

Edgar Filing: MERCATOR SOFTWARE INC - Form SC 13D

MERCATOR SOFTWARE INC  
Form SC 13D  
August 12, 2003

OMB APPROVAL
OMB NUMBER: 3235-0145
EXPIRES:
DECEMBER 31, 2005
ESTIMATED AVERAGE
BURDEN HOURS
PER RESPONSE ...11

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

SCHEDULE 13D

Under the Securities Exchange Act of 1934

(Amendment No.\_\_\_\_) \*

MERCATOR SOFTWARE, INC.

-----  
(Name of Issuer)

Common Stock, par value \$.01 per share

-----  
(Title of Class and Securities)

587587106

-----  
(CUSIP Number)

Ascential Software Corporation  
Attn: Peter Gyenes  
Chief Executive Officer  
50 Washington Street  
Westborough, Massachusetts 01581  
(508) 366-3888

With a copy to:

Scott N. Semel Ascential Software Corporation 50 Washington Street Westborough, MA 01581 (508) 366-3880	Louis A. Goodman, Esq. Skadden, Arps, Slate, Meagher & Flom LLP One Beacon Street Boston, MA 02108 (617) 573-4800
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-----  
(Name, Address and Telephone Number of Person Authorized  
to Receive Notices and Communications)

August 2, 2003

-----  
(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Sections 240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box. [ ]

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Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Section 240.13d-7 for other parties to whom copies are to be sent.

\* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

(Continued on following pages)

SCHEDULE 13D

CUSIP No. 0001063167

1. NAMES OF REPORTING PERSON

Ascential Software Corporation

I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (entities only)

943011736

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP:

(a) ( )

(b) ( )

3. SEC USE ONLY

4. SOURCE OF FUNDS\*

WC

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e)

( )

6. CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

NUMBER OF  
SHARES

7. SOLE VOTING POWER

None

BENEFICIALLY

8. SHARED VOTING POWER

OWNED BY

5,910,134 ((1) and see Item 5)

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-----  
EACH 9. SOLE DISPOSITIVE POWER  
REPORTING None  
-----  
PERSON 10. SHARED DISPOSITIVE POWER  
WITH 5,910,134 ((1) and see Item 5)  
-----

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

5,910,134 ((1) and see Item 5)  
-----

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW 11 EXCLUDES CERTAIN SHARES ( )  
-----

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW 11

15.1%(2)  
-----

14. TYPE OF REPORTING PERSON

CO  
-----

(1) Based on representations made by the tendering stockholders pursuant to the Stock Tender Agreement (as defined in Item 4). The actual number of shares beneficially owned is all shares owned as of such date or thereafter acquired by the stockholders parties to the Stock Tender Agreement.

(2) Based on 35,266,939 shares of common stock of the Issuer outstanding as of July 31, 2003, as represented by the Issuer in the Merger Agreement (as defined under Item 4 of this Statement), plus 3,802,428 shares issuable upon exercise of options subject to the Stock Tender Agreement (as defined under Item 4 of this Statement and as represented by the stockholders parties thereto).

CUSIP No. 0001063167  
-----

1. NAMES OF REPORTING PERSON

Greek Acquisition Corporation

I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (entities only)  
-----

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP:

(a) ( )  
(b) ( )  
-----

3. SEC USE ONLY

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-----  
4. SOURCE OF FUNDS\*

AF  
-----

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) ( )  
-----

6. CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware  
-----

NUMBER OF	7. SOLE VOTING POWER
SHARES	7,049,861 ((1) and see Item 5)
BENEFICIALLY	8. SHARED VOTING POWER
OWNED BY	5,910,134 ((1) and see Item 5)
EACH	9. SOLE DISPOSITIVE POWER
REPORTING	7,049,861 ((1) and see Item 5)
PERSON	10. SHARED DISPOSITIVE POWER
WITH	5,910,134 ((1) and see Item 5)

-----

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

12,959,995 ((1) and see Item 5)  
-----

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW 11 EXCLUDES CERTAIN SHARES ( )  
-----

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW 11

28.1% (3)  
-----

14. TYPE OF REPORTING PERSON

CO  
-----

(3) Based on 35,266,939 shares of common stock of the Issuer outstanding as of July 31, 2003, as represented by the Issuer in the Merger Agreement (as defined under Item 4 of this Statement), plus 7,049,861 shares subject to the Stock Option Agreement (as defined under Item 4 of this Statement and based on the number of shares outstanding as of July 31, 2003), plus 3,802,428 shares issuable upon exercise of options subject to the Stock Tender Agreement (as defined under Item 4 of this Statement and as represented by the stockholders parties thereto).

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### ITEM 1. SECURITY AND ISSUER.

