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

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**FORM 8-K**

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**CURRENT REPORT  
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported):  
June 3, 2009**

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**NetApp, Inc.**  
(Exact name of registrant as specified in its charter)

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**Delaware  
(State or other jurisdiction  
of incorporation)**

**0-27130  
(Commission File Number)**

**77-0307520  
(IRS Employer  
Identification No.)**

**495 East Java Drive  
Sunnyvale, CA 94089  
(Address of principal executive offices, including zip code)**

**(408) 822-6000  
(Registrant's telephone number, including area code)**

**Not Applicable  
(Former name or former address, if changed since last report.)**

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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#### **Item 1.01 Entry into a Material Definitive Agreement.**

On June 3, 2009, NetApp, Inc., a Delaware corporation ("*NetApp*"), Data Domain, Inc., a Delaware corporation ("*Data Domain*"), Kentucky Merger Sub One Corporation, a Delaware corporation and a direct, wholly-owned subsidiary of NetApp ("*Merger Sub One*"), and Derby Merger Sub Two LLC, a Delaware limited liability company and a direct, wholly-owned subsidiary of NetApp ("*Merger Sub Two*") and together with Merger Sub One, the "*Merger Subs*", entered into Amendment No. 1 (the "*Amendment*") to the Agreement and Plan of Merger, dated as of May 20, 2009, by and among NetApp, Data Domain and the Merger Subs (as amended, the "*Merger Agreement*"). Under the revised terms, the aggregate merger consideration payable by NetApp to the Data Domain stockholders in connection with the Merger (as defined in the Merger Agreement) has been increased from \$25 per share to \$30 per share, as described below.

As amended, upon the closing of the Merger, each outstanding share of Data Domain common stock (other than those shares with respect to which appraisal rights are properly exercised and not withdrawn) will be converted into the right to receive (a) \$16.45 per share in cash, without interest (the per share amount of cash being referred to as the "*Cash Consideration*"), plus (b) a number of validly issued, fully paid and non-assessable shares of NetApp common stock equal to the following exchange ratio (the "*Exchange Ratio*"):

- (i) 0.7783 shares of NetApp common stock if the Closing Average (as defined below) is less than \$17.41,
- (ii) 0.6370 shares of NetApp common stock if the Closing Average is greater than \$21.27, and
- (iii) that fraction of a share of NetApp common stock (rounded to the nearest ten thousandth) equal to the quotient obtained by dividing \$13.55 by the Closing Average, if the Closing Average is (A) less than or equal to \$21.27 and (B) greater than or equal to \$17.41 (the per share amount of stock referenced in (i), (ii) or (iii) above, as applicable, being referred to as the "*Stock Consideration*").

The "*Closing Average*" is defined as the average of the closing sales prices for NetApp common stock, rounded to the nearest one-hundredth of a cent, on NASDAQ for the ten most recent consecutive trading days ending on the third trading day immediately prior to the closing of the Merger.

In the event that the Exchange Ratio is greater than or equal to 0.7006 and less than 0.7783, NetApp, in its sole discretion, may (a) reduce the Stock Consideration by such amount as NetApp may determine and (b) increase the Cash Consideration by an amount equal to the product of (i) the amount of the such reduction in the Stock Consideration multiplied by (ii) the Closing Average. However, NetApp may not reduce the amount of the Stock Consideration and increase the Cash Consideration to the extent that it would reasonably be expected to cause the Merger to fail to qualify as a tax-free reorganization under the Internal Revenue Code, except as may be required as described in the paragraph below. The parties can make no assurances as to the tax-free status of the transaction.

If the aggregate amount of the Stock Consideration issuable in the Merger (including Stock Consideration issuable to holders of Data Domain options, restricted stock and restricted shares) would exceed 19.5% of the outstanding shares of NetApp common stock immediately prior to the closing of the Merger, the Stock Consideration will be decreased to the minimum extent necessary so that no more than 19.5% of the outstanding shares of NetApp common stock will be issued in the Merger (with such percentage measured immediately prior to the closing of the Merger). In such event, the Cash Consideration will be increased by an amount equal to the product of (a) the amount of the reduction in the Stock Consideration multiplied by (b) the Closing Average.

