

NETSUITE INC
Form SC TO-T
August 18, 2016

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

SCHEDULE TO
TENDER OFFER STATEMENT UNDER SECTION 14(D)(1) OR 13(E)(1)
OF THE SECURITIES EXCHANGE ACT OF 1934

NETSUITE INC.
(Name of Subject Company (Issuer))
NAPA ACQUISITION CORPORATION

(Offeror)

a subsidiary of

OC ACQUISITION LLC

(Parent of Offeror)

a subsidiary of

ORACLE CORPORATION

(Parent of Offeror)

(Names of Filing Persons)

Common Stock, Par Value \$0.01 Per Share

(Title of Class of Securities)

64118Q107

(CUSIP Number of Class of Securities)

Brian S. Higgins

Vice President and Associate General Counsel

Oracle Corporation

500 Oracle Parkway

Redwood City, California 94065

Telephone: (650) 506-7000

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications on Behalf of Filing Persons)

Copies to:

Keith A. Flaum

James R. Griffin

Weil, Gotshal & Manges LLP

201 Redwood Shores Parkway

Redwood Shores, California 94065

Telephone: (650) 802-3000

CALCULATION OF FILING FEE

Transaction Valuation*

\$9,473,545,994.00

Amount of Filing Fee**

\$953,986.08

* Estimated solely for purposes of calculating the filing fee. This calculation is based on the offer to purchase all of the issued and outstanding shares of common stock, par value \$0.01 per share, of NetSuite Inc. (NetSuite), at a purchase price of \$109.00 per share, net to the seller in cash, without interest thereon and subject to any required tax withholding. Such shares consist of: (i) 81,007,997 shares of common stock of NetSuite that were issued and outstanding as of August 8, 2016; (ii) 1,035,657 shares of common stock of NetSuite potentially issuable upon

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exercise of outstanding exercisable in-the-money stock options as of August 8, 2016; (iii) 3,480,715 shares of common stock of NetSuite issuable upon the settlement of outstanding restricted stock units as of August 8, 2016; and (iv) 1,388,897 shares of common stock of NetSuite issuable upon the settlement of outstanding performance share units as of August 8, 2016. The foregoing figures have been provided by the issuer to the offeror and are as of August 8, 2016, the most recent practicable date.

** The filing fee was calculated in accordance with Rule 0-11 under the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory No. 1 for Fiscal Year 2016, issued August 27, 2015, by multiplying the transaction value by 0.00010070.

.. Check box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid:
Form or Registration No.:

Filing Party:
Date Filed:

.. Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

- x third-party tender offer subject to Rule 14d-1.
- .. issuer tender offer subject to Rule 13e-4.
- .. going-private transaction subject to Rule 13e-3.
- .. amendment to Schedule 13D under Rule 13d-2

Check the following box if the filing is a final amendment reporting the results of the tender offer. ..

This Tender Offer Statement on Schedule TO (together with any amendments and supplements hereto, this Schedule TO) is filed by Napa Acquisition Corporation, a Delaware corporation (Purchaser), a subsidiary of OC Acquisition LLC, a Delaware limited liability company (Parent), which is a subsidiary of Oracle Corporation, a Delaware corporation (Oracle). This Schedule TO relates to the offer by Purchaser to purchase all of the issued and outstanding shares of common stock, par value, \$0.01 per share (the Shares), of NetSuite Inc., a Delaware corporation (NetSuite), at a purchase price of \$109.00 per Share (the Offer Price) net to the seller in cash, without interest thereon and subject to any required tax withholding, upon the terms and subject to the conditions set forth in the Offer to Purchase and in the related Letter of Transmittal, copies of which are attached hereto as Exhibits (a)(1)(A) and (a)(1)(B), respectively.

All information contained in the Offer to Purchase (including Schedule I to the Offer to Purchase) and the accompanying Letter of Transmittal is hereby expressly incorporated herein by reference in response to Items 1 through 9 and Item 11 of this Schedule TO.

The Agreement and Plan of Merger, dated as of July 28, 2016 (as it may be amended from time to time, the Merger Agreement), by and among NetSuite, Parent, Purchaser and (solely with respect to performance of its obligations set forth in certain specified sections thereof) Oracle, a copy of which is attached as Exhibit (d)(1) hereto, and the Tender and Support Agreements, dated as of July 28, 2016 (as they may be amended from time to time, the Tender and Support Agreements) with Zachary Nelson, Evan Goldberg, James McGeever and Ronald Gill, a copy of the form of which is attached as Exhibit (d)(2) hereto, and NetSuite Restricted Holdings LLC, an entity beneficially owned by Lawrence J. Ellison, a copy of which is attached as Exhibit (d)(3) hereto, are incorporated herein by reference with respect to Items 4, 5, 6 and 11 of this Schedule TO.