The class of equity securities to which this Statement on Schedule 13D (this "Schedule 13D") relates is the common stock, par value \$.01 per share (the "Common Stock"), of Mercator Software, Inc. (the "Issuer"). The principal executive offices of the Issuer are located at 45 Danbury Road, Wilton, Connecticut 06897.

### ITEM 2. IDENTITY AND BACKGROUND.

(a) - (c), (f) This Schedule 13D is being filed by Ascential Software Corporation, a Delaware Corporation ("Parent"), and Greek Acquisition Corporation, a Delaware corporation and a wholly-owned subsidiary of Parent (the "Purchaser"). The principal business of Parent is supplying data integration solutions to organizations worldwide. The Purchaser is a newly-incorporated corporation formed by Parent solely for the purpose of acquiring ownership of the Issuer. The address of Parent's and Purchaser's principal executive offices is 50 Washington Street, Westborough, Massachusetts 01581

Certain information concerning the executive officers and directors of Parent and Purchaser is set forth in Schedule A hereto and is incorporated herein by reference.

(d) - (e) During the past five years, neither Parent nor Purchaser nor, to the best knowledge of Parent and Purchaser, any of the directors and officers of Parent and Purchaser, who are listed on Schedule A hereto, has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) or was a party to a civil proceeding of a judicial or administrative body of competent jurisdiction as a result of which any such person was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, Federal or State securities laws or finding any violation with respect to such laws.

### ITEM 3. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION.

The total amount of funds required to purchase all of the shares of Common Stock of the Issuer issuable pursuant to the Stock Option Agreement (as defined under Item 4 below and based on the assumption therein) is \$21,149,583 of which \$70,498.61 is payable in cash and the remainder by note (based on the number of shares

outstanding as of July 31, 2003). In the event that the Option (as defined under Item 4 below) is exercised, Parent would provide such funds to Purchaser from Parent's available cash and working capital.

The total amount of funds required to purchase all of the shares of Common Stock of the Issuer (including shares issuable upon the exercise of options) subject to the Stock Tender Agreement (as defined under Item 4 below) and subject to the assumptions described therein is \$17,730,402. To the extent that such shares are tendered in accordance with the terms of the Offer (as defined under Item 4 below), such funds will be included in the aggregate consideration required to consummate the Offer (as defined under Item 4 below) and the Merger (as defined under Item 4 below), which funds will be provided by Parent to Purchaser from Parent's available cash and working capital. To the extent that such shares are not tendered in accordance with the terms of the Offer (as defined under Item 4 below), and Parent subsequently exercises its

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option under the Stock Tender Agreement (as defined under Item 4 below) to purchase such shares, Parent will obtain such funds from Parent's available cash and working capital.

The total amount of funds required by Parent to consummate the Offer (as defined under Item 4 below) and the Merger (as defined under Item 4 below) is estimated to be approximately \$106 million plus any related transaction fees and expenses. Parent will obtain such funds from available cash and working capital.

### ITEM 4. PURPOSE OF THE TRANSACTION.

(a) - (g) On August 2, 2003, Parent, Purchaser and the Issuer entered into an Agreement and Plan of Merger (the "Merger Agreement"). Pursuant to the Merger Agreement, Purchaser commenced an offer to purchase all of the outstanding Common Stock (together with any associated preferred stock or other rights issued pursuant to the Rights Agreement, dated as of September 2, 1998, by and between Issuer and The Bank of New York, as Rights Agent) at a price per share of \$3.00, net to the stockholder in cash (the "Offer Price"), upon the terms and subject to the conditions set forth in the Offer to Purchase and related Letter of Transmittal (which together with any amendments or supplements thereto will constitute the "Offer") sent to Issuer's stockholders on or about August 8, 2003. The Offer is subject to various conditions, including, among other things, the receipt of tenders of at least 51% of the outstanding Common Stock, on a fully diluted basis. Subject to certain exceptions, following satisfaction or waiver of the conditions of the Offer, Purchaser will purchase all of the outstanding Common Stock validly tendered pursuant to the Offer and not withdrawn.

The Merger Agreement further provides that after purchase of the Common Stock (together with any associated preferred stock or other rights) by Purchaser in the Offer, and subject to the satisfaction or waiver of certain other conditions, Purchaser will be merged with and into the Issuer (the "Merger"), with the Issuer surviving the merger as the Surviving Corporation and becoming a wholly-owned subsidiary of Parent. Pursuant to the Merger Agreement, at the effective time of the Merger each share of Common Stock outstanding immediately prior to the effective time of the Merger (other than shares held by Parent or any subsidiary of Parent (including Purchaser), which will all be cancelled, or by holders who have perfected their dissenters rights under Delaware law) will be converted into the right to receive the Offer Price, without interest.