Other than as described above, the Merger Agreement, as filed on May 21, 2009 on a Current Report on Form 8-K, remains in full force and effect as originally executed on May 20, 2009. The foregoing description of the Amendment does not purport to be complete and is qualified in its entirety by reference to the Amendment, which is filed as Exhibit 2.1 hereto and incorporated into this report by reference.

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**Item 8.01 Other Information.**

On June 3, 2009, NetApp issued a press release relating to its offer to increase the merger consideration payable by NetApp to the Data Domain stockholders in connection with the Merger. A copy of the press release is attached hereto as Exhibit 99.1. Later on the same day, NetApp and Data Domain issued a joint press release announcing the execution of the Amendment by the parties. A copy of the joint press release is attached hereto as Exhibit 99.3.

**Additional Information and Where to Find It**

NetApp plans to file with the SEC a Registration Statement on Form S-4 in connection with the transaction and Data Domain plans to file with the SEC and mail to its stockholders a Proxy Statement/Prospectus in connection with the transaction. The Registration Statement and the Proxy Statement/Prospectus will contain important information about NetApp, Data Domain, the transaction and related matters. Investors and security holders are urged to read the Registration Statement and the Proxy Statement/Prospectus carefully when they are available. Investors and security holders will be able to obtain free copies of the Registration Statement and the Proxy Statement/Prospectus and other documents filed with the SEC by NetApp and Data Domain through the web site maintained by the SEC at [www.sec.gov](http://www.sec.gov) and by contacting NetApp Investor Relations at (408) 822-7098 or Data Domain Investor Relations at (408) 980-4909. In addition, investors and security holders will be able to obtain free copies of the documents filed with the SEC on NetApp's website at [www.netapp.com](http://www.netapp.com) and on Data Domain's website at [www.datadomain.com](http://www.datadomain.com).

**Participants in the Acquisition of Data Domain**

NetApp, Data Domain and their respective directors, executive officers and certain other members of management and employees may be deemed to be participants in the solicitation of proxies in respect of the proposed transaction. Information regarding these persons who may, under the rules of the SEC, be considered participants in the solicitation of Data Domain stockholders in connection with the proposed transaction will be set forth in the Proxy Statement/Prospectus described above when it is filed with the SEC. Additional information regarding NetApp's executive officers and directors is included in NetApp's definitive proxy statement, which was filed with the SEC on July 14, 2008, and additional information regarding Data Domain's executive officers and directors is included in Data Domain's Annual Report on Form 10-K/A for fiscal year ended December 31, 2008, which was filed with the SEC on April 30, 2009. You can obtain free copies of these documents from NetApp or Data Domain using the contact information above.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
2.1	Amendment No. 1 to Agreement and Plan of Merger, dated as of June 3, 2009, by and among NetApp, Inc. and Data Domain, Inc., Kentucky Merger Sub One Corporation, and Derby Merger Sub Two LLC.
99.1	Press Release by NetApp, Inc., dated June 3, 2009.
99.2	Offer Letter to the Board of Directors of Data Domain, Inc. (Disseminated by NetApp as an attachment to the Press Release filed as exhibit 99.1 hereto.)
99.3	Joint Press Release by NetApp, Inc. and Data Domain, Inc., dated June 3, 2009.

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**NETAPP, INC.**

Date: June 3, 2009

By: /s/ Andrew Kryder  
Andrew Kryder  
Secretary, General Counsel and Senior Vice President,  
Legal and Tax

**AMENDMENT NO. 1 TO  
AGREEMENT AND PLAN OF MERGER**

This Amendment No. 1 (this "Amendment") to that certain Agreement and Plan of Merger (the "Merger Agreement") by and among NetApp, Inc., a Delaware corporation ("Parent"), Kentucky Merger Sub One Corporation, a Delaware corporation and a direct, wholly-owned subsidiary of Parent ("Merger Sub One"), Derby Merger Sub Two LLC, a Delaware limited liability company and a direct, wholly-owned subsidiary of Parent ("Merger Sub Two" and together with Merger Sub One, the "Merger Subs"), and Data Domain, Inc., a Delaware corporation (the "Company") is made and entered into as of June 3, 2009 by and among Parent, Merger Sub One, Merger Sub Two and the Company. All capitalized terms that are used in this Amendment but not defined in this Amendment shall have the respective meanings ascribed thereto in the Merger Agreement.

