy of this proxy statement. Any representation to the contrary is a criminal offense.

This proxy statement is dated December 30, 2003 and is first being mailed to Viisage stockholders on or about January 7, 2004.

Table of Contents

Viisage Technology, Inc.

30 Porter Road

Littleton, MA 01460

Notice of Special Meeting of Stockholders

to be held on January 23, 2004

To our Stockholders:

A special meeting of stockholders of Viisage Technology, Inc. will be held at the offices of Choate, Hall & Stewart, Exchange Place, 53 State Street, Boston, Massachusetts on January 23, 2004, beginning at 10:00 a.m., local time.

The purpose of the meeting will be to approve the issuance of shares of our common stock to the shareholders, and the participants under the share option plan, of ZN Vision Technologies AG in connection with the acquisition of ZN contemplated by the securities purchase agreement entered into on March 28, 2003 by and among Viisage, ZN and all of the shareholders of ZN, pursuant to which ZN will become a wholly-owned subsidiary of Viisage.

The accompanying proxy statement describes the acquisition in more detail. We encourage you to read the entire document and each of its attachments carefully.

Our Board of Directors has unanimously approved the acquisition and recommends that you vote in favor of the proposal described above. Only stockholders of record as of the close of business on December 24, 2003 will be entitled to vote at the special meeting and at any adjournments or postponements of the meeting.

You are cordially invited to attend the special meeting in person. In order to ensure that a quorum is present at the meeting, please date, sign and promptly return the enclosed proxy card whether or not you plan to attend the special meeting. A postage-prepaid envelope is included for your convenience. If you plan to attend the meeting, upon your written request your proxy will be returned to you and you may vote your shares in person.

Edgar Filing: VIISAGE TECHNOLOGY INC - Form DEFM14A

By Order of the Board of Directors,

/s/ Charles J. Johnson

Secretary

December 30, 2003

Littleton, Massachusetts

Whether or not you plan to attend the special meeting, please fill in, date and sign the enclosed proxy card and return it promptly in the enclosed return envelope, which requires no postage if mailed in the United States. You can revoke your proxy at any time before it is voted.

Table of Contents**TABLE OF CONTENTS**

	Page
<u>FORWARD LOOKING STATEMENTS</u>	i
<u>QUESTIONS AND ANSWERS ABOUT THE ACQUISITION AND THE SPECIAL MEETING</u>	ii
<u>SUMMARY TERM SHEET</u>	1
<u>SELECTED FINANCIAL DATA OF VIISAGE</u>	6
<u>SELECTED FINANCIAL DATA OF ZN</u>	9
<u>EXCHANGE RATE INFORMATION</u>	10
<u>UNAUDITED PRO FORMA COMBINED FINANCIAL STATEMENTS</u>	11
<u>COMPARATIVE HISTORICAL AND UNAUDITED PRO FORMA PER SHARE DATA</u>	18
<u>MARKET PRICE INFORMATION</u>	19
<u>DIVIDEND POLICY</u>	19
<u>RECENT EVENTS</u>	20
<u>RISK FACTORS</u>	21
<u>Risks Related to the Acquisition</u>	21
<u>Risks Related to the Business of the Combined Company</u>	23
<u>THE SPECIAL MEETING</u>	32
<u>When and Where the Special Meeting Will Be Held</u>	32
<u>What Will Be Voted on</u>	32
<u>Who May Vote at the Special Meeting</u>	32
<u>How to Vote</u>	32
<u>How to Change Your Vote</u>	32
<u>Quorum and Vote Required</u>	33
<u>Abstentions and Broker Non-Votes</u>	33
<u>Solicitation of Proxies and Expenses of Solicitation</u>	33
<u>Appraisal Rights</u>	33
<u>THE ACQUISITION</u>	34
<u>Industry Overview</u>	34
<u>Strategy of Viisage</u>	34
<u>Background of the Acquisition</u>	36
<u>Reasons for the Acquisition</u>	38
<u>Opinion of Viisage's Financial Advisor</u>	39
<u>Recommendation of Viisage's Board of Directors</u>	47
<u>Interests of Certain Persons in the Acquisition</u>	47
<u>Past Contracts, Transactions or Negotiations</u>	47
<u>THE SECURITIES PURCHASE AGREEMENT</u>	48
<u>The Acquisition</u>	48
<u>The Closing</u>	48
<u>Consideration Paid to ZN Shareholders; Assumption of ZN Option Plan</u>	48
<u>Potential Adjustment to Purchase Price and Option Consideration</u>	49
<u>Escrow</u>	49
<u>Representations and Warranties; Conditions to Closing</u>	49
<u>Covenants of the Parties</u>	49
<u>Indemnification</u>	50
<u>Termination</u>	50
<u>Expenses</u>	51
<u>Shares Held By Officers and Directors of ZN</u>	51
<u>Accounting Treatment and U.S. Federal Income Tax Consequences</u>	51
<u>Registration Rights and Re-sales of Viisage Common Stock by the ZN shareholders</u>	51
<u>Regulatory Filings Required in Connection with the Acquisition</u>	53
<u>Amendment to Securities Purchase Agreement</u>	53
<u>SECURITY OWNERSHIP OF BENEFICIAL OWNERS AND MANAGEMENT OF VIISAGE</u>	54
<u>VIISAGE FINANCIAL INFORMATION</u>	56

