

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 of Incorporation)

77-0307520
(I.R.S. Employer Identification No.)

**495 East Java Drive,
Sunnyvale, California 94089**

(Address of principal executive offices)

NETAPP, INC. EMPLOYEE STOCK PURCHASE PLAN

(Full title of the plan)

**Tom Georgens
President and Chief Executive Officer
NetApp, Inc.
495 East Java Drive,
Sunnyvale, California 94089
(408) 822-6000**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:
Steven E. Bochner, Esq.
Wilson Sonsini Goodrich & Rosati, P. C.
650 Page Mill Road
Palo Alto, CA 94304
(650) 493-9300

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

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
(Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered | Amount to be Registered(1) | Proposed Maximum Offering Price Per Share | Proposed Maximum Aggregate Offering Price | Amount of Registration Fee |
|--|----------------------------|---|---|----------------------------|
| Common Stock (par value \$0.001) issuable upon purchase of Shares granted under the Employee Stock Purchase Plan | 6,700,000 | \$ 24.37(2) | \$ 163,275,650 | \$ 9,110.78 |

- (1) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement shall also cover any additional shares of the Registrant's common stock that became issuable under the applicable plan by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration that increases the number of outstanding shares of registrant's Common Stock.
- (2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) and Rule 457(h) of the Securities Act. The price per share is based upon the average of the high and low prices of Registrant's Common Stock on October 22, 2009 as reported on the Nasdaq Global Select Market. The proposed maximum offering price per share of \$24.37 was determined by discounting the offering price per share (as computed in the preceding sentence) by 15% in accordance with the terms of the Registrant's Employee Stock Purchase Plan.

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PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing the information specified in this Part I will be sent or given to employees, officers, directors or others as specified by Rule 428(b)(1). In accordance with the rules and regulations of the Commission and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424. Such documents, together with the documents incorporated by reference herein pursuant to Item 3 of Part II of this Registration Statement on Form S-8, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act, and are available upon written or oral request: NetApp, Inc., Attn: General Counsel, 495 East Java Drive, Sunnyvale, CA 94089, Tel: 408.822.6000.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

NetApp, Inc. (the "Registrant") hereby incorporates by reference into this Registration Statement the following documents previously filed with the Commission:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended April 24, 2009, filed with the Commission on June 17, 2009, pursuant to Section 13 of the Securities Exchange Act of 1934, as amended (the "1934 Act");
- (b) The Registrant's Current Report on Form 8-K, filed with the Commission on June 26, 2009;
- (c) The Registrant's Current Report on Form 8-K, filed with the Commission on July 9, 2009;
- (d) The Registrant's Current Report on Form 8-K, filed with the Commission on July 23, 2009;
- (e) The Registrant's Current Report on Form 8-K, filed with the Commission on August 25, 2009;
- (f) The Registrant's Current Report on Form 8-K, filed with the Commission on September 30, 2009;
- (g) The Registrant's Current Report on Form 8-K, filed with the Commission on October 20, 2009;
- (h) The Registrant's Quarterly Report on Form 10-Q for the quarter ended July 31, 2009, filed with the Commission on September 4, 2009, pursuant to Section 13 of the 1934 Act; and
- (i) The Registrant's Registration Statement No. 000-27130 on Form 8-A filed with the Commission on November 1, 1995, in which there is described the terms, rights and provisions applicable to the Registrant's Common Stock.

All reports and definitive proxy or information statements filed pursuant to Section 13(a), 13(c), 14 or 15(d) of the 1934 Act after the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which de-registers 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. 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 4. Description of Securities

Not applicable.

Item 5. Interests of Named Experts and Counsel

Not applicable.

Item 6. Indemnification of Directors and Officers

Section 145 of the Delaware General Corporation Law authorizes a court to award or a corporation's board of directors to grant indemnification to directors and officers in terms sufficiently broad to permit the indemnification under some circumstances for liabilities (including reimbursement for expenses incurred) arising under the Securities Act of 1933, as amended. Article IX of the Certificate of Incorporation of the Registrant provides that, subject to Delaware law, its directors will not be personally liable for monetary damages for breach of their fiduciary duties to the Registrant and its stockholders. This provision does not eliminate any director's fiduciary duties and in appropriate circumstances, equitable remedies such as injunctive or other forms of non-monetary relief will remain available under Delaware law. The provision also does not affect a director's responsibilities under any other law, such as the federal securities laws or state or federal environmental laws.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

| Exhibit Number | Documents |
|----------------|-----------|
|----------------|-----------|

- | | |
|------|---|
| 4.1 | The Registrant's Registration Statement No. 000-27130 on Form 8-A, filed with the Commission on November 1, 1995, in which there is described the terms, rights and provisions applicable to the Registrant's Common Stock. |
| 5.1 | Opinion of Wilson Sonsini Goodrich & Rosati, P.C. |
| 23.1 | Consent of Independent Registered Public Accounting Firm. |
| 23.2 | Consent of Wilson Sonsini Goodrich & Rosati, P.C. is contained in Exhibit 5.1 to this Registration Statement. |
| 24 * | Power of Attorney is contained on the signature page. |
| 99.1 | NetApp, Inc. Employee Stock Purchase Plan, previously filed with the Commission as an appendix to the Company's Proxy Statement, dated August 20, 2009. |

In accordance with the requirements of Item 8(b) of Part II of Form S-8, the Registrant will submit or has submitted the NetApp, Inc. Employee Stock Purchase Plan (the "Plan"), and any amendments thereto, to the Internal Revenue Service (the "IRS") in a timely manner and has made or will make all changes required by the IRS to qualify the Plan.