WHEREAS, on June 1, 2009, the Company received an unsolicited acquisition proposal from EMC Corporation and EMC Corporation commenced a tender offer to acquire all outstanding shares of Company Common Stock;

WHEREAS, on June 2, 2009, Parent offered to amend the Merger Agreement on the terms set forth herein;

WHEREAS, each of the respective Board of Directors of Parent, the Merger Subs and the Company has approved this Amendment and the transactions contemplated hereby, and deems it advisable and in the best interests of their respective stockholders to enter into this Amendment and consummate the transactions contemplated hereby pursuant to which, among other things, and as a single integrated transaction, Merger Sub One will be merged with and into the Company (the "First Step Merger" or the "Merger") in accordance with the applicable provisions of the General Corporation Law of the State of Delaware (the "DGCL"), the Company will continue as the surviving corporation of the First Step Merger and each share of the Company Common Stock outstanding immediately prior to the Effective Time will be cancelled and converted into the right to receive the consideration set forth herein, all upon the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the representations, warranties, covenants and agreements set forth herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted, and intending to be legally bound hereby, Parent, the Merger Subs and the Company hereby agree as follows:

1. Amendments to Section 1.1(cc). Section 1.1(cc) of the Merger Agreement is hereby amended and restated in its entirety and replaced with the following:

"(cc) "Exchange Ratio" shall mean, subject to adjustment pursuant to Section 2.7(b)(i) and Section 2.7(b)(ii):

(i) 0.7783 shares of Parent Common Stock if the Closing Average is less than \$17.41;

(ii) 0.6370 shares of Parent Common Stock if the Closing Average is greater than \$21.27; and

(iii) that fraction of shares of Parent Common Stock (rounded to the nearest ten thousandth) equal to the quotient obtained by dividing \$13.55 by the Closing Average, if the Closing Average is (A) less than or equal to \$21.27 and (B) greater than or equal to \$17.41.

2. Amendment to Section 2.7(b)(i). Section 2.7(b)(i) of the Merger Agreement is hereby amended and restated in its entirety and replace with the following:

“(i) Each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (other than any Dissenting Company Shares), including any Company Restricted Stock that shall have ceased, as a result of or immediately prior to the Effective Time, to be unvested or subject to a repurchase option, risk of forfeiture or other condition pursuant to the terms of such Company Stock Award or other agreement governing such Company Restricted Stock (which shall include any vesting as a result of any termination of employment or transaction contemplated by employee agreements and any resignation delivered pursuant to Section 6.13) shall be canceled and extinguished and automatically converted into the right to receive a combination of (A) \$16.45 in cash, without interest (such per share cash amount being referred to herein as the “Cash Consideration”) plus (B) a number of validly issued, fully paid and nonassessable shares of Parent Common Stock equal to the Exchange Ratio (such per share amount being referred to herein as the “Stock Consideration”) upon the surrender of the certificate representing such share of Company Common Stock (or the receipt of an agent’s message in the case of Book-Entry Shares) in the manner set forth in Section 2.9 (or in the case of a lost, stolen or destroyed certificate, upon delivery of an affidavit (and bond, if required) in the manner set forth in Section 2.11). Notwithstanding the foregoing sentence, if the Exchange Ratio is (A) greater than or equal to 0.7006, and (B) less than 0.7783, then Parent, in its sole discretion and subject to the following sentence, may reduce the Stock Consideration by such amount as Parent may determine. If Parent elects to reduce the amount of the Stock Consideration pursuant to the preceding sentence, then the Cash Consideration shall be increased by an amount equal to the product of (A) the amount of such reduction in the Stock Consideration pursuant to the preceding sentence multiplied by (B) the Closing Average. For all purposes of and under this Agreement, the term “Merger Consideration” shall mean the Cash Consideration plus the Stock Consideration, each as adjusted by this Section 2.7(b)(i) and Section 2.7(b)(ii) together with any cash payable under Section 2.7(b)(iv) with respect to each share of Company Common Stock in lieu of a fractional share of Parent Common Stock otherwise issuable pursuant hereto.”

3. Additional Representations and Warranties of the Company. The Company hereby represents and warrants to Parent, Merger Sub One and Merger Sub Two as follows (each of which representations and warranties shall be deemed, for all purposes of and under the Merger Agreement, to form a part of Section 3.2 of the Merger Agreement):

(a) Corporate Approvals.