Edgar Filing: VIISAGE TECHNOLOGY INC - Form DEFM14A

<u>VIISAGE MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS</u>	56
<u>Overview</u>	56
<u>Recent Accounting Developments</u>	56

Table of Contents

	<u>Page</u>
<u>Segments</u>	58
<u>Acquisitions</u>	58
<u>Impact of Timing of Contract Awards and Contract Performance in Our Secure Identification Segment</u>	59
<u>Dependence on Significant Customers</u>	59
<u>Critical Accounting Policies</u>	60
<u>Results of Operations</u>	62
<u>Liquidity and Capital Resources</u>	66
<u>Contractual Obligations</u>	68
<u>Contingent Obligations</u>	68
<u>Inflation</u>	68
<u>Recent Accounting Pronouncements</u>	68
<u>Changes in and Disagreements with Accountants on Accounting and Financial Matters</u>	70
<u>Quantitative and Qualitative Disclosures about Market Risk</u>	70
<u>BUSINESS OF ZN</u>	71
<u>General Overview</u>	71
<u>Background of ZN</u>	71
<u>Employees</u>	71
<u>Location and Facilities</u>	71
<u>Technology</u>	72
<u>Activities and Current Products</u>	72
<u>Products, Installation and Maintenance</u>	73
<u>Competition</u>	73
<u>Markets</u>	73
<u>Distribution Channels</u>	73
<u>Management of ZN</u>	74
<u>ZN FINANCIAL INFORMATION</u>	75
<u>ZN OPERATING AND FINANCIAL REVIEW</u>	75
<u>Overview</u>	75
<u>Critical Accounting Policies</u>	75
<u>Significant Estimates</u>	76
<u>Trend Information</u>	77
<u>Results of Operations</u>	78
<u>Interest and Write-Downs on Financial Assets in Current Assets</u>	81
<u>Extraordinary Expenses and Absorbed Loss from Participation</u>	81
<u>Annual Loss</u>	81
<u>US GAAP Reconciliation</u>	82
<u>Liquidity and Financial Resources</u>	83
<u>Commitments and Contingencies</u>	85
<u>Quantitative and Qualitative Disclosures about Market Risk</u>	85
<u>Market Price</u>	85
<u>DEADLINE FOR SUBMISSION OF STOCKHOLDER PROPOSALS FOR THE VIISAGE 2004 ANNUAL MEETING</u>	86
<u>OTHER MATTERS</u>	86
<u>INDEPENDENT ACCOUNTANTS</u>	86
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	86
<u>FINANCIAL STATEMENTS OF VIISAGE</u>	F-1
<u>FINANCIAL STATEMENTS OF ZN</u>	F-32
<u>ANNEXES</u>	
<u>Annex A-1 Securities Purchase Agreement</u>	A-1/1
<u>Annex A-2 Amendment No. 1 to the Securities Purchase Agreement.</u>	A-2/1
<u>Annex A-3 Amendment No. 2 to the Securities Purchase Agreement</u>	A-3/1
<u>Annex B Opinion of Viisage's Financial Advisor</u>	B-1

Table of Contents

FORWARD LOOKING STATEMENTS

Some statements made in this proxy statement are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. These forward-looking statements include statements as to:

the benefits expected to result from the acquisition;

the performance and financial condition of Viisage, ZN or the combined company following the acquisition; and

the anticipated closing date of the acquisition.

