

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

**FORM S-8
REGISTRATION STATEMENT**

*Under
The Securities Act of 1933*

NETAPP, INC.

(Exact name of Registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

**3060 Olsen Drive
San Jose, California**

(Address of principal executive offices)

77-0307520

(I.R.S. Employer
Identification Number)

95128

(Zip code)

NetApp, Inc. Employee Stock Purchase Plan

NetApp, Inc. 2021 Equity Incentive Plan

(Full title of the plan)

George Kurian

Chief Executive Officer

NetApp, Inc.

3060 Olsen Drive

San Jose, California 95128

(Name and address of agent for service)

(408) 822-6000

(Telephone number, including area code, of agent for service)

Copies to:

Thomas J. Ivey, Esq.

Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates

525 University Avenue

Palo Alto, California 94304

(650) 470-4500

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

EXPLANATORY NOTE

This registration statement (the “**Registration Statement**”) is being filed by NetApp, Inc. (the “**Registrant**”) for the purpose of registering (i) an additional 3,000,000 shares of common stock, par value \$0.001 per share (the “**Common Stock**”), issuable pursuant to the NetApp, Inc. Employee Stock Purchase Plan (as amended, the “**Purchase Plan**”) and (ii) an additional 12,700,000 shares of Common Stock issuable pursuant to the NetApp, Inc. 2021 Equity Incentive Plan (as amended, the “**2021 Plan**” and together with the Purchase Plan, the “**Plans**”). This Registration Statement relates solely to the registration of additional securities of the same class as other securities for which registration statements on Form S-8 relating to the Plans set forth herein are effective.

Pursuant to General Instruction E to Form S-8, this Registration Statement incorporates by reference the contents of the Registrant’s effective registration statement on Form S-8 with respect to the Plans filed with the Securities and Exchange Commission (the “**Commission**”) on September 14, 2021 (File No. 333-259520), as further supplemented by the information set forth below.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing the information specified in this Part I of Form S-8 will be sent or given to participants in the Plans in accordance with Rule 428(b)(1) under the Securities Act of 1933, as amended (the “**1933 Act**”) and are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the 1933 Act. Such documents, together with the documents incorporated by reference herein pursuant to Item 3 of Part II of this Registration Statement, constitute a prospectus that meets the requirements of Section 10(a) of the 1933 Act, and are available upon written or oral request to: NetApp, Inc., Attn: Chief Legal Officer, 3060 Olsen Drive, San Jose, California 95128, Tel: (408) 822-6000.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The Registrant hereby incorporates by reference into this Registration Statement the following documents previously filed with the Commission (other than information supplied in a Current Report on Form 8-K that is furnished and not filed and, except as may be noted in any such Form 8-K, exhibits filed on such form that are related to such information):

- (a) The Registrant’s Annual Report on [Form 10-K](#) for the fiscal year ended April 28, 2023, filed with the Commission on June 14, 2023, pursuant to Section 13 of the Securities Exchange Act of 1934, as amended (the “**1934 Act**”);
- (b) The Registrant’s Quarterly Report on [Form 10-Q](#) for the quarter ended July 28, 2023, filed with the Commission on August 29, 2023 pursuant to Section 13 of the 1934 Act;
- (c) Each of the Registrant’s Current Reports on Form 8-K, filed with the Commission pursuant to Section 13 of the 1934 Act on [May 31, 2023](#), [August 10, 2023](#) and [September 15, 2023](#); and
- (d) The Description of Capital Stock of the Registrant contained in [Exhibit 4.5](#) to the Registrant’s Annual Report on Form 10-K for the fiscal year ended April 28, 2023 (filed with the Commission on June 14, 2023), including any amendments or reports filed for the purpose of updating such descriptions.

All reports and definitive proxy or information statements filed by the Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the 1934 Act on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered hereby have been sold or that deregisters all securities then remaining unsold shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents; *provided, however*, that documents or information deemed to have been furnished and not filed (whether before or after the date of this Registration Statement) in accordance with the rules of the Commission shall not be deemed incorporated by reference into this Registration Statement. Any statement contained in a document incorporated or deemed to be

incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 8. Exhibits

<u>Exhibit Number</u>	<u>Documents</u>
4.1	<u>Certificate of Incorporation of the Registrant, as amended (incorporated by reference to Exhibit 3.1 to Registrant's Current Report on Form 8-K filed with the Commission on September 13, 2021).</u>
4.2	<u>Amended and Restated Bylaws of the Registrant (incorporated by reference to Exhibit 3.2 to Registrant's Current Report on Form 8-K filed with the Commission on September 13, 2021).</u>
5.1*	<u>Opinion of Skadden, Arps, Slate, Meagher & Flom LLP.</u>
23.1*	<u>Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm.</u>
23.2*	<u>Consent of Skadden, Arps, Slate, Meagher & Flom LLP (contained in Exhibit 5.1 to this Registration Statement).</u>
24.1*	<u>Power of Attorney (contained on the signature page of this Registration Statement).</u>
99.1	<u>NetApp, Inc. Employee Stock Purchase Plan, as amended effective September 13, 2023 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Commission on September 15, 2023).</u>
99.2	<u>NetApp, Inc. 2021 Equity Incentive Plan, as amended effective September 13, 2023 (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed with the Commission on September 15, 2023).</u>
107*	<u>Filing Fee Table</u>

* Filed herewith.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Jose, State of California, on September 15, 2023.

NETAPP, INC.

By: /s/ George Kurian
George Kurian
Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENT, that each person whose signature appears below constitutes and appoints George Kurian and Michael J. Berry, and each of them, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign this Registration Statement on Form S-8 and any and all amendments (including post-effective amendments), and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his or her substitute or substitutes, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement on Form S-8 has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated:

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ George Kurian</u> George Kurian	Chief Executive Officer and Director (Principal Executive Officer and Principal Operating Officer)	September 15, 2023
<u>/s/ Michael J. Berry</u> Michael J. Berry	Executive Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	September 15, 2023
<u>/s/ T. Michael Nevens</u> T. Michael Nevens	Chairman of the Board	September 15, 2023
<u>/s/ Deepak Ahuja</u> Deepak Ahuja	Director	September 15, 2023
<u>/s/ Gerald Held</u> Gerald Held	Director	September 15, 2023
<u>/s/ Kathryn M. Hill</u> Kathryn M. Hill	Director	September 15, 2023
<u>/s/ Deborah L. Kerr</u> Deborah L. Kerr	Director	September 15, 2023
<u>/s/ Scott F. Schenkel</u> Scott F. Schenkel	Director	September 15, 2023
<u>/s/ George T. Shaheen</u> George T. Shaheen	Director	September 15, 2023

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
525 University Avenue
Palo Alto, California 94301

TEL: (650) 470-4500
FAX: (650) 470-4570
www.skadden.com

September 15, 2023

NetApp, Inc.
3060 Olsen Drive
San Jose, CA 95128

Re: NetApp, Inc. Registration Statement on Form S-8

Ladies and Gentlemen:

We have acted as special United States counsel to NetApp, Inc., a Delaware corporation (the "Company"), in connection with the registration statement on Form S-8 (together with the exhibits thereto, the "Registration Statement") to be filed on the date hereof by the Company with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933 (the "Securities Act"), relating to the registration of an aggregate of 15,700,000 shares ("Shares") of common stock of the Company, par value \$0.001 per share (the "Common Stock"), authorized for issuance pursuant to (i) the NetApp, Inc. 2021 Equity Incentive Plan (as amended, the "2021 Plan"), and (ii) the NetApp, Inc. Employee Stock Purchase Plan (as amended, the "Purchase Plan" and, together with the 2021 Plan, the "Plans").

This opinion is being furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K of the General Rules and Regulations of the Commission promulgated under the Securities Act.

In rendering the opinion stated herein, we have examined and relied upon the following:

- (a) the Registration Statement in the form filed with the Commission on the date hereof;
- (b) copies of the Plans;
- (c) an executed copy of a certificate of Elizabeth O'Callahan, Executive Vice President, Chief Legal Officer, and Secretary of the Company, dated the date hereof (the "Secretary's Certificate");
- (d) a copy of the Company's Certificate of Incorporation, as amended and in effect as of the date hereof ("Certificate of Incorporation"), certified by the Secretary of State of the State of Delaware, and certified pursuant to the Secretary's Certificate;
- (e) a copy of the Company's Bylaws, as amended and in effect as of the date hereof ("Bylaws"), certified pursuant to the Secretary's Certificate; and
- (f) copies of certain resolutions of the Company's Board of Directors (or a committee thereof), relating to the approval of the Plans, the filing of the Registration Statement and certain related matters, certified pursuant to the Secretary's Certificate.

In our examination, we have assumed the genuineness of all signatures, including electronic signatures, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as facsimile, electronic, certified or photocopied copies, and the authenticity of the originals of such copies. In making our examination of

executed documents, we have assumed that the parties thereto, other than the Company, had the power, corporate or other, to enter into and perform all obligations thereunder and have also assumed the due authorization by all requisite action, corporate or other, and the execution and delivery by such parties of such documents and the validity and binding effect thereof on such parties.