(i) The Company has all requisite corporate power and authority to execute and deliver this Amendment, to perform its obligations under the Agreement (as amended by this Amendment), and subject to obtaining the Requisite Merger Approval, to consummate the transactions contemplated by the Agreement (as amended by this Amendment). The execution and delivery of this Amendment by the Company, the performance by the Company of its obligations under the Agreement (as amended by this Amendment), and the consummation by the Company of the transactions contemplated by the Agreement (as amended by this Amendment) have been duly authorized by all necessary corporate action on the part of the Company other than, in the case of the consummation of the Merger, (i) the filing with the SEC of a proxy statement with respect to and obtaining the Requisite Merger Approval and (ii) the filing of the Certificate of Merger as required by the DGCL, and no additional corporate or other actions or proceedings on the part of the Company are necessary to authorize this Amendment or the consummation of the transactions contemplated by the Agreement (as amended by this Amendment). This Amendment has been duly executed and delivered by the Company and, assuming the due authorization, execution and delivery by Parent, Merger Sub One and Merger Sub Two, constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except that such enforceability may be limited by applicable bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium and other similar laws affecting or relating to creditors rights generally and is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

(ii) At a meeting duly called and held on June 3, 2009, the Company Board unanimously (i) determined that the Agreement (as amended by this Amendment) is advisable, (ii) determined that the Agreement (as amended by this Amendment) is fair to, and in the best interests of, the Company's stockholders, (iii) approved the execution and delivery of this Amendment by the Company, the performance by the Company of its covenants and obligations set forth in the Agreement (as amended by this Amendment) and the consummation of the Merger and the transactions contemplated by the Agreement (as amended by this Amendment) upon the terms and conditions set forth in the Agreement (as amended by this Amendment), and (iv) resolved to recommend that the stockholders of the Company approve the Merger Proposal at the Company Stockholder Meeting. As of the date hereof, the Company Board has not rescinded or modified in any way the foregoing determinations and actions.

4. Additional Representations and Warranties of Parent and the Merger Subs. Each of Parent, Merger Sub One and Merger Sub Two hereby represents and warrants to the Company as follows (each of which representations and warranties shall be deemed, for all purposes of and under the Merger Agreement, to form a part of Section 4.2 of the Merger Agreement):

(a) Corporate Approvals.

(i) Each of Parent, Merger Sub One and Merger Sub Two has all requisite corporate power and authority to execute and deliver this Amendment and to consummate the transactions contemplated by the Agreement (as amended by this Amendment) and to perform its obligations under the Agreement (as amended by this Amendment). The execution and delivery of this Amendment by Parent, Merger Sub One and Merger Sub Two, the performance by Parent, Merger Sub One and Merger Sub Two of their respective obligations under the Agreement (as amended by this Amendment), and, assuming the accuracy in all respects of the representations and warranties of the Company set forth in Section 3.4 and the compliance in all respects by the Company with the restrictions set forth in Section 5.2(b), the consummation by Parent, Merger Sub One and Merger Sub Two of the transactions contemplated by the Agreement (as amended by this Amendment) have been duly authorized by all necessary corporate action on the part of Parent, Merger Sub One and Merger Sub Two and no additional corporate or other actions or proceedings (including a vote of Parent's stockholders) on the part of Parent, Merger Sub One or Merger Sub Two are necessary to authorize this Amendment or the consummation of the transactions contemplated by the Agreement (as amended by this Amendment). This Amendment has been duly executed and delivered by each of Parent, Merger Sub One and Merger Sub Two and, assuming the due authorization, execution and delivery by the Company, constitutes a legal, valid and binding obligation of each of Parent, Merger Sub One and Merger Sub Two, enforceable against each of them in accordance with its terms, except that such enforceability may be limited by applicable bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium and other similar laws affecting or relating to creditors rights generally and is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