Item 1. Summary Term Sheet.

The information set forth in the Summary Term Sheet of the Offer to Purchase is incorporated herein by reference.

Item 2. Subject Company Information.

(a) The name of the subject company and the issuer of the securities to which this Schedule TO relates is NetSuite Inc., a Delaware corporation. NetSuite's principal executive offices are located at 2955 Campus Drive, Suite 100, San Mateo, CA 94403-2511. NetSuite's telephone number is (650) 627-1000.

(b) This Schedule TO relates to the outstanding shares of common stock, par value \$0.01 per share, of NetSuite. NetSuite has advised Purchaser, Parent and Oracle that, as of August 8, 2016 (the most recent practicable date) 81,007,997 Shares were issued and outstanding.

(c) The information set forth in Section 6 (entitled Price Range of Shares; Dividends) of the Offer to Purchase is incorporated herein by reference.

Item 3. Identity and Background of the Filing Person.

(a) (c) This Schedule TO is filed by Purchaser, Parent and Oracle. The information set forth in Section 8 (entitled Certain Information Concerning Oracle, Parent and Purchaser) of the Offer to Purchase and Schedule I to the Offer to Purchase is incorporated herein by reference.

Item 4. Terms of the Transaction.

(a)(1)(i) (viii), (xii), (a)(2)(i) (iv), (vii) The information set forth in the following sections of the Offer to Purchase is incorporated herein by reference:

the Introduction

the Summary Term Sheet

Section 1 Terms of the Offer

Section 2 Acceptance for Payment and Payment for Shares

Section 3 Procedures for Accepting the Offer and Tendering Shares

Section 4 Withdrawal Rights

Section 5 Certain United States Federal Income Tax Consequences of the Offer

Section 11 The Merger Agreement; Other Agreements

Section 12 Purpose of the Offer; Plans for NetSuite

Section 13 Certain Effects of the Offer

Section 15 Conditions of the Offer

Section 16 Certain Legal Matters; Regulatory Approvals

Section 17 Appraisal Rights

Section 19 Miscellaneous

(a)(1)(ix) (xi), (a)(2)(v) (vi) Not applicable.

Item 5. Past Contacts, Transactions, Negotiations and Agreements.

(a), (b) The information set forth in the following sections of the Offer to Purchase is incorporated herein by reference:

the Introduction

the Summary Term Sheet

Section 8 Certain Information Concerning Oracle, Parent and Purchaser

Section 10 Background of the Offer; Past Contacts or Negotiations with NetSuite

Section 11 The Merger Agreement; Other Agreements

Section 12 Purpose of the Offer; Plans for NetSuite

Schedule I

Item 6. Purposes of the Transaction and Plans or Proposals.

(a), (c)(1)-(7) The information set forth in the following sections of the Offer to Purchase is incorporated herein by reference:

the Introduction

the Summary Term Sheet

Section 10 Background of the Offer; Past Contacts or Negotiations with NetSuite

Section 11 The Merger Agreement; Other Agreements

Section 12 Purpose of the Offer; Plans for NetSuite

Section 13 Certain Effects of the Offer

Schedule I

Item 7. Source and Amount of Funds or Other Consideration.

(a) The information set forth in the following sections of the Offer to Purchase is incorporated herein by reference:

the Summary Term Sheet

Section 9 Source and Amount of Funds

(b), (d) Not applicable.

Item 8. Interest in Securities of the Subject Company.

(a) The information set forth in the following sections of the Offer to Purchase is incorporated herein by reference:

the Summary Term Sheet

Section 8 Certain Information Concerning Oracle, Parent and Purchaser

Section 11 The Merger Agreement; Other Agreements

Section 12 Purpose of the Offer; Plans for NetSuite

Schedule I

(b) The information set forth in the following sections of the Offer to Purchase is incorporated herein by reference:

Section 8 Certain Information Concerning Oracle, Parent and Purchaser

Schedule I

Item 9. Persons/Assets, Retained, Employed, Compensated or Used.