Any statements contained in this proxy statement, including statements to the effect that Viisage or ZN or their respective management believes, expects, anticipates, plans, may, will, projects, continues, or estimates or statements concerning potential or opportunity or of thereof or comparable terminology or the negative thereof, that are not statements of historical fact should be considered forward-looking statements. Such statements, including statements under the captions Viisage Management's Discussion and Analysis of Financial Condition and Results of Operations and ZN Operating and Financial Review are subject to risk and uncertainties that could cause actual results to differ materially from those projected in the forward-looking statements. In connection with the forward-looking statements appearing in these disclosures, you should carefully consider the matters discussed in this proxy statement under the caption Risk Factors beginning on page 21.

Table of Contents

**QUESTIONS AND ANSWERS ABOUT THE ACQUISITION
AND THE SPECIAL MEETING**

Q: What is the acquisition? (See page 34)

A: In the acquisition, we will acquire all of the outstanding share capital of ZN from the ZN shareholders and assume the ZN option plan in exchange for shares of our common stock and cash, resulting in ZN becoming a wholly-owned subsidiary of Viisage.

Q: Why are we proposing to acquire ZN? (See page 38)

A: We believe the combination of our Eigenface technology with ZN's hierarchical graph matching technology will create a new standard in facial recognition technology. ZN's particular strength in one-to-one verification and intelligent video surveillance complements our large database search capabilities. We also believe the combined technologies are more likely to be awarded new contracts with government and other customers than either technology separately. In addition, ZN's established infrastructure of research and development, sales, marketing and strategic partnerships will accelerate our international distribution, particularly in Europe. Finally, our experience in working with ZN has shown that we share the same passion for excellence and a common goal of becoming the global leader in facial recognition, a critical component for identity verification leadership.

Q: What is the purchase price for the acquisition? (See page 48)

A: ZN's shareholders will receive an aggregate of 5,221,454 shares of our common stock and \$493 in cash. We also will assume ZN's employee share option plan, and accordingly we will pay to ZN MABG, the current trustee and administrator of the ZN option plan 10,741 in cash (which, based on the December 24, 2003 Euro to U.S. dollar exchange rate of 1.23940 equals approximately \$13,312), and we will reserve 1,138,546 shares of our common stock for issuance to the plan participants.

Q: What are the conditions to closing the acquisition? (See page 49)

A: The acquisition is conditioned upon the approval by our stockholders of the issuance of shares of our common stock in connection with the acquisition. Other closing conditions are described on page 49 under Representations and Warranties; Conditions to Closing and in the copy of the securities purchase agreement attached to this proxy statement as Annex A-1.

Q: What will Viisage do if stockholders do not approve the issuance of shares to the ZN shareholders? (See page 33)

A: If the stockholders do not approve the proposal, Viisage will abandon its efforts to acquire ZN. In addition, Viisage will be required to pay a termination fee of \$500,000 pursuant to the securities purchase agreement.

Q: Are there risks you should consider in deciding whether to vote in favor of the issuance of shares in the acquisition? (See page 21)

A: Yes. You should consider carefully the matters discussed in the section of this proxy statement entitled Risk Factors beginning on page 21.

Q:

Where can you learn more about other important terms of the acquisition? (See page 48, all of Annex A-1, all of Annex A-2 and all of Annex A-3)

A: To learn more about the other important terms of the acquisition, you should read carefully the section of this proxy statement entitled The Securities Purchase Agreement beginning on page 48, the text of the securities purchase agreement attached to this proxy statement as Annex A-1 and the amendments to the securities purchase agreement attached to this proxy statement as Annex A-2 and Annex A-3.