(iii) At a meeting duly called and held on June 2, 2009, the Parent Board unanimously (i) determined that the Agreement (as amended by this Amendment) is advisable, (ii) determined that the Agreement (as amended by this Amendment) is fair to, and in the best interests of, the stockholders of Parent, and (iii) approved this Amendment and the transactions contemplated by the Agreement (as amended by this Amendment). As of the date hereof, the Parent Board has not rescinded or modified in any way the foregoing determinations and actions. Pursuant to action taken by written consent on June 2, 2009, the board of directors of Merger Sub One unanimously (i) determined that the Agreement (as amended by this Amendment) is advisable, (ii) determined that the Agreement (as amended by this Amendment) is fair to, and in the best interests of, the sole



stockholder of Merger Sub One, and (iii) approved this Amendment and the transactions contemplated by the Agreement (as amended by this Amendment). As of the date hereof, the board of directors of Merger Sub One has not rescinded or modified in any way the foregoing determinations and actions. Pursuant to action taken by written consent on June 2, 2009, the board of managers of Merger Sub Two unanimously (i) determined that the Agreement (as amended by this Amendment) is advisable, (ii) determined that the Agreement (as amended by this Amendment) is fair to, and in the best interests of, the stockholder of Merger Sub Two, and (iii) approved this Amendment and the transactions contemplated by the Agreement (as amended by this Amendment). As of the date hereof, the board of managers of Merger Sub Two has not rescinded or modified in any way the foregoing determinations and actions.

5. Merger Agreement References. The parties hereto hereby agree that all references to the "Agreement" set forth in the Merger Agreement (including, without limitation, in the representations and warranties of the parties set forth therein) shall be deemed to be references to the Merger Agreement as amended by this Amendment.

6. Full Force and Effect. Except as expressly amended or modified hereby, the Merger Agreement and the agreements, documents, instruments and certificates among the parties hereto as contemplated by, or referred to, in the Merger Agreement shall remain in full force and effect without any amendment or other modification thereto.

7. Counterparts. This Amendment may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed by their respective duly authorized officers to be effective as of the date first above written.

**NETAPP, INC.**

By: /s/ Steven J. Gomo  
Name: Steven J. Gomo  
Title: EVP & CFO

**DATA DOMAIN, INC.**

By: /s/ Frank Sloomman  
Name: Frank Sloomman  
Title: President & CEO

**KENTUCKY MERGER SUB ONE CORPORATION**

By: /s/ Andrew Kryder  
Name: Andrew Kryder  
Title: President

**DERBY MERGER SUB TWO LLC**

By: /s/ Andrew Kryder  
Name: Andrew Kryder  
Title: President

**AMENDMENT NO. 1 TO AGREEMENT AND PLAN OF MERGER**

## NetApp Makes Revised Offer to Acquire Data Domain

**Sunnyvale, Calif.—June 3, 2009**— NetApp (NASDAQ:NTAP) today announced that it has made a revised proposal to acquire Data Domain (NASDAQ:DDUP). Under the terms of the proposal, a copy of which is attached, NetApp will acquire all of the outstanding shares of Data Domain common stock for \$30 per share in cash and stock in a transaction valued at approximately \$1.9B, net of Data Domain's cash, subject to certain adjustments.

“Our strategic rationale remains the same and we firmly believe that the combination of our two companies will provide a greater opportunity and risk-adjusted value for Data Domain shareholders, customers, and partners,” said Dan Warmenhoven, chairman and CEO of NetApp. “The complementary nature of the Data Domain and NetApp product lines will result in higher aggregate growth compared to the redundancies that would result with the EMC product line.”

The Data Domain portfolio provides NetApp a complementary offering to expand its reach in the market for heterogeneous disk-based backup. The Data Domain acquisition will increase NetApp's ability to capitalize on the growth of disk-based backup adoption, a trend accelerated by the economics of deduplication.

NetApp's offer for Data Domain is also superior to EMC's previously announced, unsolicited proposal, as it offers a combination of value certainty and the opportunity for Data Domain shareholders to participate in the future success of the combined NetApp and Data Domain entity.

Warmenhoven added, “The cultural compatibility between Data Domain and NetApp will maximize the potential for continued innovation from a creative and motivated employee base. This will not only create a meaningful choice for our customers but also lead to a complementary combination with no obstacles to an expeditious close of the acquisition. Therefore, we are as committed to this partnership now as we were when we first announced our intent to acquire Data Domain.”

NetApp first announced its definitive agreement to acquire Data Domain on May 20, 2009. For complete details on this acquisition, visit the page [NetApp to Acquire Data Domain](#) or [www.netapp.com](http://www.netapp.com).

