
**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)

77-0307520
(I.R.S. Employer
Identification Number)

**3060 Olsen Drive
San Jose, California**
(Address of principal executive offices)

95128
(Zip code)

**NetApp, Inc. 2021 Equity Incentive Plan
NetApp, Inc. Employee Stock Purchase 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
Non-accelerated filer

Accelerated filer
Smaller reporting company
Emerging growth company

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.

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered(1)(2)	Proposed Maximum Offering Price Per Share(3)	Proposed Maximum Aggregate Offering Price(3)	Amount of Registration Fee(4)
Common Stock, par value \$0.001 per share reserved for issuance under the NetApp, Inc. 2021 Equity Incentive Plan	9,765,221	\$89.05	\$869,592,930.05	\$94,872.59
Common Stock, par value \$0.001 per share reserved for issuance under the NetApp, Inc. Employee Stock Purchase Plan	3,000,000	\$89.05	\$267,150,000.00	\$29,146.07
Total	12,765,221		\$1,136,742,930.05	\$124,018.65

- (1) Represents an aggregate 12,765,221 shares of common stock, par value \$0.001 per share (the "**Common Stock**"), of NetApp, Inc. (the "**Registrant**") that may be issued pursuant to the NetApp, Inc. 2021 Equity Incentive Plan (the "**2021 Plan**") and the NetApp, Inc. Employee Stock Purchase Plan (as amended, the "**Purchase Plan**" and together with the 2021 Plan, the "**Plans**").
- (2) 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 Common Stock that become issuable under the Plans by reason of certain corporate transactions or events, including any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration that increases the number of outstanding shares of the Common Stock.
- (3) 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 proposed maximum offering price per share is based upon the average of the high and low prices of the Common Stock as reported on the Nasdaq Global Select Market on September 8, 2021.
- (4) Determined in accordance with Section 6(b) of the Securities Act at a rate equal to \$109.10 per \$1,000,000 of the proposed maximum aggregate offering price.

EXPLANATORY NOTE

NetApp, Inc. has prepared this registration statement in accordance with the requirements of Form S-8 under the Securities Act to register 12,765,221 shares of its Common Stock, par value \$0.001 per share, issuable pursuant to the NetApp, Inc. 2021 Equity Incentive Plan and the NetApp, Inc. Employee Stock Purchase Plan.

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 employees, officers, directors or others as specified by Rule 428(b)(1) under the Securities Act. In accordance with the rules and regulations of the U.S. Securities and Exchange Commission (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 under the Securities 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 Securities Act, and are available upon written or oral request to: NetApp, Inc., Attn: General Counsel, 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 30, 2021, filed with the Commission on June 21, 2021, 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 30, 2021, filed with the Commission on September 2, 2021 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 [June 2, 2021](#) and [September 13, 2021](#); and
- (d) The Registrant’s Registration Statement No. 000-27130 on Form 8-A filed with the Commission on November 1, 1995, which contains a description of the terms, rights and provisions applicable to the Common Stock, 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 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 (the “**DGCL**”) 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. Article IX of the Registrant’s Certificate of Incorporation, as amended, 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, except for any matter in respect of which such director shall be liable under Section 174 of the DGCL or any amendment thereto or shall be liable by reason that, in addition to any and all other requirements for such liability, such director (1) shall have breached the director’s duty or loyalty to the Registrant or its stockholders, (2) shall have acted in a manner involving intentional misconduct or a knowing violation of law or, in failing to act, shall have acted in a manner involving intentional misconduct or a knowing violation of law, or (3) shall have derived an improper personal benefit. 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.

Article VII of the Registrant’s Amended and Restated Bylaws (the “**Bylaws**”) provides for indemnification of its directors to the fullest extent authorized under Delaware law. The Bylaws also provide that:

- The Registrant is required to advance the expenses, as incurred, of any such individual in connection with defending a proceeding, action or suit by reason of such individual’s serving on behalf of and at the Registrant’s request, except that such officer or director shall undertake to repay such advances if it is ultimately determined that such person is not entitled to indemnification.
- The rights conferred in the Bylaws are not exclusive, and the Registrant is authorized to enter into indemnification arrangements with any person other than a director who is made a party to any action, suit or proceedings by reason of the fact that he is or was an officer or employee of the Registrant.
- The Registrant may not retroactively amend the Bylaw provisions described above to reduce its indemnification obligations to its directors, officers, employees and agents.