Table of Contents

Q: Does our Board of Directors recommend voting in favor of the issuance of shares of our common stock to the ZN shareholders in the acquisition? (See page 47)

A: Yes. After careful consideration, our Board of Directors has determined that the terms of the acquisition are fair to, and in the best interests of, our stockholders and unanimously recommends that our stockholders vote in favor of the issuance of shares of our common stock in connection with the acquisition.

Q: Who is making this proxy solicitation? (See page 32)

A: We are making the solicitation at the direction of our Board of Directors.

Q: Do any directors or executive officers of Viisage have any direct or indirect interest in the acquisition? (See page 47)

A: No.

Q: When will the acquisition be completed? (See page 48)

A: The special meeting of stockholders of Viisage to which this proxy statement relates will be held on January 23, 2004, and we expect to close the acquisition as soon as practicable following the special meeting.

Q: Who has the right to vote at the special meeting? (See page 32)

A: Only holders of our common stock of record as of December 24, 2003 may vote at the special meeting.

Q: What stockholder vote is necessary to approve the issuance of shares in the acquisition? (See page 33)

A: The affirmative vote of the holders of a majority of shares of common stock of present or represented by proxy at the special meeting is required.

Q: Is ZN shareholder approval required?

A: No. Each ZN shareholder signed the securities purchase agreement and thereby approved the acquisition.

Q: What do you need to do now? (See page 32)

A: We urge you to read carefully and consider the information contained in this proxy statement. In addition, you should complete, sign and date the attached proxy card and return it to Viisage Technology, Inc., Proxy Services, c/o EquiServe Trust Company, N.A., P.O. Box 8687, Edison, NJ 08818-9247 in the enclosed postage-prepaid return envelope as soon as possible so that your shares of common stock may be represented at the special meeting.

Q: What is the quorum requirement with respect to the special meeting? (See page 33)

A: The presence, in person or by properly executed proxy, of the holders of at least a majority of shares of our common stock entitled to vote at the special meeting will constitute a quorum.

Q: Can you change your vote after you have voted by proxy? (See page 32)

A: Yes. You can change your vote at any time before your proxy is voted at the special meeting. This can be done in a number of ways. First, you may send in a later-dated, signed proxy card to the corporate secretary of Viisage so that it arrives before the special meeting. Second, you can send a written notice to the corporate secretary of Viisage stating that you would like to revoke your proxy. Third, you may attend the special meeting and vote in person.

Table of Contents

Q: When and where will the special meeting be held? (See page 32)

A: The special meeting will be held at the offices of Choate, Hall & Stewart, Exchange Place, 53 State Street, Boston, Massachusetts, beginning at 10:00 a.m., local time, on January 23, 2004.

Q: Are you entitled to dissenter s or appraisal rights? (See page 33)

A: No. You are not entitled to dissenter s or appraisal rights in connection with the acquisition.

Q: If your shares of Viisage common stock are held in street name by a broker, will the broker vote the shares? (See page 33)

A: A broker will vote shares at the special meeting only if you give the broker instructions on how to vote. Without instructions, those shares will not be voted. If your shares are held by a broker, you should instruct your broker as to how you want your shares to be voted.

Q: Whom should you contact if you have additional questions?

A: For more information, you should contact:

William K. Aulet

Senior Vice President and Chief Financial Officer

Viisage Technology, Inc.

30 Porter Road

Littleton, MA 01460

Telephone: (978) 952-2200

Table of Contents

SUMMARY TERM SHEET

This summary term sheet highlights the material information contained in the proxy statement, but may not contain all of the information that is important to you. You should read carefully this entire document, including the appendices, and the other documents to which we refer you for a more complete understanding of the acquisition that is the subject of this proxy statement.

Throughout this proxy statement, \$ indicates amounts denominated in United States dollars, € indicates amounts denominated in Euros and DM indicates amounts denominated in Deutsche Marks.

The Companies

Viisage Technology, Inc.