### Forward-Looking Statements

This press release contains forward-looking statements, which involve a number of risks and uncertainties. NetApp and Data Domain caution readers that any forward-looking information is not a guarantee of future performance and that actual results could differ materially from those contained in the forward-looking information. All such forward-

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looking statements include, but are not limited to, statements about the benefits of NetApp's acquisition of Data Domain, including future financial and operating results, NetApp's plans, objectives, expectations and intentions and other statements that are not historical facts.

The following factors, among others, could cause actual results to differ from those set forth in the forward-looking statements: the ability to obtain regulatory approvals of the transaction on the proposed terms and schedule; the failure of Data Domain stockholders to approve the transaction; the risk that the businesses will not be integrated successfully; the risk that the cost savings and any other synergies from the transaction may not be fully realized or may take longer to realize than expected; disruption from the transaction making it more difficult to maintain relationships with customers, employees or suppliers; and competition and its effect on pricing, spending, third-party relationships and revenues. Additional factors that may affect future results are contained in NetApp's and Data Domain's filings with the SEC, which are available at the SEC's web site <http://www.sec.gov>. NetApp and Data Domain disclaim any obligation to update and revise statements contained in these materials based on new information or otherwise.

#### **Additional Information and Where to Find It**

NetApp plans to file with the SEC a Registration Statement on Form S-4 in connection with the transaction, and Data Domain plans to file with the SEC and mail to its stockholders a Proxy Statement/Prospectus in connection with the transaction. The Registration Statement and the Proxy Statement/Prospectus will contain important information about NetApp, Data Domain, the transaction and related matters. Investors and security holders are urged to read the Registration Statement and the Proxy Statement/Prospectus carefully when they are available. Investors and security holders will be able to obtain free copies of the Registration Statement and the Proxy Statement/Prospectus and other documents filed with the SEC by NetApp and Data Domain through the web site maintained by the SEC at [www.sec.gov](http://www.sec.gov) and by contacting NetApp Investor Relations at (408) 822-7098 or Data Domain Investor Relations at (408) 980-4909. In addition, investors and security holders will be able to obtain free copies of the documents filed with the SEC on NetApp's website at [www.netapp.com](http://www.netapp.com) and on Data Domain's website at [www.datadomain.com](http://www.datadomain.com).

#### **Participants in the Acquisition of Data Domain**

NetApp, Data Domain and their respective directors, executive officers and certain other members of management and employees may be deemed to be participants in the solicitation of proxies in respect of the proposed transaction. Information regarding these persons who may, under the rules of the SEC, be considered participants in the solicitation of Data Domain stockholders in connection with the proposed transaction will be set forth in the Proxy Statement/Prospectus described above when it is filed with the SEC. Additional information regarding NetApp's executive officers and directors is included in NetApp's definitive proxy statement, which was filed with the SEC on July 14, 2008, and

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additional information regarding Data Domain's executive officers and directors is included in Data Domain's Annual Report on Form 10-K/A for fiscal year ended December 31, 2008, which was filed with the SEC on April 30, 2009. You can obtain free copies of these documents from NetApp or Data Domain using the contact information above.

**About NetApp**

NetApp creates innovative storage and data management solutions that help our customers deliver outstanding cost efficiency and accelerate business breakthroughs. Discover our passion for helping companies around the world go further, faster at [www.netapp.com](http://www.netapp.com).

June 2, 2009

Aneel Bhusri  
Chairman of the Board of Directors  
Data Domain, Inc.  
2421 Mission College Boulevard  
Santa Clara, CA 95054

Dear Aneel:

On behalf of NetApp, I am pleased to reiterate our continued interest and enthusiasm for a potential combination of Data Domain and NetApp. As you know, we believe that a combination has the potential to create a combined company that is unparalleled in its position to add real value for our customers by solving their storage efficiency needs.

In light of EMC's recently announced unsolicited proposal to acquire Data Domain, we would like to propose a revised transaction between NetApp and Data Domain which we believe offers Data Domain's stockholders a superior combination of risk-adjusted value and transaction certainty than EMC's unsolicited acquisition proposal.