In connection with the Merger Agreement, Parent, Purchaser and certain directors, executive officers and officers of the Issuer identified therein (each an Individual and collectively, the "Individuals") entered into a Stock Tender Agreement (the "Stock Tender Agreement") dated as of August 2, 2003, which provides for the tender by such Individuals of the shares of Common Stock held by them as of that date or acquired prior to the consummation or termination of the Offer (whether by exercise of options or otherwise) (such shares of Common Stock being referred to as "Issuer Shares") pursuant to the Offer, the grant by such Individuals of an irrevocable proxy to officers of Purchaser to vote their Issuer Shares in favor of the Merger and the Merger Agreement and against any action or agreement that is contrary to the Merger Agreement and the grant by such Individual to Parent of an option to purchase such Individual's Issuer Shares in the event such Individual fails to comply with the terms of the Stock Tender Agreement.

In connection with the Merger Agreement, Parent, Purchaser and Issuer entered into a Common Stock Option Agreement (the "Stock Option

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Agreement") dated as of August 2, 2003, pursuant to which Issuer granted Purchaser an option (the "Option") to purchase up to 19.99% of the then outstanding Issuer Shares at a purchase price per share equal to the Offer Price if Purchaser has accepted and made payment for the Common Stock validly tendered and not withdrawn in the Offer and following the exercise of the Option, Purchaser will own at least 90% of the then outstanding Common Stock.

The foregoing descriptions of the Merger Agreement, Stock Tender Agreement and Stock Option Agreement are qualified in their entirety by reference to the full text of the forms of the Merger Agreement, Stock Tender Agreement and Stock Option Agreement, which are incorporated herein by reference. Copies of the Merger Agreement,

the Stock Tender Agreement and the Stock Option Agreement are attached to this Schedule 13D as Exhibits 1, 2 and 3, respectively.

(h) - (j) Upon consummation of the Merger as contemplated by the Merger Agreement, the Common Stock will be delisted from the Nasdaq Stock Market, and the Common Stock will become eligible for termination of registration pursuant to Section 12(g)(4) of the Securities Exchange Act of 1934, as amended.

### ITEM 5. INTEREST IN THE SECURITIES OF THE ISSUER.

(a) - (b) Purchaser may be deemed to beneficially own 7,049,861 shares of Common Stock as a result of the execution of the Stock Option Agreement, and would have sole voting and dispositive power with respect to any shares issuable to Purchaser upon exercise of the Option. Each of Parent and Purchaser may be deemed to beneficially own 5,910,134 shares of Common Stock (including 3,802,420 shares of Common Stock underlying options exercisable within 60 days of August 2, 2003) as a result of the execution of the Stock Tender Agreement and based on the representations of the stockholders parties thereto. Pursuant to the Stock Tender Agreement, the stockholder parties thereto have agreed to tender their Issuer Shares in accordance with the terms and conditions of the Offer and to grant Parent an option to acquire such Issuer Shares if they fail to comply with their obligations under the Stock Option Agreement. As a result, each of Parent and Purchaser may be deemed to have voting power and dispositive power with respect to the shares of Common Stock covered by the Stock Tender Agreement.

The aggregate number of shares of Common Stock that may be deemed to be beneficially owned by Parent constitutes approximately 15.1% of the outstanding shares of Common Stock (based on 35,266,939 shares of Common Stock outstanding as of July 31, 2003, as represented by the Issuer in the Merger Agreement, plus 3,802,428 shares of Common Stock issuable upon exercise of options subject to the Stock Tender Agreement). The aggregate number of shares of Common Stock that may be deemed to be beneficially owned by Purchaser constitutes approximately 28% of the outstanding shares of Common Stock (based on 35,266,939 shares of Common Stock outstanding as of July 31, 2003, as represented by Issuer in the Merger Agreement, plus 7,049,761 shares of Common Stock subject to the Stock Option Agreement based on the number of shares outstanding as of July 31, 2003, plus 3,802,428 shares of Common Stock issuable upon exercise of options subject to the Stock Tender Agreement as represented by the stockholder parties thereto).

Parent and Purchaser each disclaims beneficial ownership of the shares

of Common Stock covered by the Stock Option Agreement and the Stock Tender

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Agreement.

(c) Other than as set forth in this Item 5, there have been no transactions in the shares of Common Stock effected during the past 60 days by Parent or Purchaser, nor to the knowledge of Parent or Purchaser, as of the date hereof, by any person listed on Schedule A hereto.

(d) No other person is known by Parent or Purchaser to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, the Common Stock obtainable by Parent or Purchaser upon exercise of the Option or pursuant to the Stock Tender Agreement.