30 Porter Road

Littleton, MA 01460

(978) 952-2200

www.viisage.com

Viisage is a leading provider of advanced technology identity solutions. Viisage began operations as a separate entity in 1996, providing integrated solutions to capture facial images, demographic information and other biological identifiers, produce identification cards and create relational databases containing this information. Since its inception, Viisage has also been acquiring and developing proprietary facial recognition technologies for a variety of applications. Applications can include driver's licenses, voter registration, national identification cards, law enforcement, social services, access control and PC network and Internet access security. Viisage's primary customers have been government agencies, with particular penetration in Departments of Motor Vehicles. Viisage's website address is www.viisage.com. Information contained on Viisage's website does not constitute part of this proxy statement.

ZN Vision Technologies AG

Universitaetsstrasse 160

44801 Bochum

GERMANY

Telephone: 49-234-9787-0

www.zn-ag.com

Edgar Filing: VIISAGE TECHNOLOGY INC - Form DEFM14A

ZN Vision Technologies AG is a leading provider of facial recognition technologies and services in Europe, specializing in hierarchical graph matching technology. ZN's technology is used for access control, image database searches and surveillance. ZN's website address is www.zn-ag.com. Information contained on ZN's website does not constitute part of this proxy statement.

Acquisition of ZN

(Page 48)

Pursuant to the securities purchase agreement dated as of March 28, 2003 by and among Viisage, ZN and all of the ZN shareholders, Viisage will acquire all of the outstanding share capital of ZN from the ZN shareholders and ZN will become a wholly-owned subsidiary of Viisage.

In exchange for all of the outstanding share capital of ZN, other than the shares held under the ZN option plan, the ZN shareholders will receive an aggregate of 5,221,454 shares of our common stock and \$493 in cash.

10%, or 522,146, of the shares issued to the ZN shareholders will be held in escrow for one year to secure indemnification claims we may have against the ZN shareholders under the securities purchase agreement.

Table of Contents

Assumption of ZN Option Plan

(Page 48)

We have agreed pursuant to the securities purchase agreement to assume the ZN option plan by paying to ZN MABG, the current trustee and administrator of the ZN option plan, 10,741 in cash (which, based on the December 24, 2003 Euro to U.S. dollar exchange rate of 1.23940 equals approximately \$13,312), and reserving 1,138,546 shares of our common stock for issuance to the plan participants.

Immediately prior to the closing of the acquisition, all of the options under the ZN option plan, representing approximately 1,138,546 shares of our common stock, will be vested. However, participants in the plan may not exercise their options until September 30, 2004, regardless of whether their options have vested prior to that date. In addition, participants in the plan are prohibited from selling any of their shares until after the second anniversary of the closing of the acquisition. Thereafter, participants may sell only a percentage of their shares each year until after the fifth anniversary of the closing of the acquisition.

Purchase Price

(Page 48)

The total number of shares of our common stock to be issued to the ZN shareholders or reserved for issuance under the ZN option plan is 6,360,000, and the total amount of cash to be paid to the ZN shareholders and ZN MABG is approximately \$13,805 in cash, based on the December 24, 2003 Euro to U.S. dollar exchange rate of 1.23940. Based on the \$3.45 closing price of a share of our common stock on December 24, 2003 on the Nasdaq National Market, the aggregate purchase price (shares and cash) for the acquisition was approximately \$21,955,805. This amount does not represent the value of the acquisition for financial accounting purposes.

Source of Cash

(Page 48)

Cash to be paid to the ZN shareholders and to ZN MABG as part of the purchase price will come from our working capital.

Possible Adjustment to the Purchase Price

(Page 49)

Under the securities purchase agreement, ZN stipulated that its net book value on March 28, 2003, the date the securities purchase agreement was signed, was 1,794,000, calculated in accordance with generally accepted accounting principles in Germany, or German GAAP.

Edgar Filing: VIISAGE TECHNOLOGY INC - Form DEFM14A

The securities purchase agreement stipulates that that the U.S. dollar to Euro exchange rate for purposes of calculations of potential purchase price adjustments will be deemed to be 1.06 to 1.00. Accordingly, ZN's net book value in U.S. dollars on March 28, 2003 would be deemed to be \$1,901,640.

The securities purchase agreement also stipulates that the value of Viisage common stock in connection with any such reduction will be deemed to be \$4.00 per share, regardless of the actual price on the closing date.