Pursuant to the terms of the attached amendment to our existing Agreement and Plan of Merger (the "Merger Agreement"), we are proposing to revise the Merger Agreement to deliver \$30 per share in total value to Data Domain stockholders, consisting of \$16.45 per share in cash (before any adjustments described in Sections 2.7(b)(i) and 2.7(b)(ii) of the Merger Agreement) and \$13.55 per share in NetApp stock based on NetApp's closing share price on June 2, 2009 of \$19.34. As with the terms of our existing Merger Agreement, our amended Merger Agreement would include a 10% symmetrical collar, centered on a midpoint derived from NetApp's closing share price of \$19.34. Accordingly, the exchange ratio for the stock component of the merger consideration set forth in the amended Merger Agreement would be equal to (i) 0.7783 shares of NetApp common stock if the "Closing Average" (as defined in the Merger Agreement) is less than \$17.41, (ii) 0.6370 shares of NetApp common stock if the "Closing Average" is greater than \$21.27, and (iii) that fraction of a share of NetApp common stock equal to the quotient obtained by dividing \$13.55 by the "Closing Average", if the "Closing Average" is (A) less than or equal to \$21.27 and (B) greater than or equal to \$17.41. In order to maximize deal certainty, NetApp would expect to use cash to settle the low end of the collar. Under the terms of our proposal, all other terms of the amended Merger Agreement would remain unchanged from those set forth in the existing Merger Agreement.

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We believe this proposal offers Data Domain stockholders more compelling risk-adjusted value than EMC's current acquisition proposal for several reasons. First, it offers a combination of value certainty — through the cash and the collar — coupled with the potential for long-term value upside through the ongoing ownership of NetApp stock. Second, the stock portion of the transaction consideration is expected to be tax-free to Data Domain stockholders. And third and potentially most important, we believe that a combination of Data Domain and NetApp offers clearly superior transaction certainty. Unlike a combination of Data Domain and EMC, which has substantial product overlap and which we believe will face significant regulatory challenges, a combination of Data Domain and NetApp has no meaningful regulatory risk.

We look forward to discussing the terms of this proposal in greater detail at your earliest convenience. For your convenience and to express the sincerity of our intent, we have included a signed copy of our proposed amendment to the Merger Agreement. We note, however, that this proposal and the Merger Agreement amendment attached hereto are non-binding and we reserve the right to withdraw this proposal and the Merger Agreement amendment at any time unless and until the signed copy of the Merger Agreement amendment attached hereto is counter-signed by Data Domain and returned to us without any revisions thereto. Any purported revisions to the attached Merger Agreement amendment shall not be accepted by us and shall be considered void, notwithstanding the execution thereof by Data Domain.

Sincerely,  
Steven Gomo

FOR IMMEDIATE DISTRIBUTION

**NETAPP AND DATA DOMAIN ENTER INTO REVISED  
ACQUISITION AGREEMENT**

**Sunnyvale, Calif. and Santa Clara, Calif.—June 3, 2009**—NetApp (NASDAQ:NTAP) and Data Domain (NASDAQ:DDUP) today announced that they have entered into a revised acquisition agreement under which NetApp will acquire all of the outstanding shares of Data Domain common stock for \$30 per share in cash and stock in a transaction valued at approximately \$1.9B, net of Data Domain's cash.

"We are excited about this great opportunity for NetApp and Data Domain," said Dan Warmenhoven, chairman and CEO of NetApp. "The synergies between our two companies will enable us to accelerate growth and market adoption more so than as separate entities. This partnership will create meaningful benefits for our global customers."

"We are pleased with the revised terms of NetApp's acquisition offer and feel it will provide great value to our shareholders and customers," said Frank Sloodman, president and CEO of Data Domain.

**Transaction Details**

Data Domain stockholders will have a right to receive a cash amount of \$16.45 plus shares of NetApp common stock equal to the exchange ratio for each Data Domain share. The exchange ratio is equal to (i) 0.7783 shares of NetApp common stock if the "Closing Average" (as defined in the Merger Agreement) is less than \$17.41, (ii) 0.6370 shares of NetApp common stock if the Closing Average is greater than \$21.27, and (iii) that fraction of a share of NetApp common stock equal to the quotient obtained by dividing \$13.55 by the Closing Average, if the Closing Average is (A) less than or equal to \$21.27 and (B) greater than or equal to \$17.41. The closing average means the average of the closing sales prices for NetApp common stock as reported on the NASDAQ Global Select Market for the 10 most recent consecutive trading days ending on the third trading day immediately prior to the closing of the first-step merger. Under

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certain conditions, NetApp may elect to reduce, or may be required to reduce, the stock consideration, and, in the event of such a reduction, NetApp will be required to increase the cash consideration.