(e) Not applicable.

ITEM 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO SECURITIES OF THE ISSUER.

The information set forth in Items 3, 4 and 5 of this Schedule 13D and the Exhibits to this Schedule 13D are hereby incorporated by reference herein.

ITEM 7. MATERIAL TO BE FILED AS EXHIBITS.

Exhibit No. -----	Exhibit Name -----
1	Agreement and Plan of Merger, dated August 2, 2003, by and among Parent, Purchaser and Issuer (incorporated herein by reference to Exhibit 2.1 to Parent's Current Report on Form 8-K dated August 2, 2003 filed on August 5, 2003).
2	Common Stock Option Agreement, dated as of August 2, 2003, by and among Parent, Purchaser and Issuer (incorporated herein by reference to Exhibit 10.2 to Parent's Current Report on Form 8-K dated August 2, 2003 filed on August 5, 2003).
3	Stock Tender Agreement, dated as of August 2, 2003, by and among Parent, Purchaser and certain stockholders of Issuer (incorporated herein by reference to Exhibit 10.1 to Parent's Current Report on Form 8-K dated August 2, 2003 filed August 5, 2003).
4	Joint Filing Agreement, dated as of August 12, 2003, by and between Parent and Purchaser.

SIGNATURES

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this Statement is true, complete, and correct.

Dated: August 12, 2003

ASCENTIAL SOFTWARE CORPORATION

By: /s/ Peter Gyenes  
-----



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Name: Peter Gyenes  
Title: Chief Executive Officer

GREEK ACQUISITION CORPORATION

By: /s/ Peter Fiore

-----  
Name: Peter Fiore  
Title: President

SCHEDULE A

DIRECTORS AND EXECUTIVE OFFICERS  
OF  
ASCENTIAL SOFTWARE CORPORATION  
AND  
GREEK ACQUISITION CORPORATION

The following table sets forth the name, business address and present principal occupation or employment of each director and executive officer of Ascential Software Corporation. Unless otherwise indicated, each such person is a citizen of the United States, and the business address of each such person is c/o Ascential Software Corporation, 50 Washington Street, Westborough, Massachusetts 01581.

ASCENTIAL SOFTWARE CORPORATION

NAME	PRESENT PRINCIPAL OCCUPATION
Peter Gyenes	Chairman of the Board of Directors and Chief Executive Officer of Ascential Software Corporation
Peter Fiore	President of Ascential Software Corporation
Robert C. McBride	Vice President and Chief Financial Officer of Ascential Software Corporation
Scott N. Semel	Vice President, General Counsel and Secretary of Ascential Software Corporation
John J. Gavin	Director of Ascential Software Corporation
David J. Ellenberger	Director of Ascential Software Corporation and Chief Executive Officer of 170 Systems, Inc.
William J. Weyand	Director of Ascential Software Corporation
Robert M. Morrill	Director of Ascential Software Corporation and general partner of Morrill Associates, L.P.

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The following table sets forth the name, business address and present principal occupation or employment of each director and executive officer of Greek Acquisition Corporation. Unless otherwise indicated, each such person is a citizen of the United States, and the business address of each such person is c/o Ascential Software Corporation, 50 Washington Street, Westborough, Massachusetts 01581.

### GREEK ACQUISITION CORPORATION

NAME	PRESENT PRINCIPAL OCCUPATION
Peter Fiore	President of Ascential Software Corporation AND President and Director of Greek Acquisition Corporation
Robert C. McBride	Vice President and Chief Financial Officer of Ascential Software Corporation AND Treasurer and Director of Greek Acquisition Corporation
Scott N. Semel	Vice President, General Counsel and Secretary of Ascential Software Corporation AND Secretary and Director of Greek Acquisition Corporation

### EXHIBIT INDEX

Exhibit No. -----	Exhibit Name -----
1	Agreement and Plan of Merger, dated August 2, 2003, by and among Parent, Purchaser and Issuer (incorporated herein by reference to Exhibit 2.1 to Parent's Current Report on Form 8-K dated August 2, 2003 filed on August 5, 2003).
2	Common Stock Option Agreement, dated as of August 2, 2003, by and among Parent, Purchaser and Issuer (incorporated herein by reference to Exhibit 10.2 to Parent's Current Report on Form 8-K dated August 2, 2003 filed on August 5, 2003).
3	Stock Tender Agreement, dated as of August 2, 2003, by and among Parent, Purchaser and certain stockholders of Issuer (incorporated herein by reference to Exhibit 10.1 to Parent's Current Report on Form 8-K dated August 2, 2003 filed August 5, 2003).
4	Joint Filing Agreement, dated as of August 12, 2003, by and between Parent and Purchaser.