In rendering the opinion stated herein, we have also assumed that (i) an appropriate account statement evidencing the Shares credited to the recipient's account maintained with the Company's transfer agent has been issued by the Company's transfer agent; (ii) the issuance of the Shares will be properly recorded in the books and records of the Company; (iii) each award agreement under which options, restricted stock, restricted stock units or other awards are granted pursuant to the applicable Plan will be consistent with such Plan and will be duly authorized, validly executed and delivered by the parties thereto; and (iv) the issuance of the Shares does not violate or conflict with any agreement or instrument binding on the Company (except that we do not make this assumption with respect to the Certificate of Incorporation or the Bylaws). As to any facts material to the opinions expressed herein that we did not independently establish or verify, we have relied upon statements and representations of officers and other representatives of the Company and others and of public officials, including the facts and conclusions set forth in the Secretary's Certificate.

We do not express any opinion with respect to the laws of any jurisdiction other than the General Corporation Law of the State of Delaware.

Based upon the foregoing and subject to the qualifications and assumptions stated herein, we are of the opinion that the Shares have been duly authorized by the Company and, when the Shares are issued to the participants in accordance with the terms and conditions of the applicable Plan and the applicable award agreement for consideration paid or delivered in an amount at least equal to the par value of such Shares, the Shares will be validly issued, fully paid and non-assessable.

We hereby consent to the filing of this opinion with the Commission as an exhibit to the Registration Statement. In giving this consent, we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the Securities Act or the General Rules and Regulations of the Commission promulgated under the Securities Act. This opinion is expressed as of the date hereof unless otherwise expressly stated, and we disclaim any undertaking to advise you of any subsequent changes in the facts stated or assumed herein or of any subsequent changes in applicable laws.

Very truly yours,

/s/ Skadden, Arps, Slate, Meagher & Flom LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our reports dated June 14, 2023, relating to the consolidated financial statements of NetApp, Inc. and subsidiaries (the “Company”) and the effectiveness of the Company’s internal control over financial reporting, appearing in the Annual Report on Form 10-K of the Company for the year ended April 28, 2023.

/s/ DELOITTE & TOUCHE LLP

Raleigh, North Carolina

September 15, 2023

Calculation of Filing Fee Tables**Form S-8**
(Form Type)**NetApp, Inc.**
(Exact Name of Registrant as Specified in its Charter)Table 1: Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered ⁽¹⁾	Proposed Maximum Offering Price Per Unit ⁽²⁾	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee ⁽⁵⁾
Equity	Common Stock, \$0.001 par value per share, reserved for issuance under the 2021 Plan (as defined below)	457(h)	12,700,000 ⁽³⁾	\$78.79	\$1,000,633,000.00	0.0001102	\$110,269.76
Equity	Common Stock, \$0.001 par value per share, reserved for issuance under the Purchase Plan (as defined below)	457(h)	3,000,000 ⁽⁴⁾	\$78.79	\$236,370,000.00	0.0001102	\$26,047.97
Total Offering Amounts					\$1,237,003,000.00		\$136,317.73
Total Fee Offsets							—
Net Fee Due							\$136,317.73

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional shares of NetApp, Inc.’s (the “Registrant”) common stock, \$0.001 par value per share (“Common Stock”) that become issuable under the NetApp, Inc. 2021 Equity Incentive Plan (as amended, the “2021 Plan”) or the NetApp, Inc. Employee Stock Purchase Plan (as amended, the “Purchase Plan” by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of the Registrant’s outstanding shares of Common Stock.
 - (2) This estimate is made pursuant to Rule 457(h)(1) and Rule 457(c) of the Securities Act solely for purposes of calculating the registration fee. The price per share and aggregate offering price are based upon the average of the high and low prices of the Common Stock on September 11, 2023, as reported on The Nasdaq Global Select Market.
 - (3) Represents an additional 12,700,000 shares of Common Stock issuable under the 2021 Plan. The Registrant previously filed a registration statement on Form S-8 (File No. 333-259520) with respect to shares issuable under the 2021 Plan.
 - (4) Represents an additional 3,000,000 shares of Common Stock issuable under the Purchase Plan. The Registrant previously filed a registration statement on Form S-8 (File No. 333-259520) with respect to shares issuable under the Purchase Plan.
 - (5) The Registrant does not have any fee offsets.
-