In addition, the Registrant’s policy is to enter into separate indemnification agreements with each of its directors and executive officers to provide for the maximum indemnification allowed to directors and executive officers by Section 145 of the DGCL and which allow for certain additional procedural protections. The Registrant also maintains directors and officers insurance to insure such persons against certain liabilities.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

<u>Exhibit Number</u>	<u>Documents</u>
4.1	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).
4.2	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).
5.1*	Opinion of Skadden, Arps, Slate, Meagher & Flom LLP.
23.1*	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm.
23.2*	Consent of Skadden, Arps, Slate, Meagher & Flom LLP (contained in Exhibit 5.1 to this Registration Statement).
24.1*	Power of Attorney (contained on the signature page of this Registration Statement).
99.1	NetApp, Inc. 2021 Equity Incentive Plan (filed with the Commission on July 30, 2021 as Appendix A to the Registrant's 2021 Proxy Statement (Commission File No. 000-27130) and incorporated herein by reference).
99.2	NetApp, Inc. Employee Stock Purchase Plan, as amended (filed with the Commission on July 30, 2021 as Appendix B to the Registrant's 2021 Proxy Statement (Commission File No. 000-27130) and incorporated herein by reference).

* Filed herewith.

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:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement;

(iii) 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;

Provided, however, that Paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the 1934 Act (15 U.S.C. 78m or 78o(d)) that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, 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.

(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, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the 1934 Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the 1934 Act) 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 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 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 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 San Jose, State of California, on September 14, 2021.

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 14, 2021
<u>/s/ Michael J. Berry</u> Michael J. Berry	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	September 14, 2021
<u>/s/ Robert Parks</u> Robert Parks	Vice President and Chief Accounting Officer (Principal Accounting Officer)	September 14, 2021
<u>/s/ T. Michael Nevens</u> T. Michael Nevens	Chairman of the Board	September 14, 2021
<u>/s/ Deepak Ahuja</u> Deepak Ahuja	Director	September 14, 2021
<u>/s/ Gerald Held</u> Gerald Held	Director	September 14, 2021
<u>/s/ Kathryn M. Hill</u> Kathryn M. Hill	Director	September 14, 2021

<u>/s/ Deborah L. Kerr</u> Deborah L. Kerr	Director	September 14, 2021
<u>/s/ Scott Schenkel</u> Scott Schenkel	Director	September 14, 2021
<u>/s/ George T. Shaheen</u> George T. Shaheen	Director	September 14, 2021

Skadden, Arps, Slate, Meagher & Flom LLP
525 University Avenue
Palo Alto, California 94301
(650) 470-4500

September 14, 2021

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 of the Company (together with the exhibits thereto, the “Registration Statement”) to be filed on the date hereof with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Securities Act”). The Registration Statement relates to the issuance by the Company from time to time, pursuant to Rules 415 and 416, as applicable, of the General Rules and Regulations of the Commission promulgated under the Securities Act (the “Rules and Regulations”) of up to 12,765,221 shares (the “Shares”) of the Company’s common stock, par value \$0.001 per share, issuable pursuant to the NetApp, Inc. 2021 Equity Incentive Plan (the “2021 Plan”) and 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 under the Securities Act.

In rendering the opinion set forth herein, we have examined and relied on the following:

- (a) the Registration Statement in the form filed with the Commission on the date hereof;
- (b) an executed copy of a certificate of Matthew Fawcett, Executive Vice President, Chief Strategy and Legal Officer, and Secretary of the Company, dated the date hereof (the “Secretary’s Certificate”);
- (c) a copy of the 2021 Plan, certified pursuant to the Secretary’s Certificate;
- (d) a copy of the Purchase Plan, certified pursuant to the Secretary’s Certificate;
- (e) a copy of the Company’s Amended and Restated 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;
- (f) 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;
- (g) a specimen certificate representing the Shares, certified pursuant to the Secretary’s Certificate; and
- (h) copies of certain resolutions of the Board of Directors of the Company relating to the approval of the Plans, the filing of the Registration Statement and 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 law of any jurisdiction other than the laws of the General Corporation Law of the State of Delaware.

Based upon the foregoing and subject to the foregoing, 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 Rules and Regulations. 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 law.

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 21, 2021, 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 Company's Annual Report on Form 10-K for the year ended April 30, 2021.

/s/ DELOITTE & TOUCHE LLP

San Jose, California
September 14, 2021