(a) The information set forth in the following sections of the Offer to Purchase is incorporated herein by reference:

the Summary Term Sheet

Section 3 Procedures for Accepting the Offer and Tendering Shares

Section 10 Background of the Offer; Past Contacts or Negotiations with NetSuite

Section 18 Fees and Expenses

Item 10. Financial Statements.

Not applicable.

Item 11 Additional Information.

(a)(1) The information set forth in the following sections of the Offer to Purchase is incorporated herein by reference:

Section 8 Certain Information Concerning Oracle, Parent and Purchaser

Section 10 Background of the Offer; Past Contacts or Negotiations with NetSuite

Section 11 The Merger Agreement; Other Agreements

Section 12 Purpose of the Offer; Plans for NetSuite

(a)(2) The information set forth in the following sections of the Offer to Purchase is incorporated herein by reference:

Section 12 Purpose of the Offer; Plans for NetSuite

Section 15 Conditions of the Offer

Section 16 Certain Legal Matters; Regulatory Approvals

(a)(3) The information set forth in the following sections of the Offer to Purchase is incorporated herein by reference:

Section 15 Conditions of the Offer

Section 16 Certain Legal Matters; Regulatory Approvals

(a)(4) The information set forth in the following sections of the Offer to Purchase is incorporated herein by reference:

Section 13 Certain Effects of the Offer

(a)(5) The information set forth in the following sections of the Offer to Purchase is incorporated herein by reference:

Section 16 Certain Legal Matters; Regulatory Approvals

Item 12. Exhibits.

Exhibit No.	Description
(a)(1)(A)	Offer to Purchase, dated August 18, 2016.*
(a)(1)(B)	Letter of Transmittal (including Guidelines for Certification of Taxpayer Identification Number on IRS Form W-9).*
(a)(1)(C)	Notice of Guaranteed Delivery.*
(a)(1)(D)	Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.*
(a)(1)(E)	Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.*
(a)(1)(F)	Summary Advertisement, dated August 18, 2016.*
(a)(5)(A)	Press Release issued by Oracle Corporation on July 28, 2016 (incorporated by reference to the Schedule TO filed by Oracle Corporation on August 1, 2016).
(a)(5)(B)	FAQ issued by Oracle Corporation on April July 28, 2016 (incorporated by reference to the Schedule TO filed by Oracle Corporation on August 1, 2016).

- (b) Not applicable.
- (d)(1) Agreement and Plan of Merger, dated as of July 28, 2016, among NetSuite Inc., OC Acquisition LLC, Napa Acquisition Corporation and (solely with respect to performance of its obligations set forth in certain specified sections thereof) Oracle Corporation (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K filed by Oracle Corporation with the SEC on August 1, 2016).
- (d)(2) Form of Tender and Support Agreement among OC Acquisition LLC, Napa Acquisition Corporation and the stockholder party thereto (incorporated by reference to Exhibit (e)(4) to the Schedule 14D-9 filed by NetSuite Inc. on August 18, 2016).

Exhibit No.	Description
(d)(3)	Tender and Support Agreement dated as of July 28, 2016, among OC Acquisition LLC, Napa Acquisition Corporation and NetSuite Restricted Holdings LLC (incorporated by reference to Exhibit (e)(5) to the Schedule 14D-9 filed by NetSuite Inc. on August 18, 2016).
(d)(4)	Confidentiality Agreement, effective as of May 5, 2016, between Oracle Corporation and NetSuite Inc., as amended and restated on July 20, 2016 (incorporated by reference to Exhibit (e)(2) to the Schedule 14D-9 filed by NetSuite Inc. on August 18, 2016).
(d)(5)	Exclusivity Agreement, dated as of July 15, 2016, between the Transactions Committee, on behalf of NetSuite Inc., and the Special Committee, on behalf of Oracle Corporation (incorporated by reference to Exhibit (e)(3) to the Schedule 14D-9 filed by NetSuite Inc. on August 18, 2016).
(g)	Not applicable.
(h)	Not applicable.

* Filed herewith

SIGNATURES

After due inquiry and to the best knowledge and belief of the undersigned, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

Date: August 18, 2016

Napa Acquisition Corporation

By: /s/ Brian S. Higgins
Name: Brian S. Higgins
Title: Vice President

OC Acquisition LLC

By: /s/ Brian S. Higgins
Name: Brian S. Higgins
Title: Secretary

Oracle Corporation

By: /s/ Brian S. Higgins
Name: Brian S. Higgins
Title: Vice President

EXHIBIT INDEX

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