The number of shares we will be required to issue to the ZN shareholders and reserve for issuance under the ZN option plan will be reduced on a dollar-for-dollar basis if ZN's net book value on the closing date has declined by more than 400,000 (or \$424,000) for each whole or partial month elapsed between March 28, 2003, the date the securities purchase agreement was signed, and the closing date.

Assuming the closing of the acquisition occurs on January 23, 2004, the day of the special meeting (or ten whole or partial months after the date the on which the securities purchase agreement was signed):

Table of Contents

So long as ZN's net deficit book value is equal to or less than (2,206,000) (or \$(2,338,360)), there would be no adjustment.

However, if ZN's net book value is less than that amount, then the purchase price and the number of shares we would be required to reserve under the ZN option plan would be decreased by an amount equal to the extent by which ZN's net book value was less than that amount.

Therefore, by way of example only, if ZN's net book value deficit is (3,000,000) (or \$(3,180,000)) on the closing date, the aggregate value of the purchase price reduction and decrease in option consideration would be 794,000 (or \$841,640), the number of shares issued to the ZN shareholders and the number of shares reserved for issuance under the ZN option plan would be reduced by 210,410 shares in the aggregate (or \$841,640 divided by \$4.00).

Material Conditions to the Acquisition

(Pages 48-52, all of Annex A-1, all of Annex A-2 and all of Annex A-3)

The material conditions to the completion of the acquisition include:

approval by the Viisage stockholders of the proposal subject to this proxy statement under the rules of the Nasdaq National Market;

issuance of shares of Viisage common stock and payment of cash consideration to the ZN shareholders;

filing of an additional listing of shares application with Nasdaq with respect to the shares being issued to the ZN shareholders;

execution by Viisage of agreements with the participants in the ZN option plan in connection with the assumption by Viisage of the ZN option plan;

establishment of an escrow into which 522,146 shares of Viisage common stock will be held to secure the indemnification obligations of the ZN shareholders; and

delivery by Viisage and the ZN shareholders of certificates at the closing confirming, among other things, that all necessary consents and approvals have been obtained, the representations and warranties of the parties set forth in the securities purchase agreement remain true and correct on the closing date, there are no legal proceedings involving the parties would have an adverse effect on the acquisition.

We do not expect that any of the conditions listed above will be waived by either party.

Termination of the Securities Purchase Agreement

(Pages 50-51)

The securities purchase agreement may be terminated:

on December 31, 2003 if the acquisition is not completed prior to that time;

by any of the parties if the approval of Viisage stockholders solicited by this proxy statement is not obtained; or

for other customary reasons, as described in the securities purchase agreement.

Termination Fee

(Page 51)

We could be required to pay a termination fee of \$500,000 if the securities purchase agreement is terminated and the acquisition is not completed for any of the following reasons:

our stockholders do not approve the issuance of shares of our common stock in connection with the acquisition;

Table of Contents

there has been a material adverse effect on us since March 28, 2003, the date we signed the securities purchase agreement;

our net book value is less than \$20,000,000 on the closing date; or

the acquisition is not completed by December 31, 2003 by reason of our failure to perform our obligations at the closing.

Risks Related to the Acquisition and the Business of the Combined Company

(Page 21)

By approving the issuance of shares of our common stock in connection with the acquisition, you will be voting to approve the combination of the businesses of Viisage and ZN, which we refer to as the combined company. You should consider carefully the matters discussed in the section of this proxy statement entitled "Risk Factors" beginning on page 21.

Effect of a Negative Vote on the Issuance of Shares to the ZN Shareholders

(Page 33)

If the stockholders do not approve the proposal, Viisage will abandon its efforts to acquire ZN. In addition, Viisage will be required to pay a termination fee of \$500,000 pursuant to the securities purchase agreement.

Recommendation of Our Board of Directors

(Page 47)

Our Board of Directors believes that the acquisition is fair to, and in the best interests of, our stockholders and unanimously recommends that our stockholders vote for the proposal to issue our common stock in the acquisition.

Our Board of Directors considered a number of factors in determining whether to approve the acquisition and the issuance of shares of our common stock in connection with the acquisition. These considerations are more particularly described in the section of this proxy statement entitled "The Acquisition Viisage's Reasons for the Acquisition".

No