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement to include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act of 1934) that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

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 Sunnyvale, State of California, on October 26, 2009.

NetApp, Inc.

By: /s/ THOMAS GEORGENS
Thomas Georgens
Title: President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENT, that each person whose signature appears below constitutes and appoints Thomas Georgens and Steven J. Gomo, and each of them, as his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement on Form S-8, and to file the same, with all exhibits thereto, and 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 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 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 has been signed below by the following persons on behalf of the Company and in the capacities and on the dates indicated:

| <u>Signatures</u> | <u>Title</u> | <u>Date</u> |
|---|--|------------------|
| <u>/s/ THOMAS GEORGENS</u> (Thomas Georgens) | President and Chief Executive Officer, Director (Principal Executive Officer) | October 26, 2009 |
| <u>/s/ DANIEL J. WARMENHOVEN</u> (Daniel J. Warmenhoven) | Executive Chairman and Chairman of the Board, Director | October 26, 2009 |
| <u>/s/ STEVEN J. GOMO</u> (Steven J. Gomo) | Executive Vice President of Finance and Chief Financial Officer | October 26, 2009 |
| <u>/s/ DONALD T. VALENTINE</u> (Donald T. Valentine) | Director | October 26, 2009 |

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| <u>Signatures</u> | <u>Title</u> | <u>Date</u> |
|--|--------------|------------------|
| /s/ Mark Leslie (Mark Leslie) | Director | October 26, 2009 |
| /s/ Nicholas G. Moore (Nicholas G. Moore) | Director | October 26, 2009 |
| /s/ George T. Shaheen (George T. Shaheen) | Director | October 26, 2009 |
| /s/ Robert T. Wall (Robert T. Wall) | Director | October 26, 2009 |
| /s/ Jeffrey R. Allen (Jeffrey R. Allen) | Director | October 26, 2009 |
| /s/ Alan Earhart (Alan Earhart) | Director | October 26, 2009 |

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EXHIBIT INDEX

| Exhibit Number | Description |
|-----------------------|---|
| 4.1 | The Registrant's Registration Statement No. 000-27130 on Form 8-A, filed with the Commission on November 1, 1995, in which there is described the terms, rights and provisions applicable to the Registrant's Common Stock. |
| 5.1 | Opinion of Wilson Sonsini Goodrich & Rosati, P.C. |
| 23.1 | Consent of Independent Registered Public Accounting Firm. |
| 23.2 | Consent of Wilson Sonsini Goodrich & Rosati, P. C., is contained in Exhibit 5.1 to this Registration Statement. |
| 24* | Power of Attorney is contained on the signature page. |
| 99.1 | NetApp, Inc. Employee Stock Purchase Plan, previously filed with the Commission as an appendix to the Company's Proxy Statement, dated August 20, 2009. |

October 26, 2009
NetApp, Inc.
495 East Java Drive
Sunnyvale, California 94089

Ladies and Gentlemen:

You have requested our opinion with respect to certain matters in connection with the filing by NetApp, Inc. (the "Company") of a Registration Statement on Form S-8 (the "Registration Statement") with the Securities and Exchange Commission covering the offering of up to 6,700,000 shares of the Company's Common Stock, \$0.001 par value (collectively, the "Shares"), pursuant to its Employee Stock Purchase Plan (the "Plan").

In connection with this opinion, we have examined the Registration Statement, your Certificate of Incorporation and By-laws, as amended, and such other documents, records, certificates, memoranda and other instruments as we deem necessary as a basis for this opinion. We have assumed the genuineness and authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies thereof, and the due execution and delivery of all documents where due execution and delivery are a prerequisite to the effectiveness thereof.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when sold and issued in accordance with the Plan and the Registration Statement, will be validly issued, fully paid, and nonassessable.

We consent to the filing of this opinion as an exhibit to the Registration Statement.

Very truly yours,

/s/ Wilson Sonsini Goodrich & Rosati
Wilson Sonsini Goodrich & Rosati, P.C.

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 16, 2009 relating to (1) the consolidated financial statements of NetApp, Inc. and its subsidiaries (collectively, the “Company”) (which report expresses an unqualified opinion and includes an explanatory paragraph regarding the adoption of Financial Accounting Standards Board (“FASB”) Interpretation No. 48, *Accounting for Uncertainty in Income Taxes — an Interpretation of FASB Statement No. 109*), (2) the effectiveness of the Company’s internal control over financial reporting, (3) the consolidated financial statement schedule, appearing the Annual Report on Form 10-K of the Company for the year ended April 24, 2009, and (4) our report dated June 16, 2009 (except as to Notes 2 and 4 which are dated September 30, 2009 as to the effects of the retrospective adoption of FASB Staff Position APB 14-1, *Accounting for Convertible Debt Instruments that May be Settled in Cash upon Conversion (Including Partial Cash Settlement)* (“FSP APB 14-1”) which became effective April 25, 2009) , included in the Current Report on Form 8-K dated September 30, 2009.

/s/ DELOITTE & TOUCHE LLP

San Jose, California
October 26, 2009