The Board of Directors of Data Domain has unanimously approved the revised transaction agreement. The deal is anticipated to close in 60-110 days subject to customary closing conditions including regulatory approval.

NetApp first announced its definitive agreement to acquire Data Domain on May 20, 2009. For complete details on this acquisition, visit the page [NetApp to Acquire Data Domain](#) or [www.netapp.com](http://www.netapp.com).

#### **Forward-Looking Statements**

This press release contains forward-looking statements, which involve a number of risks and uncertainties. NetApp and Data Domain caution readers that any forward-looking information is not a guarantee of future performance and that actual results could differ materially from those contained in the forward-looking information. All such forward-looking statements include, but are not limited to, statements about the benefits of NetApp's acquisition of Data Domain, including future financial and operating results, NetApp's plans, objectives, expectations and intentions and other statements that are not historical facts.

The following factors, among others, could cause actual results to differ from those set forth in the forward-looking statements: the ability to obtain regulatory approvals of the transaction on the proposed terms and schedule; the failure of Data Domain stockholders to approve the transaction; the risk that the businesses will not be integrated successfully; the risk that the cost savings and any other synergies from the transaction may not be fully realized or may take longer to realize than expected; disruption from the transaction making it more difficult to maintain relationships with customers, employees or suppliers; and competition and its effect on pricing, spending, third-party relationships and revenues. Additional factors that may affect future results are contained in NetApp's and Data Domain's filings with the SEC, which are available at the SEC's web site <http://www.sec.gov>. NetApp and Data Domain disclaim any obligation to update and revise statements contained in these materials based on new information or otherwise.

#### **Additional Information and Where to Find It**

NetApp plans to file with the SEC a Registration Statement on Form S-4 in connection with the transaction, and Data Domain plans to file with the SEC and mail to its stockholders a Proxy Statement/Prospectus in connection with the transaction. The Registration Statement and the Proxy Statement/Prospectus will contain important information about NetApp, Data Domain, the transaction and related matters. Investors and security holders are urged to read the Registration Statement and the Proxy Statement/Prospectus carefully when they are available. Investors and security holders

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will be able to obtain free copies of the Registration Statement and the Proxy Statement/Prospectus and other documents filed with the SEC by NetApp and Data Domain through the web site maintained by the SEC at [www.sec.gov](http://www.sec.gov) and by contacting NetApp Investor Relations at (408) 822-7098 or Data Domain Investor Relations at (408) 980-4909. In addition, investors and security holders will be able to obtain free copies of the documents filed with the SEC on NetApp's website at [www.netapp.com](http://www.netapp.com) and on Data Domain's website at [www.datadomain.com](http://www.datadomain.com).

#### **Participants in the Acquisition of Data Domain**

NetApp, Data Domain and their respective directors, executive officers and certain other members of management and employees may be deemed to be participants in the solicitation of proxies in respect of the proposed transaction. Information regarding these persons who may, under the rules of the SEC, be considered participants in the solicitation of Data Domain stockholders in connection with the proposed transaction will be set forth in the Proxy Statement/Prospectus described above when it is filed with the SEC. Additional information regarding NetApp's executive officers and directors is included in NetApp's definitive proxy statement, which was filed with the SEC on July 14, 2008, and additional information regarding Data Domain's executive officers and directors is included in Data Domain's Annual Report on Form 10-K/A for fiscal year ended December 31, 2008, which was filed with the SEC on April 30, 2009. You can obtain free copies of these documents from NetApp or Data Domain using the contact information above.

**About Data Domain** Data Domain is the leading provider of deduplication storage systems. Thousands of companies worldwide have purchased Data Domain systems to reduce storage costs and simplify data management. Data Domain delivers the performance, reliability and scalability to address the data protection and nearline storage needs of enterprises of all sizes. Data Domain products integrate into existing customer infrastructures and are compatible with leading enterprise backup and archive software products. To find out more about Data Domain, visit [www.datadomain.com](http://www.datadomain.com).

#### **About NetApp**

NetApp creates innovative storage and data management solutions that help our customers deliver outstanding cost efficiency and accelerate business breakthroughs. Discover our passion for helping companies around the world go further, faster at [www.netapp.com](http://www.netapp.com).

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